

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2014
First Extraordinary Session, 2014
Second Extraordinary Session, 2014

Volume II
Chapters 104 - 193
Chapters 1 - 9
Chapters 1 - 6

WEST VIRGINIA HOUSE OF DELEGATES
HONORABLE TIMOTHY R. MILEY
SPEAKER OF THE HOUSE

COMPILED AND PUBLISHED
UNDER THE DIRECTION

OF

GREGORY M. GRAY
CLERK OF THE HOUSE



OFFICE OF THE CLERK OF THE HOUSE
212 MAIN UNIT
STATE CAPITOL
CHARLESTON, WEST VIRGINIA

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR AND EXTRAORDINARY SESSIONS, 2014

OFFICERS

Speaker – Timothy R. Miley, Bridgeport
Clerk – Gregory M. Gray, Charleston
Sergeant-at-Arms – George McClaskie, Charleston
Doorkeeper – Tom Hively, Chesapeake

District	Name	Address	Occupation or Profession	Legislative Service
First	Ronnie D. Jones (D)	Weirton	Retired Businessman	80 th - 81 st
	Randy Swartzmiller (D)	New Cumberland	Regulatory Compliance Management	75 th - 81 st
Second	Phillip W. Diserio (D)	Follansbee	Electrician	Appt. 1/23/2012, 80 th ; 81 st
Third	Ryan Ferns (R)	Wheeling	Physical Therapist	80 th - 81 st
	Erikka Storch (R)	Wheeling	Financial Officer	80 th - 81 st
Fourth	David E. Evans (R)	Moundsville	Vocational Administrator	81 st
	Michael T. Ferro (D)	McMechen	Retired Educator/ Coach	79 th - 81 st
Fifth	Dave Pethel (D)	Hundred	Educator	69 th - 71 st ; 74 th - 81 st
Sixth	William Roger Romine (R)	Sistersville	Retired School Administrator	75 th - 81 st
			Retired Chemical Engineer/Farmer	78 th - 81 st
Eighth	W. "Bill" Anderson, Jr. (R)	Williamstown	Educator	71 st - 81 st
Ninth	Anna Border Sheppard (R)	Davisville	Educator	Appt. 6/21/2011, 80 th ; 81 st
			Retired Insurance Agent	72 nd - 81 st
Tenth	Tom Azinger (R)	Vienna	Retired Insurance Agent	72 nd - 81 st
	John Ellem (R)	Parkersburg	Attorney	75 th - 81 st
Eleventh	Bob Ashley (R)	Spencer	Business Representative	78 th - 81 st
			Insurance Agent	67 th - 73 rd ; 75 th - 81 st
Twelfth	Steve Westfall (R)	Ripley	Insurance Agent	81 st
Thirteenth	Scott Cadle (R)	Letart	Trucking/Excavating	81 st
	Brady Paxton (D)	Liberty	Educator	71 st ; Appt. 4/22/1999, 74 th ; 75 th - 81 st

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Fourteenth...	Jim Butler (R)	Henderson	Excavating Contractor	81 st
Fifteenth...	Troy Andes (R)	Hurricane	Businessman	78 th - 81 st
Sixteenth...	Kevin J. Craig (D)	Huntington	Vice President - Business Development	75 th - 81 st
	Carol Miller (R)	Huntington	Small Business Owner/ Buffalo Farmer	78 th - 81 st
	Jim Morgan (D)	Huntington	Retired	69 th - 70 th ; Appt. 2/23/2001, 75 th ; 76 th - 81 st
Seventeenth...	Doug Reynolds (D)	Huntington	Attorney	78 th - 81 st
	Dale Stephens (D)	Huntington	Businessman/ School Bus Operator	75 th ; 77 th - 81 st
Eighteenth...	Kelli Sobonya (R)	Huntington	Realtor	76 th - 81 st
Nineteenth...	Timothy R. Kinsey (D)	Lavalette	Retired Banker	Appt. 6/14/2013, 81 st
	Don C. Perdue (D)	Prichard	Pharmacist	74 th - 81 st
Twentieth...	Justin J. Marcum (D)	Williamson	Attorney	Appt. 1/18/2012, 80 th ; 81 st
Twenty-first...	Harry Keith White (D)	Gilbert	Businessman	Appt. 9/11/1992, 70 th ; 71 st - 81 st
Twenty-second.	Josh Barker (D)	Chapmanville	City Manager of Danville	Appt. 7/31/2013, 81 st
	Jeff Eldridge (D)	Alum Creek	Self Employed	77 th - 79 th ; 81 st
Twenty-third..	Joshua Nelson (R)	Danville	Coal Miner	81 st
Twenty-fourth.	Rupert Phillips, Jr. (D)	Lorado	Sales Manager	80 th - 81 st
	Teddy "Ted" Tomblin (D)	Logan	Businessman	81 st
Twenty-fifth..	Linda Goode Phillips (D)	Pineville	Retired Elementary School Counselor	79 th - 81 st
Twenty-sixth..	Clif Moore (D)	Thorpe	Administrator	77 th - 81 st
Twenty-seventh.	Joe Ellington (R)	Princeton	Physician	80 th - 81 st
	Marty Gearheart (R)	Bluefield	Businessman	80 th - 81 st
	John H. Shott (R)	Bluefield	Attorney	79 th , Resigned 5/2010; 81 st
Twenty-eighth.	Roy G. Cooper (R)	Wayside	Retired U. S. Navy	81 st
	John D. O'Neal, IV (R)	Beckley	Businessman	80 th - 81 st
Twenty-ninth..	Ricky Moye (D)	Crab Orchard	Businessman/ School Bus Operator	78 th - 81 st
Thirtieth...	Linda Sumner (R)	Beckley	Retired Educator	76 th - 81 st
Thirty-first...	Lynne Carden Arvon (R)	Beckley	Medical Sales/ Social Services	81 st

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Thirty-second.	David G. Perry (D).....	Oak Hill.....	Educator.....	75 th - 81 st
	John Pino (D).....	Oak Hill.....	Contractor.....	67 th ; 71 st - 78 th ; 80 th - 81 st
	Margaret Anne Staggers (D).	Fayetteville.....	Emergency Physician/Paramedic ...	78 th - 81 st
Thirty-third. . .	David A. Walker (D).	Clendenin.	Heavy Equipment Operator.....	79 th - 81 st
Thirty-fourth. .	Brent Boggs (D).....	Gassaway.....	Railroad Engineer.	73 rd - 81 st
Thirty-fifth. . .	John B. McCuskey (R).....	Charleston.	Attorney.....	81 st
	Eric Nelson (R).	Charleston.	Businessman.	80 th - 81 st
Thirty-sixth. . .	Suzette Raines (R).	St. Albans.....	Self Employed/ Consultant.	81 st
	Doug Skaff, Jr. (D).	South Charleston. .	Business Owner.....	79 th - 81 st
	Nancy Peoples Guthrie (D). .	Charleston.	Owner/ President.	78 th - 81 st
Thirty-seventh.	Mark Hunt (D).....	Charleston.	Attorney.....	72 nd - 74 th ; 77 th - 81 st
	Danny Wells (D).	Charleston.	Retired Executive Sports Editor.	77 th - 81 st
Thirty-seventh.	Meshea L. Poore (D).	Charleston.	Attorney.....	Appt. 12/18/2009, 79 th ; 80 th - 81 st
Thirty-eighth..	Patrick Lane (R).....	Cross Lanes.	Attorney/ Entrepreneur.	77 th - 81 st
Thirty-ninth... .	Ron Walters (R).....	Charleston.	Insurance Executive/President	71 st - 73 rd ; 75 th - 81 st
Fortieth.	Tim Armstead (R).	Elkview.	Attorney.....	Appt. 9/5/1998, 73 rd ; 74 th - 81 st
Forty-first. . . .	Adam R. Young (D).....	Summersville.	Educator.....	81 st
Forty-second. .	George "Boogie" Ambler (R).	Fort Springs.	Businessman/ Educator/Farmer.	81 st
	Ray Canterbury (R).	Ronceverte.	Internet Entrepreneur... .	75 th - 81 st
Forty-third.. . .	Denise L. Campbell (D)	Elkins.....	Licensed Nursing Home Administrator. . . .	80 th - 81 st
	William G. Hartman (D)	Elkins.....	Retired Independent. Insurance Agent.....	76 th - 81 st
Forty-fourth... .	Dana L. Lynch (D).....	Webster Springs... .	Retired.....	81 st
Forty-fifth... .	Bill Hamilton (R).....	Buckhannon.	Independent Insurance Agency Owner.....	76 th - 81 st
Forty-sixth. . . .	Peggy Donaldson Smith (D)..	Weston.	Attorney.....	79 th - 81 st
Forty-seventh.	Mary M. Poling (D).....	Moatsville.	Retired Educator.	75 th - 81 st
Forty-eighth. .	Ron Fragale (D).....	Clarksburg.	Educator.....	70 th - 73 rd ; 75 th - 80 th ; Appt. 2/1/2013, 81 st
	Danny Hamrick (R).	Clarksburg.	Airline Operations.	81 st
	Richard J. Jaquinta (D).....	Clarksburg.	Educator/Coach.	76 th - 81 st
	Tim Miley (D).	Bridgeport.	Attorney.....	77 th - 81 st

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Forty-ninth. . .	Mike Manypenny (D).	Grafton.	Agricultural/ Environmental Consultant.	79 th - 81 st
Fiftieth.	Michael Caputo (D).	Fairmont.	UMWA, District 31 Vice-President.	73 rd - 81 st
	Linda Longstreth (D).	Fairmont.	Administrator/ Educator.	77 th - 81 st
	Tim Manchin (D).	Fairmont.	Attorney.	76 th - 81 st
Fifty-first.	Anthony Barill (D).	Morgantown.	Retired.	80 th - 81 st
	Barbara Evans Fleischauer (D).	Morgantown.	Attorney/Small Business Owner	72 nd - 76 th ; 78 th - 81 st
	Cindy Frich (R).	Morgantown.	Sales/Volunteer Home Care.	76 th - 77 th ; 81 st
	Charlene Marshall (D).	Morgantown.	Retired Data Technician.	74 th - 75 th ; 76 th - 81 th
	Amanda Pasdon (R).	Morgantown.	Business Development Director.	80 th - 81 st
Fifty-second. . .	Larry A. Williams (D).	Tunnelton.	Businessman/ Farmer	Appt. 10/8/1993, 71 st ; 72 nd - 81 st
Fifty-third. . . .	Randy E. Smith (R).	Terra Alta.	Coal Miner.	81 st
Fifty-fourth. . .	Allen V. Evans (R).	Dorcas.	Businessman/ Farmer	70 th - 81 st
Fifty-fifth. . . .	Isaac Sponaugle (D).	Franklin.	Attorney.	81 st
Fifty-sixth. . . .	Gary G. Howell (R).	Keyser.	Small Business Owner.	80 th - 81 st
Fifty-seventh. .	Ruth Rowan (R).	Points.	Retired Educator.	77 th - 81 st
Fifty-eighth. . .	Daryl E. Cowles (R).	Berkeley Springs.	Businessman.	78 th - 81 st
Fifty-ninth. . . .	Larry D. Kump (R).	Falling Waters.	Retired Public Administrator.	80 th - 81 st
Sixtieth.	Larry W. Faircloth (R).	Inwood.	Business Consulting and Marketing.	81 st
Sixty-first. . . .	Jason Barrett (D).	Martinsburg.	Restaurant Owner.	81 st
Sixty-second. . .	John Overington (R).	Martinsburg.	Public Relations/ Former Educator.	67 th - 81 st
Sixty-third. . . .	Michael "Mike" Folk (R).	Martinsburg.	Airline Pilot/Farmer.	81 st
Sixty-fourth. . .	Eric L. Householder (R).	Martinsburg.	Small Business Owner.	80 th - 81 st
Sixty-fifth. . . .	Tiffany Elizabeth Lawrence (D).	Charles Town.	Marketing and Public Relations.	79 th - 81 st
Sixty-sixth. . . .	Paul Espinosa (R).	Charles Town.	General Manager, Frontier Communications.	81 st
Sixty-seventh. .	Stephen Skinner (D).	Shepherdstown.	Attorney.	81 st

MEMBERS OF THE SENATE

REGULAR AND EXTRAORDINARY SESSIONS, 2014

OFFICERS

President – Jeffrey V. Kessler, Glen Dale

Clerk – Joseph M. Minard, Clarksburg

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

Doorkeeper – Tony Gallo, Charleston

District	Name	Address	Occupation or Profession	Legislative Service
First.	Robert J. Fitzsimmons (D)	Wheeling.	Attorney.	Appt. 1/26/2012, 81 st
	Jack Yost (D)	Wellsburg.	Retired.	(House 76 th - 78 th); 79 th - 81 st
Second.	Larry J. Edgell (D)	New Martinsburg.	Educator.	74 th - 81 st
	Jeffrey V. Kessler (D)	Glen Dale.	Attorney.	Appt. 11/1997, 73 rd ; 74 th - 81 st
Third.	Donna J. Boley (R)	St. Marys.	Retired.	Appt. 5/14/1985, 67 th ; 68 th - 81 st
	David C. Nohe (R)	Vienna.	Mayor, City of Vienna.	80 th - 81 st
Fourth.	Mitch B. Carmichael (R)	Ripley.	Director of Commercial Sales.	(House 75 th - 80 th); 81 st
	Mike Hall (R)	Winfield.	Businessman.	(House 72 nd - 77 th); 78 th - 81 st
Fifth.	Evan H. Jenkins (D)	Huntington.	Attorney/Assoc Executive.	76 th - 81 st
	Robert H. Plymale (D)	Ceredo.	Businessman.	71 st - 81 st
Sixth.	H. Truman Chafin (D)	Williamson.	Attorney.	66 th - 81 st
	Bill Cole (R)	Bluefield.	Automobile Dealer.	(House Appt. 5/28/2010, 79 th); 81 st
Seventh.	Art Kirkendoll (D)	Chapmanville.	Self Employed.	Appt. 11/14/2011, 80 th ; 81 st
	Ron Stollings (D)	Madison.	Physician.	78 th - 81 st
Eighth.	Chris Walters (R)	Poca.	Insurance.	81 st
	Erik P. Wells (D)	Charleston.	Public Relations/ Media Consultant	78 th - 81 st
Ninth.	Mike Green (D)	Daniels.	Businessman/ Real Estate Developer.	78 th - 81 st
	Daniel Hall (D)	Oceana.	Insurance Investigator	(House 79 th - 80 th); 81 st

MEMBERS OF THE SENATE - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Tenth.....	William Laird IV (D).....	Oak Hill.....	Retired/ Self-Employed.....	(House 73 rd - 75 th); 79 th - 81 st
	Ronald F. Miller (D).....	Lewisburg.....	Self-Employed.....	80 th - 81 st
Eleventh....	Clark Barnes (R).....	Randolph.....	Businessman.....	77 th - 81 st
	Gregory A. Tucker (D).....	Summersville.....	Attorney.....	80 th - 81 st
Twelfth....	Samuel J. Cann (D).....	Bridgeport.....	Businessman.....	(House 72 nd - 81 st); Appt. 1/16/2013, 81 st
	Douglas Facemire (D).....	Sutton.....	Grocery Chain Owner.....	79 th - 81 st
Thirteenth....	Robert D. Beach (D).....	Morgantown.....	Executive Director of College Foundation.....	(House Appt. 5/1998, 73 rd ; 74 th - 79 th); 80 th - 81 st
	Roman W. Prezioso, Jr. (D)..	Fairmont.....	Administrator.....	(House 69 th - 72 nd); 73 rd - 81 st
Fourteenth....	Dave Sypolt (R).....	Kingwood.....	Professional..... Land Surveyor	78 th - 81 st
	Bob Williams (D).....	Grafton.....	Real Estate..... Appraiser	79 th - 81 st
Fifteenth....	Craig P. Blair (R).....	Martinsburg.....	Small Business Owner/President.....	(House 76 th - 79 th); 81 st
	Donald H. Cookman (D).....	Romney.....	Retired Circuit Judge.....	Appt. 1/23/2013, 81 st
Sixteenth....	Herb Snyder (D).....	Shenandoah Junction	Director, Environmental Chemistry.....	73 rd - 76 th ; 79 th - 81 st
	John R. Unger II (D).....	Martinsburg.....	Businessman/ Economic Development.....	74 th - 81 st
Seventeenth....	Brooks F. McCabe, Jr. (D)...	Charleston.....	Real Estate Developer.....	74 th - 81 st
	Corey Palumbo (D).....	Charleston.....	Attorney.....	(House 76 th - 78 th); 79 th - 81 st

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2014

STANDING

AGRICULTURE AND NATURAL RESOURCES

Walker (*Chair of Agriculture*), Manypenny (*Vice Chair of Agriculture*), Pino (*Chair of Natural Resources*), R. Phillips (*Vice Chair of Natural Resources*), Campbell, Diserio, Guthrie, M. Poling, Sponaule, Swartzmiller, Tomblin, Wells, Williams, A. Evans (*Minority Chair of Agriculture*), Romine (*Minority Vice Chair of Agriculture*), Hamilton (*Minority Chair of Natural Resources*), Ireland (*Minority Vice Chair of Natural Resources*), Ambler, Anderson, Border, Canterbury, Ellem, Miller and Overington.

BANKING AND INSURANCE

Moore (*Chair of Banking*), Campbell (*Vice Chair of Banking*), Guthrie (*Chair of Insurance*), Hartman (*Vice Chair of Insurance*), Barrett, Hunt, Iaquina, Kinsey, Morgan, Perry, R. Phillips, Reynolds, Tomblin, Azinger (*Minority Chair of Banking*), E. Nelson (*Minority Vice Chair of Banking*), Ashley (*Minority Chair of Insurance*), Walters (*Minority Vice Chair of Insurance*), Andes, Frich, McCuskey, O'Neal, Pasdon, Shott and Westfall.

EDUCATION

M. Poling (*Chair*), Perry (*Vice Chair*), Barill, Barrett, Campbell, Fragale, Lawrence, Moye, Pethtel, Tomblin, Walker, Williams, Young, Pasdon (*Minority Chair*), Sumner (*Minority Vice Chair*), Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Raines, Rowan and Westfall.

HOUSE OF DELEGATES COMMITTEES

ENERGY

Craig (*Chair*), Caputo (*Vice Chair*), Barker, Diserio, Eldridge, Fragale, Kinsey, Longstreth, Marcum, L. Phillips, R. Phillips, D. Poling, Skaff, Walker, Andes (*Minority Chair*), Shott (*Minority Vice Chair*), Anderson, Arvon, Butler, Cadle, Frich, Ireland, McCuskey, R. Smith and Sumner.

FINANCE

Boggs (*Chair*), Reynolds (*Vice Chair*), Craig, Guthrie, Iaquinta, Marshall, Moye, Perdue, Pethel, L. Phillips, R. Phillips, D. Poling, Skaff, Williams, Anderson (*Minority Chair*), E. Nelson (*Minority Vice Chair*), Andes, Ashley, Canterbury, Cowles, A. Evans, Gearheart, Miller, Storch and Walters

GOVERNMENT ORGANIZATION

Morgan (*Chair*), Stephens (*Vice Chair*), Barker, Caputo, Diserio, Eldridge, Hartman, Jones, Kinsey, Paxton, P. Smith, Staggers, Swartzmiller, Howell (*Minority Chair*), Border (*Minority Vice Chair*), Arvon, Azinger, Cadle, Faircloth, Ferns, Folk, Kump, J. Nelson, Romine and R. Smith.

HEALTH AND HUMAN RESOURCES

Perdue (*Chair*), Fleischauer (*Vice Chair*), Barker, Campbell, Diserio, Eldridge, Guthrie, Kinsey, Lawrence, Marshall, Moore, Poore, Staggers, Ellington (*Minority Chair*), Householder (*Minority Vice Chair*), Arvon, Border, Cowles, Faircloth, Lane, Miller, Pasdon, Rowan and Sobonya.

HOUSE OF DELEGATES COMMITTEES

INDUSTRY AND LABOR

D. Poling (*Chair*), Diserio (*Vice Chair*), Caputo, Ferro, Guthrie, Longstreth, Lynch, Marshall, Moore, Poore, Skinner, Walker, Young, Sobonya (*Minority Chair*), Overington (*Minority Vice Chair*), Andes, Azinger, Faircloth, Folk, Householder, Howell, Kump, J. Nelson, Romine and Storch.

JUDICIARY

Manchin (*Chair*), Hunt (*Vice Chair*), Ferro, Fleischauer, Longstreth, Lynch, Manypenny, Marcum, Moore, Pino, Poore, Skinner, Sponaugle, Wells, Ellem (*Minority Chair*), Lane (*Minority Vice Chair*), Frich, Hamilton, Householder, Ireland, McCuskey, O'Neal, Overington, Shott and Sobonya.

PENSIONS AND RETIREMENT

Pethtel (*Chair*), Jones (*Vice Chair*), Craig, Lynch, Canterbury (*Minority Chair*), Kump (*Minority Vice Chair*) and Ellem.

POLITICAL SUBDIVISIONS

Lawrence (*Chair*), Fragale (*Vice Chair*), Barill, Fleischauer, Hartman, Hunt, Jones, Marcum, Morgan, Moye, Perry, Sponaugle, Williams, Sumner (*Minority Chair*), Cowles (*Minority Vice Chair*), Cooper, Ellington, Espinosa, Ferns, Gearheart, Hamilton, Hamrick, Lane, McCuskey and Pasdon.

ROADS AND TRANSPORTATION

Staggers (*Chair*), L. Phillips (*Vice Chair*), Barker, Barill, Longstreth, Lynch, Marcum, Moye, D. Poling, P. Smith, Stephens, Walker, Wells, Young, Cowles (*Minority Chair*), Gearheart (*Minority Vice Chair*), Ambler, Arvon, Butler, Cadle, Espinosa, D. Evans, Hamrick, Howell and Shott.

HOUSE OF DELEGATES COMMITTEES

RULES

Miley (*Chair*), Boggs, Caputo, Manchin, Marshall, Morgan, Paxton, M. Poling, Swartzmiller, White, Anderson, Armstead, Ashley, Cowles, Lane, Overington, Sobonya and Sumner.

SENIOR CITIZEN ISSUES

Williams (*Chair*), Moye (*Vice Chair*), Campbell, Ferro, Manypenny, Marshall, Moore, Perdue, Perry, Pethtel, Pino, Stephens, Young, Rowan (*Minority Chair*), O'Neal (*Minority Vice Chair*), Armstead, Ashley, Border, Ellem, Faircloth, Ferns, Householder, Raines, Sobonya and Westfall.

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Skaff (*Chair*), Barrett (*Co-Vice Chair*), Hartman (*Co-Vice Chair*), Fleischauer, Manchin, Manypenny, Morgan, L. Phillips, Pino, Reynolds, Skinner, Sponaugle, White, Williams, Miller (*Minority Chair*), Ellington (*Minority Vice Chair*), Ashley, Azinger, A. Evans, Hamilton, E. Nelson, Raines, Storch, Walters and Westfall.

VETERANS' AFFAIRS AND HOMELAND SECURITY

Iaquinta (*Chair of Veterans' Affairs*), Longstreth (*Vice Chair of Veterans' Affairs*), Paxton (*Chair of Homeland Security*), Eldridge (*Vice Chair of Homeland Security*), Barill, Ferro, Fleischauer, Jones, Lawrence, Pethtel, P. Smith, Staggers, Stephens, Azinger (*Minority Chair of Veterans' Affairs*), Rowan (*Minority Vice Chair Veterans' Affairs*), Ashley (*Minority Chair of Homeland Security*), Storch (*Minority Vice Chair of Homeland Security*), Armstead, Cadle, Cooper, D. Evans, Folk, Howell, E. Nelson and J. Nelson.

ENROLLED BILLS

Wells (*Chair*), Barill (*Vice Chair*), Ferro and Overington.

SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2014

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Miller (*Chair*), Williams (*Vice Chair*), Beach, Cann, Cookman, D. Hall, Laird, Tucker, Carmichael, Nohe and Sypolt.

BANKING AND INSURANCE

Tucker (*Chair*), Fitzsimmons (*Vice Chair*), Chafin, Facemire, Green, D. Hall, Jenkins, McCabe, Palumbo, Prezioso, M. Hall, Nohe and Walters.

CONFIRMATIONS

Green (*Chair*), Facemire (*Vice Chair*), Chafin, Miller, Plymale, Snyder, Yost, Cole and Sypolt.

ECONOMIC DEVELOPMENT

Williams (*Chair*), Cann (*Vice Chair*), Beach, Cookman, Kirkendoll, McCabe, Prezioso, Snyder, Stollings, Wells, Barnes, Blair, Sypolt and Walters.

EDUCATION

Plymale (*Chair*), Wells (*Vice Chair*), Beach, Chafin, Edgell, D. Hall, Laird, Stollings, Tucker, Unger, Barnes, Boley, Carmichael and Cole.

ENERGY, INDUSTRY AND MINING

Facemire (*Chair*), Kirkendoll (*Vice Chair*), Beach, Cann, Green, Jenkins, Plymale, Snyder, Stollings, Yost, Barnes, Nohe and Sypolt.

SENATE COMMITTEES

ENROLLED BILLS

Cookman (*Chair*), Edgell, Fitzsimmons, Palumbo and Cole.

FINANCE

Prezioso (*Chair*), Facemire (*Vice Chair*), Chafin, Edgell, Green, Laird, McCabe, Plymale, Stollings, Unger, Wells, Yost, Barnes, Blair, Boley, M. Hall and Sypolt.

GOVERNMENT ORGANIZATION

Snyder (*Chair*), Miller (*Vice Chair*), Cann, Cookman, Fitzsimmons, Green, Jenkins, Kirkendoll, Williams, Yost, Blair, Boley, Cole and Sypolt.

HEALTH AND HUMAN RESOURCES

Stollings (*Chair*), Jenkins (*Vice Chair*), Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Tucker, Yost, Boley, M. Hall and Walters.

INTERSTATE COOPERATION

Kirkendoll (*Chair*), Cookman (*Vice Chair*), D. Hall, Palumbo, Wells, Blair and Nohe.

JUDICIARY

Palumbo (*Chair*), Tucker (*Vice Chair*), Beach, Cann, Cookman, Fitzsimmons, D. Hall, Jenkins, Kirkendoll, Miller, Snyder, Unger, Williams, Carmichael, Cole, Nohe and Walters.

LABOR

Yost (*Chair*), D. Hall (*Vice Chair*), Chafin, Facemire, Fitzsimmons, McCabe, Miller, Wells, Barnes, Blair and Walters.

SENATE COMMITTEES

MILITARY

Wells (*Chair*), Yost (*Vice Chair*), Edgell, Fitzsimmons, Jenkins, Laird, Tucker, Boley and Carmichael.

NATURAL RESOURCES

Laird (*Chair*), Edgell (*Vice Chair*), Beach, Cookman, Facemire, Green, McCabe, Prezioso, Snyder, Williams, M. Hall, Nohe and Walters.

PENSIONS

Jenkins (*Chair*), McCabe (*Vice Chair*), Cann, Chafin, Edgell, Carmichael and M. Hall.

RULES

Kessler (*Chair*), Edgell, Palumbo, Plymale, Prezioso, Snyder, Stollings, Unger, Barnes, Boley and M. Hall.

TRANSPORTATION AND INFRASTRUCTURE

Beach (*Chair*), Kirkendoll (*Vice Chair*), Facemire, Fitzsimmons, McCabe, Plymale, Williams, Barnes and Cole.

CHAPTER 104

**(Com. Sub. for H. B. 4392 - By Delegates Morgan, Diserio,
Jones, D. Poling and Barker)**

[Passed March 6, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-16-1, §21-16-2, §21-16-3, §21-16-4, §21-16-5, §21-16-6, §21-16-7, §21-16-8, §21-16-9 and §21-16-10; to amend and reenact §29-3-12b of said code; and to amend and reenact sections §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7 and §29-3D-8 of said code, all relating to regulating persons who perform work on heating, ventilating and cooling systems and dampers; defining terms; requiring persons who perform work on heating, ventilating and cooling systems to be licensed by the Commissioner of Labor; requiring persons who perform work on dampers to be licensed by the State Fire Marshal; providing for exemptions from licensure; providing a scope of practice for heating, ventilating and cooling technicians and technicians-in-training; authorizing the commissioner to promulgate legislative rules; authorizing the State Fire Marshal to promulgate legislative rules; authorizing enforcement procedures; authorizing interagency agreements; authorizing the issuance, renewal, denial, suspension and revocation of licenses; authorizing fines for violation of articles; providing for criminal penalties; providing that no political subdivision of the state may mandate additional licensing requirements; and authorizing and providing for the disposition of fees.

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 §21-16-1, §21-16-2, §21-16-3,

§21-16-4, §21-16-5, §21-16-6, §21-16-7, §21-16-8, §21-16-9 and §21-16-10; that §29-3-12b of said code be amended and reenacted; and that §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7 and §29-3D-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 21. LABOR

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.

§21-16-1. Declaration of purpose.

1 The provisions of this article are intended to protect the
2 health, safety and welfare of the public as well as public and
3 private property by assuring the competence of those who
4 perform work on a heating, ventilating and cooling system
5 through licensure by the Commissioner of Labor.

§21-16-2. Definitions.

1 As used in this article and the legislative rules promulgated
2 pursuant to this article:

3 (a) "Perform work on a heating, ventilating and cooling
4 system" means to install, maintain, alter, remodel or repair one
5 or more components of a heating, ventilating and cooling
6 system.

7 (b) "Heating, ventilating and cooling system" means
8 equipment to heat, cool or ventilate residential or commercial
9 structures, comprised of one or more of the following
10 components:

11 (1) "Heating system" means a system in which heat is
12 transmitted by radiation, conduction or convection, or a
13 combination of any of these methods, to the air, surrounding
14 surfaces, or both, and includes a forced air system that uses air

15 being moved by mechanical means to transmit heat, but does not
16 include a fireplace or woodburning stove not incorporated into
17 or used as a primary heating system;

18 (2) "Ventilating system" means the natural or mechanical
19 process of supplying air to, or removing air from, any space
20 whether the air is conditioned or not conditioned, at a rate of
21 airflow of more than two hundred fifty cubic feet per minute;
22 and

23 (3) "Cooling system" means a system in which heat is
24 removed from air, surrounding surfaces, or both, and includes an
25 air-conditioning system.

26 (c) "HVAC Technician" means a person licensed to install,
27 test, maintain and repair heating, ventilating and cooling
28 systems.

29 (d) "HVAC Technician in Training" means a person with
30 interest in and an aptitude for performing installation,
31 maintenance and repair work to a heating, ventilating and
32 cooling system as defined in this article, but who alone is not
33 capable or authorized to perform heating, ventilating and cooling
34 system work unless directly supervised by a HVAC technician.

35 (e) "License" means a valid and current license issued by the
36 Commissioner of Labor in accordance with the provisions of this
37 article.

38 (f) "Routine maintenance" means work performed on a
39 routine schedule that includes cleaning and/or replacing filters,
40 greasing or lubricating motor bearings, adjusting and/or
41 replacing belts, checking system temperature, checking gas
42 temperature, adjusting gas pressure as required, and checking
43 voltage and amperage draw on heating, ventilating and cooling
44 systems.

45 (g) "Single family dwelling" means a building which is
46 occupied as, or designed or intended for occupancy as, a single
47 residence for one or more persons.

§21-16-3. License required; exemptions.

1 (a) On and after January 1, 2016, a person performing or
2 offering to perform work on a heating, ventilating and cooling
3 system in this state shall have a license issued by the
4 Commissioner of Labor, in accordance with the provisions of
5 this article and the legislative rules promulgated pursuant hereto.

6 (b) A person licensed under this article shall carry a copy of
7 the license on any job in which heating, ventilating and cooling
8 work is being performed.

9 (c) This article does not apply to:

10 (1) A person who personally performs work on a heating,
11 ventilating and cooling system in a single family dwelling owned
12 by that person or by a member of that person's immediate
13 family;

14 (2) A person who performs work on a heating, ventilating
15 and cooling system at a manufacturing plant or other industrial
16 establishment as an employee of the person, firm or corporation
17 operating the plant or establishment;

18 (3) A person who performs only electrical or plumbing work
19 on a heating, ventilating and cooling system, so long as the work
20 is within the scope of practice which the person is otherwise
21 licensed or authorized to perform; or

22 (4) A person who performs routine maintenance as a direct
23 employee of the person, firm or corporation that owns or
24 operates the facility where the heating, ventilating or cooling
25 system equipment is located.

§21-16-4. Scope of practice.

1 (a) A HVAC technician in training is authorized to assist in
2 providing heating, ventilating and cooling work only under the
3 direction and control of a HVAC technician.

4 (b) A HVAC technician is authorized to provide heating,
5 ventilating and cooling work without supervision.

6 (c) Persons licensed under this article are subject to the
7 applicable provisions of the Contractor Licensing Act in article
8 eleven of this chapter in the performance of work authorized by
9 this article.

§21-16-5. Rule-making authority.

1 The Commissioner of Labor shall propose rules for
2 legislative approval, in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code, for the implementation
4 and enforcement of the provisions of this article, which shall
5 provide:

6 (1) Standards and procedures for issuing and renewing
7 licenses, applications, examinations and qualifications;

8 (2) Provisions for the granting of licenses, without
9 examination, to applicants who present satisfactory evidence no
10 later than July 1, 2016, of having at least two thousand hours of
11 experience and/or training working on heating, ventilating and
12 cooling systems and at least six thousand hours of experience
13 and/or training in heating, ventilating and cooling or relating
14 work, to include other sheet metal industry tasks: *Provided*, That
15 if a license issued under the authority of this subsection
16 subsequently lapses, the applicant is subject to all licensure
17 requirements, including the examination;

18 (3) Reciprocity provisions;

19 (4) Procedures for investigating complaints and revoking or
20 suspending licenses, including appeal procedures;

21 (5) Fees for issuance and renewal of licenses and other costs
22 necessary to administer the provisions of this article;

23 (6) Enforcement procedures; and

24 (7) Any other rules necessary to effectuate the purposes of
25 this article.

§21-16-6. Enforcement; interagency agreements authorized.

1 (a) The Commissioner of Labor and his or her Deputy
2 Commissioner or any compliance officer of the Division of
3 Labor as authorized by the Commissioner of Labor may enforce
4 the provisions of this article and may, at reasonable hours, enter
5 any building or premises where heating, ventilating and cooling
6 work is performed and issue cease and desist orders for
7 noncompliance.

8 (b) The Commissioner of Labor may enter into an
9 interagency agreement with the State Fire Marshal for the mutual
10 purpose of enforcing the provisions of this article and the
11 provisions of article three-e, chapter twenty-nine of this code.

§21-16-7. Denial, suspension and revocation of license.

1 (a) The Commissioner of Labor may deny a license to any
2 applicant who fails to comply with the provisions of this article
3 or the rules established by the Commissioner of Labor or who
4 lacks the necessary qualifications.

5 (b) The Commissioner of Labor may, upon complaint or
6 upon his or her own inquiry, and after notice to the licensee,
7 suspend or revoke a licensee's license if:

8 (1) The license was granted upon an application or
9 documents supporting the application which materially misstated
10 the terms of the applicant's qualifications or experience;

11 (2) The licensee subscribed or vouched for a material
12 misstatement in his or her application for licensure;

13 (3) The licensee incompetently or unsafely performs heating,
14 ventilating and cooling work; or

15 (4) The licensee violated any statute of this state, any
16 legislative rule or any ordinance of any municipality or county
17 of this state which protects the consumer or public against unfair,
18 unsafe, unlawful or improper business practices.

§21-16-8. Penalties.

1 (a) On and after January 1, 2016, a person performing or
2 offering to perform, or an employer authorizing a person not
3 exempt by the provisions of section three of this article, to
4 perform, heating, ventilating and cooling work without a license
5 issued by the Commissioner of Labor, is subject to a cease and
6 desist order.

7 (b) A person continuing to perform, or an employer
8 continuing to authorize a person not exempt by the provisions of
9 section three of this article, to perform, heating, ventilating and
10 cooling work after the issuance of a cease and desist order is
11 guilty of a misdemeanor and, upon conviction thereof, is subject
12 to the following penalties:

13 (1) For the first offense, a fine of not less than \$200 nor
14 more than \$1,000;

15 (2) For the second offense, a fine of not less than \$500 nor
16 more than \$2,000;

17 (3) For the third and subsequent offenses, a fine of not less
18 than \$1,000 nor more than \$5,000, and confinement in jail for
19 not more than one year.

20 (c) Each day after official notice is given, a person continues
21 to perform, or an employer continues to authorize a person to
22 perform, and which is not exempt by the provisions of section
23 three of this article, heating, ventilating and cooling work, is a
24 separate offense and punishable accordingly.

25 (d)(1) The Commissioner of Labor may institute proceedings
26 in the circuit court of Kanawha County or of the county where
27 the alleged violation of the provisions of this article occurred or
28 are occurring to enjoin any violation of any provision of this
29 article.

30 (2) A circuit court may by injunction compel compliance
31 with this article, with the lawful orders of the Commissioner of
32 Labor and with any final decision of the Commissioner of Labor.

33 (3) The Commissioner of Labor shall be represented in all
34 such proceedings by the Attorney General or his or her
35 assistants.

36 (e) Any person adversely affected by an action of the
37 Commissioner of Labor may appeal the action pursuant to
38 chapter twenty-nine-a of this code.

§21-16-9. Inapplicability of local ordinances.

1 On and after January 1, 2016, a political subdivision of this
2 state may not require, as a condition precedent to the
3 performance of work on heating, ventilating and cooling in the
4 political subdivision, a person who holds a valid and current
5 license issued under this article, to have any other license or
6 other evidence of competence beyond those required by the

- 7 Commissioner of Labor to perform work on heating, ventilating
8 and cooling systems.

§21-16-10. Disposition of fees.

- 1 All fees paid pursuant to this article, shall be paid to the
2 Commissioner of Labor and deposited in “West Virginia
3 Contractor Licensing Board Fund” for the use of the
4 Commissioner of Labor in a manner consistent with section
5 seventeen, article eleven, chapter twenty-one of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12b. Fees.

- 1 (a) The State Fire Marshal may establish fees in accordance
2 with the following:

3 (1) For blasting. — Any person storing, selling or using
4 explosives shall first obtain a permit from the State Fire Marshal.
5 The permit shall be valid for one year. The State Fire Marshal
6 may charge a fee for the permit.

7 (2) For inspections of schools or day-care facilities. — The
8 State Fire Marshal may charge a fee of up to \$25.00 per annual
9 inspection for inspection of schools or day-care facilities:
10 *Provided*, That only one such fee may be charged per year for
11 any building in which a school and a day-care facility are
12 colocated: *Provided, however*, That any school or day-care
13 facility may not be charged for an inspection more than one time
14 per twelve-month period.

15 (3) For inspections of hospitals or nursing homes. — The
16 State Fire Marshal may charge an inspection fee of up to \$100.00
17 per annual inspection of hospitals or nursing homes: *Provided*,

18 That any hospital or nursing home may not be charged for an
19 inspection more than one time per twelve-month period.

20 (4) For inspections of personal care homes or board and care
21 facilities. — The State Fire Marshal may charge an inspection
22 fee of up to \$50.00 per annual inspection for inspections of
23 personal care homes or board and care facilities: *Provided*, That
24 any personal care home or board and care facility may not be
25 charged for an inspection more than one time per twelve-month
26 period.

27 (5) For inspections of residential occupancies. — The State
28 Fire Marshal may charge an inspection fee of up to \$100.00 for
29 each inspection of a residential occupancy. For purposes of this
30 subdivision, “residential occupancies” are those buildings in
31 which sleeping accommodations are provided for normal
32 residential purposes.

33 (6) For inspections of mercantile occupancies. — The State
34 Fire Marshal may charge an inspection fee of up to \$100.00 for
35 inspections of mercantile occupancies: *Provided*, That if the
36 inspection is in response to a complaint made by a member of
37 the public, the State Fire Marshal shall obtain from the
38 complainant an advance inspection fee of \$25.00. This fee shall
39 be returned to the complainant if, after the State Fire Marshal has
40 made the inspection, he or she finds that the complaint was
41 accurate and justified, and he or she shall thereafter collect an
42 inspection fee of up to \$100.00 from the mercantile occupancy.
43 If, after the inspection has been performed, it appears to the State
44 Fire Marshal that the complaint was not accurate or justified, the
45 State Fire Marshal shall keep the \$25.00 advance inspection fee
46 obtained from the complainant and may not collect any fees
47 from the mercantile occupant. For purposes of this section,
48 “mercantile occupancy” includes stores, markets and other
49 rooms, buildings or structures for the display and sale of
50 merchandise.

51 (7) For business occupancies. — The State Fire Marshal may
52 charge an inspection fee of up to \$100.00 for inspections of
53 business occupancies: *Provided*, That the provisions in
54 subdivision (6) of this section shall apply regarding complaints
55 by members of the public. For purposes of this section, “business
56 occupancies” are those buildings used for the transaction of
57 business, other than mercantile occupancies, for the keeping of
58 accounts and records and similar purposes.

59 (8) For inspections of assembly occupancies. — The State
60 Fire Marshal may charge an inspection fee not more than one
61 time per twelve-month period for the inspection of assembly
62 occupancies. The inspection fee shall be assessed as follows: For
63 Class C assembly facilities, an inspection fee not to exceed
64 \$50.00; for Class B assembly facilities, an inspection fee not to
65 exceed \$75.00; and for Class A facilities, an inspection fee not
66 to exceed \$100.00.

67 For purposes of this subdivision, an “assembly occupancy”
68 includes, but is not limited to, all buildings or portions of
69 buildings used for gathering together fifty or more persons for
70 such purposes as deliberation, worship, entertainment, eating,
71 drinking, amusement or awaiting transportation. For purposes of
72 this section, a “Class C assembly facility” is one that
73 accommodates fifty to three hundred persons; a “Class B
74 facility” is one which accommodates more than three hundred
75 persons but less than one thousand persons; and a “Class A
76 facility” is one which accommodates more than one thousand
77 persons.

78 (b) The State Fire Marshal may collect fees for the fire
79 safety review of plans and specifications for new and existing
80 construction. Fees shall be paid by the party or parties receiving
81 the review.

82 (1) Structural barriers and fire safety plans review. — The
83 fee is \$1.00 for each \$1,000.00 of construction cost up to the first
84 \$1 million. Thereafter, the fee is eighty cents for each \$1,000.00
85 of construction cost.

86 (2) Sprinkler system review. — The fee charged for the
87 review of an individual sprinkler system is as follows: Number
88 of heads: One to two hundred — \$85.00; two hundred one to
89 three hundred — \$100.00; three hundred one to seven hundred
90 fifty — \$120.00; over seven hundred fifty — \$120.00 plus ten
91 cents per head over seven hundred fifty.

92 (3) Fire alarm systems review. — The fee charged for the
93 review of a fire alarm system is \$50.00 for each ten thousand
94 square feet of space with a \$50.00 minimum charge.

95 (4) Range hood extinguishment system review. — The fee
96 is \$25.00 per individual system reviewed.

97 (5) Carpet specifications. — The fee for carpet review and
98 approval is \$20.00 per installation.

99 (c) All fees authorized and collected pursuant to this article,
100 article three-b, article three-c and article three-d of this chapter
101 shall be paid to the State Fire Commission and thereafter
102 deposited into the special account in the State Treasury known
103 as the “Fire Marshal Fees Fund”. Expenditures from the fund
104 shall be for the purposes set forth in this article and articles
105 three-b, three-c and three-d of this chapter and are not authorized
106 from collections but are to be made only in accordance with
107 appropriation by the Legislature and in accordance with the
108 provisions of article three, chapter twelve of this code and upon
109 fulfillment of the provisions of article two, chapter five-a of this
110 code. Any balance remaining in the special account at the end of
111 any fiscal year shall be reappropriated to the next fiscal year.

112 (d) If the owner or occupant of any occupancy arranges a
113 time and place for an inspection with the State Fire Marshal and
114 is not ready for the occupancy to be inspected at the appointed
115 time and place, the owner or occupant thereof shall be charged
116 the inspection fee provided in this section unless at least
117 forty-eight hours prior to the scheduled inspection the owner or
118 occupant requests the State Fire Marshal to reschedule the
119 inspection. In the event a second inspection is required by the
120 State Fire Marshal as a result of the owner or occupant failing to
121 be ready for the inspection when the State Fire Marshal arrives,
122 the State Fire Marshal shall charge the owner or occupant of the
123 occupancy the inspection fees set forth above for each inspection
124 trip required.

125 (e) The fees provided for in this section shall remain in
126 effect until such time as the Legislature has approved rules
127 promulgated by the State Fire Marshal, in accordance with the
128 provisions of article three, chapter twenty-nine-a of this code,
129 establishing a schedule of fees for services.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-1. Declaration of purpose.

1 The provisions of this article are intended to protect the
2 health, safety and welfare of the public as well as public and
3 private property by assuring the competence of those who
4 perform fire protection work and damper work through licensure
5 by the State Fire Marshal.

§29-3D-2. Definitions.

1 As used in this article and the legislative rules promulgated
2 pursuant to this article:

3 (a) "Combination Fire/Smoke Damper" means a device that
4 meets both fire damper and smoke damper requirements.

5 (b) “Damper” means a fire damper, smoke damper or
6 combination fire/smoke damper.

7 (c) “Damper work” means to install, test, maintain or repair
8 a damper.

9 (d) “Engineered Suppression Systems Installer” means a
10 person certified by a manufacturer to install, alter, extend,
11 maintain, layout or repair an agent suppression system.

12 (e) “Engineered Suppression Systems Technician” means a
13 person certified by a manufacturer to maintain or repair an agent
14 suppression system.

15 (f) “Fire damper” means a device installed in an air
16 distribution system, designed to close automatically upon
17 detection of heat, to interrupt migratory airflow and to restrict
18 the passage of flame. Fire dampers are classified for use in either
19 static systems or for dynamic systems, where the dampers are
20 rated for closure under airflow.

21 (g) “Fire protection damper technician” means a person
22 certified to install, test, maintain or repair a damper.

23 (h) “Fire protection damper technician in training” means a
24 person with interest in and an aptitude for performing
25 installation, maintenance or repair work to a damper as defined
26 in this article, but who alone is not capable or authorized to
27 perform damper work unless directly supervised by a Fire
28 Protection Damper Technician.

29 (i) “Fire protection layout technician” is an individual who
30 has achieved National Institute for Certification in Engineering
31 Technologies (NICET) Level III or higher certification, and who
32 has the knowledge, experience and skills necessary to layout fire
33 protection systems based on engineering design documents.

34 (j) "Fire protection system" means any fire protection
35 suppression device or system designed, installed and maintained
36 in accordance with the applicable National Fire Protection
37 Association (NFPA) codes and standards, but does not include
38 public or private mobile fire vehicles.

39 (k) "Fire protection work" means the installation, alteration,
40 extension, maintenance, or testing of all piping, materials and
41 equipment inside a building, including the use of shop drawings
42 prepared by a fire protection layout technician, in connection
43 with the discharge of water, other special fluids, chemicals or
44 gases and backflow preventers for fire protection for the express
45 purpose of extinguishing or controlling fire.

46 (l) "Journeyman sprinkler fitter" means a person qualified by
47 at least ten thousand hours of work experience installing,
48 adjusting, repairing and dismantling fire protection systems and
49 who is competent to instruct and supervise the fire protection
50 work of a sprinkler fitter in training.

51 (m) "License" means a valid and current license issued by
52 the State Fire Marshal in accordance with the provisions of this
53 article.

54 (n) "Portable Fire Extinguisher Technician" means a person
55 certified in accordance with NFPA 10 to install, maintain, repair
56 and certify portable fire extinguishers as defined by NFPA 10.

57 (o) "Preengineered Suppression Systems Installer" means a
58 person certified by a manufacturer to install, alter, extend,
59 maintain, layout or repair an agent suppression system.

60 (p) "Preengineered Suppression Systems Technician" means
61 a person certified to maintain or repair an agent suppression
62 system.

63 (q) "Single family dwelling" means a building which is
64 occupied as, or designed or intended for occupancy as, a single
65 residence for one or more persons.

66 (r) "Smoke Damper" means a device within an operating
67 (dynamic) air distribution system to control the movement of
68 smoke.

69 (s) "Sprinkler fitter in training" means a person with interest
70 in and an aptitude for performing fire protection work but who
71 alone is not capable of performing such work, and who has fewer
72 than ten thousand hours of experience installing, adjusting,
73 repairing and dismantling fire protection systems.

§29-3D-3. License required; exemptions.

1 (a) On and after January 1, 2009, a person performing or
2 offering to perform fire protection work in this state shall have
3 a license issued by the State Fire Marshal, in accordance with the
4 provisions of this article.

5 (b) On and after January 1, 2016, a person performing or
6 offering to perform damper work in this state shall have a license
7 issued by the State Fire Marshal, in accordance with the
8 provisions of this article and the legislative rules promulgated
9 pursuant hereto: *Provided*, That a person may not be licensed to
10 perform damper work in this state without first being licensed as
11 a HVAC technician pursuant to the provisions of article sixteen,
12 chapter twenty-one of this code.

13 (c) A person licensed under this article must carry a copy of
14 the license on any job in which fire protection work is being
15 performed.

16 (d) This article does not apply to:

17 (1) A person who personally performs fire protection work
18 or damper work on a single family dwelling owned or leased,
19 and occupied by that person;

20 (2) A person who performs fire protection work or damper
21 work at any manufacturing plant or other industrial
22 establishment as an employee of the person, firm or corporation
23 operating the plant or establishment;

24 (3) A person who, while employed by a public utility or its
25 affiliate, performs fire protection work in connection with the
26 furnishing of public utility service.

27 (4) A person who performs fire protection work while
28 engaging in the business of installing, altering or repairing water
29 distribution or drainage lines outside the foundation walls of a
30 building, public or private sewage treatment or water treatment
31 systems including all associated structures or buildings, sewers
32 or underground utility services;

33 (5) A person who performs fire protection work while
34 engaged in the installation, extension, dismantling, adjustment,
35 repair or alteration of a heating ventilation and air conditioning
36 (HVAC) system, air-veyor system, air exhaust system or air
37 handling system; or

38 (6) A person who performs fire protection work at a coal
39 mine that is being actively mined or where coal is being
40 processed.

§29-3D-4. Rule-making authority.

1 The State Fire Marshal shall propose rules for legislative
2 approval, in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, for the implementation and
4 enforcement of the provisions of this article, which shall
5 provide:

6 (1) Standards and procedures for issuing and renewing
7 licenses, including classifications of licenses as defined in this
8 article, applications, examinations and qualifications: *Provided,*

9 That the rules shall require a person to be licensed as a HVAC
10 technician or HVAC technician in training pursuant to article
11 sixteen, chapter twenty-one of this code and the rules
12 promulgated pursuant thereto, before being granted a license to
13 perform damper work pursuant to this article;

14 (2) Provisions for the granting of licenses without
15 examination, to applicants who present satisfactory evidence of
16 having the expertise required to perform fire protection work at
17 the level of the classifications defined in this article and who
18 apply for licensure on or before July 1, 2009: *Provided*, That if
19 a license issued under the authority of this subsection
20 subsequently lapses, the applicant is subject to all licensure
21 requirements, including the examination;

22 (3) Provisions for the granting of licenses without
23 examination, to applicants who present satisfactory evidence of
24 having the expertise required to perform damper work at the
25 level of the classifications defined in this article and who apply
26 for licensure on or before July 1, 2016: *Provided*, That if a
27 license issued under the authority of this subsection subsequently
28 lapses, the applicant is subject to all licensure requirements,
29 including the examination;

30 (4) Reciprocity provisions;

31 (5) Procedures for investigating complaints and revoking or
32 suspending licenses, including appeal procedures;

33 (6) Fees for testing, issuance and renewal of licenses, and
34 other costs necessary to administer the provisions of this article;

35 (7) Enforcement procedures; and

36 (8) Any other rules necessary to effectuate the purposes of
37 this article.

§29-3D-5. Enforcement.

1 (a) The State Fire Marshal and his or her deputy fire
2 marshal, assistant fire marshal or assistant fire marshal-in-
3 training, is authorized to enforce the provisions of this article,
4 and may, at reasonable hours, enter any building or premises
5 where fire protection work or damper work is performed and
6 issue citations for noncompliance.

7 (b) The State Fire Marshal may enter into an interagency
8 agreement with the Commissioner of Labor for the mutual
9 purpose of enforcing this article and article sixteen, chapter
10 twenty-one of this code.

§29-3D-6. Denial, suspension and revocation of license.

1 (a) The State Fire Marshal may deny a license to any
2 applicant who fails to comply with the rules established by the
3 State Fire Marshal, or who lacks the necessary qualifications.

4 (b) The State Fire Marshal may, upon complaint or upon his
5 or her own inquiry, and after notice to the licensee, suspend or
6 revoke a licensee's license if:

7 (1) The license was granted upon an application or
8 documents supporting the application which materially misstated
9 the terms of the applicant's qualifications or experience;

10 (2) The licensee subscribed or vouched for a material
11 misstatement in his or her application for licensure;

12 (3) The licensee incompetently or unsafely performs
13 plumbing, fire protection work or damper work; or

14 (4) The licensee violated any statute of this state, any
15 legislative rule or any ordinance of any municipality or county
16 of this state which protects the consumer or public against unfair,
17 unsafe, unlawful or improper business practices.

§29-3D-7. Penalties.

1 (a) On and after January 1, 2009, a person performing or
2 offering to perform fire protection work without a license issued
3 by the State Fire Marshal, is subject to a citation.

4 (b) On and after January 1, 2016, a person performing or
5 offering to perform, or an employer authorizing a person not
6 exempt by the provisions of section three of this article, to
7 perform, damper work without a license issued by the State Fire
8 Marshal, is subject to a citation.

9 (c) Any person continuing to engage in fire protection work
10 or damper work after the issuance of a citation is guilty of a
11 misdemeanor and, upon conviction thereof, is subject to the
12 following penalties:

13 (1) For the first offense, a fine of not less than \$200 nor
14 more than \$1,000;

15 (2) For the second offense, a fine of not less than \$500 nor
16 more than \$2,000, or confinement in jail for not more than six
17 months, or both;

18 (3) For the third and subsequent offenses, a fine of not less
19 than \$1,000 nor more than \$5,000, and confinement in jail for
20 not less than thirty days nor more than one year.

21 (d) Each day after a citation is given that a person continues
22 to perform, or an employer continues to authorize a person to
23 perform, fire protection work or damper work, which is not
24 exempt by the provisions of section three of this article, is a
25 separate offense and punishable accordingly.

26 (e)(1) The State Fire Marshal may institute proceedings in
27 the circuit court of Kanawha County or the county where the
28 alleged violation of the provisions of this article occurred or are

29 now occurring to enjoin any violation of any provision of this
30 article.

31 (2) A circuit court by injunction may compel compliance
32 with the provisions of this article, with the lawful orders of the
33 State Fire Marshal and with any final decision of the State Fire
34 Marshal.

35 (3) The State Fire Marshal shall be represented in all such
36 proceedings by the Attorney General or his or her assistants.

37 (f) Any person adversely affected by an action of the State
38 Fire Marshal may appeal the action pursuant to the provisions of
39 chapter twenty-nine-a of this code.

§29-3D-8. Inapplicability of local ordinances.

1 (a) On and after January 1, 2009, a political subdivision of
2 this state may not require, as a condition precedent to the
3 performance of fire protection work in the political subdivision,
4 a person who holds a valid and current license to perform fire
5 protection work issued under the provisions of this article, to
6 have any other license or other evidence of competence as a fire
7 protection worker.

8 (b) On and after January 1, 2016, a political subdivision of
9 this state may not require, as a condition precedent to the
10 performance of damper work in the political subdivision, a
11 person who holds a valid and current license to perform damper
12 work issued under this article to have any other license or other
13 evidence of competence beyond those required by the State Fire
14 Marshal and the Commissioner of Labor to perform damper
15 work.

CHAPTER 105

**(Com. Sub. for H. B. 4339 - By Delegates Campbell, Hartman,
Lynch, Sponaugle, Manchin, White and Hamilton)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §22-16-11 and §22-16-12 of the Code of West Virginia, 1931, as amended, relating to authorizing the expenditures of moneys from the Closure Cost Assistance Fund to facilitate the closure of the Elkins-Randolph County Landfill and the Webster County Landfill; authorizing expenditures of moneys from the Closure Cost Assistance Fund to complete post closure maintenance and monitoring; and limiting liability of state and Wayne County economic development authority if permit is transferred.

Be it enacted by the Legislature of West Virginia:

That §22-16-11 and §22-16-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-11. Application for closure assistance.

1 (a) The secretary shall provide an application and application
2 procedure for all permittees of solid waste landfills desiring to
3 receive closure assistance under this article.

4 (b) The secretary shall, within a reasonable time after receipt
5 of a complete application, notify the applicant of the acceptance

6 or rejection of the application. If the application is rejected the
7 notice shall contain the reasons for the rejection.

**§22-16-12. Solid Waste Facility Closure Cost Assistance Fund;
closure extension; reporting requirements.**

1 (a) The "Closure Cost Assistance Fund" continues as a
2 special revenue account in the State Treasury. The fund operates
3 as a special fund in which all deposits and payments do not
4 expire to the General Revenue Fund, but remain in the account
5 and are available for expenditure in the succeeding fiscal year.
6 Separate subaccounts may be established within the special
7 account for the purpose of identification of various revenue
8 resources and payment of specific obligations.

9 (b) Interest earned on any money in the fund shall be
10 deposited to the credit of the fund.

11 (c) The fund consists of the following:

12 (1) Moneys collected and deposited in the State Treasury
13 which are specifically designated by Acts of the Legislature for
14 inclusion in the fund, including moneys collected and deposited
15 into the fund pursuant to section four of this article;

16 (2) Contributions, grants and gifts from any source, both
17 public and private, which may be used by the secretary for any
18 project or projects;

19 (3) Amounts repaid by permittees pursuant to section
20 eighteen, article fifteen of this chapter; and

21 (4) All interest earned on investments made by the state from
22 moneys deposited in this fund.

23 (d) The Solid Waste Management Board, upon written
24 approval of the secretary, has the authority to pledge all or part

25 of the revenues paid into the Closure Cost Assistance Fund as
26 needed to meet the requirements of any revenue bond issue or
27 issues of the Solid Waste Management Board authorized by this
28 article, including the payment of principal of, interest and
29 redemption premium, if any, on the revenue bonds and the
30 establishing and maintaining of a reserve fund or funds for the
31 payment of the principal of, interest and redemption premium,
32 if any, on the revenue bond issue or issues where other moneys
33 pledged may be insufficient. Any pledge of moneys in the
34 Closure Cost Assistance Fund for revenue bonds is a prior and
35 superior charge on the fund over the use of any of the moneys in
36 the fund to pay for the cost of any project on a cash basis.
37 Expenditures from the fund, other than for the retirement of
38 revenue bonds, may only be made in accordance with this article.

39 (e) The amounts deposited in the fund may be expended only
40 on the cost of projects as provided in sections three and fifteen
41 of this article, as provided in subsection (f) of this section and
42 for payment of bonds and notes issued pursuant to section five
43 of this article. No more than two percent of the annual deposits
44 to ~~such~~ the fund may be used for administrative purposes.

45 (f) Notwithstanding any provision of this article, upon
46 request of the Solid Waste Management Board, and with the
47 approval of the projects by the Secretary of the Department of
48 Environmental Protection, the secretary may pledge and place
49 into escrow accounts up to an aggregate of \$2,000,000 of the
50 fund to satisfy two years debt service requirement that permittees
51 of publicly-owned landfills and transfer stations are required to
52 meet in order to obtain loans. Pledges shall be made on a project-
53 by-project basis, may not exceed \$500,000 for a project and are
54 made available after loan commitments are received. The
55 secretary may pledge funds for a loan only when the following
56 conditions are met:

57 (1) The proceeds of the loan are used only to perform
58 construction of a transfer station or a composite liner system that
59 is required to meet title forty-seven, series thirty-eight, solid
60 waste management rules;

61 (2) The permittee dedicates all yearly debt service revenue,
62 as determined by the Public Service Commission, to meet the
63 repayment schedule of the loan, before it uses available revenue
64 for any other purpose; and

65 (3) That any funds pledged may only be paid to the lender if
66 the permittee is in default on the loan.

67 (g) Notwithstanding any provision of this code to the
68 contrary, the Elkins-Randolph County Landfill, located in
69 Randolph County, and the Webster County Landfill, located in
70 Webster County, are eligible for funds from the Solid Waste
71 Facility Closure Cost Assistance Fund necessary to complete
72 their closure upon the filing of appropriate application. Upon the
73 filing of an appropriate application, the Department of
74 Environmental Protection shall work with the applicant to ensure
75 the application meets the department's requirements.

76 (h) The Department of Environmental Protection is required
77 to file, by January 1 of each year, an annual report with the Joint
78 Committee on Government and Finance providing details on the
79 manner in which the landfill closure assistance funds were
80 expended for the prior fiscal year.

81 (i) The Prichard Landfill in Wayne County is eligible for
82 funds from the Closure Cost Assistance Fund necessary to
83 complete post closure maintenance and monitoring upon the
84 filing of an appropriate application. In the event of a permit
85 transfer, neither the State nor the Wayne County economic
86 development authority or entity may assume any liability from
87 the private landfill other than post closure maintenance and
88 monitoring costs.

CHAPTER 106

(Com. Sub. for S. B. 181 - By Senator Snyder)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Administration; 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 Administration to promulgate a legislative rule relating to state-owned vehicles; and authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System.

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 The legislative rule filed in the State Register on July 25,
2 2013, authorized under the authority of section forty-eight,

3 article three, chapter five-a of this code, relating to the
4 Department of Administration (state owned vehicles, 148 CSR
5 3), is authorized.

§64-2-2. Consolidated Public Retirement Board.

1 The legislative rule filed in the State Register on July 25,
2 2013, authorized under the authority of section one, article ten-d,
3 chapter five of this code, modified by the Consolidated Public
4 Retirement Board to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 August 30, 2013, relating to the Consolidated Public Retirement
7 Board (Public Employees Retirement System, 162 CSR5), is
8 authorized with the following amendment:

9 On page three, subsection 8.1, line seventeen, following the
10 word “System”, by inserting a colon and the following: “And
11 provided further, That beginning July 1, 2014, each participating
12 public employer shall contribute fourteen percent (14%) of each
13 compensation payment of all its employees who are members of
14 the Public Employees Retirement System.”.

CHAPTER 107

(Com. Sub. for S. B. 133 - By Senator Snyder)

[Passed March 8, 2014; in effect from passage.]

[Approved by the Governor on April 1, 2014.]

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 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 presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to 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 the combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources which cause or contribute to nonattainment areas; 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 emission standards for hazardous air pollutants; 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 state certification of activities requiring federal licenses and permits; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment.

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 May 6,
2 2013, authorized under the authority of section six, article six-a,
3 chapter twenty-two of this code, approved for promulgation by
4 the Legislature on April 12, 2013, relating to the Department of
5 Environmental Protection (horizontal well development, 35 CSR
6 8), is authorized with the following amendment:

7 On pages ten and eleven, by striking out all of subdivision
8 5.7.a. and inserting in lieu thereof a new subdivision 5.7.a. to
9 read as follows:

10 5.7.a. All applications for well work permits shall be
11 accompanied by a well site safety plan to address proper safety
12 measures to be employed for the protection of persons on the
13 well site, as well as the general public in the area surrounding the
14 well site. Each plan shall be specific to the well site described in
15 the permit application and include the surrounding area. The
16 plan shall encompass all aspects of the operation, including the
17 actual well work for which the permit is sought, the anticipated
18 MSDS for the chemical components added to the hydraulic

19 fracturing fluid, and completion, production, and work-over
20 activities. It shall be made available on the well site during all
21 phases of the operation and provide an emergency point of
22 contact and twenty-four (24)-hour contact information for the
23 well operator. At least seven (7) days before commencement of
24 well work or site preparation work that involves any disturbance
25 of the land, the well operator shall provide a copy of the well site
26 safety plan to the local emergency planning committee (LEPC)
27 for the emergency planning district in which the well work will
28 occur or to the county office of emergency services. The
29 operator shall also provide one copy of the Well Site Safety Plan
30 to the surface owner, any water purveyor and any surface owner
31 subject to notice and water testing as provided in section 15 of
32 this rule: *Provided*, That in the event the Well Site Safety Plan
33 previously provided to a surface owner, water purveyor or
34 surface owner, is later amended, in whole or in part, the operator
35 shall provide a copy of the amendments to the surface owner,
36 water purveyor or surface owner. The operator should work
37 closely with the local first responders to familiarize them with
38 potential incidents that are related to oil and gas development, so
39 that the local first responders have the information they need to
40 provide the support necessary for the operator to implement the
41 well site safety plan. The well site safety plan shall include, at a
42 minimum, the information contained in subdivisions 5.7.b.
43 through 5.7.h.

44 (b) The legislative rule filed in the State Register on July 22,
45 2013, authorized under the authority of section four, article five,
46 chapter twenty-two of this code, relating to the Department of
47 Environmental Protection (ambient air quality standards, 45 CSR
48 8), is authorized.

49 (c) The legislative rule filed in the State Register on July 22,
50 2013, authorized under the authority of section four, article five,
51 chapter twenty-two of this code, modified by the Department of
52 Environmental Protection to meet the objections of the

53 Legislative Rule-Making Review Committee and refiled in the
54 State Register on September 4, 2013, relating to the Department
55 of Environmental Protection (permits for construction and major
56 modification of major stationary sources for the prevention of
57 significant deterioration of air quality, 45 CSR 14), is authorized.

58 (d) The legislative rule filed in the State Register on July 22,
59 2013, authorized under the authority of section four, article five,
60 chapter twenty-two of this code, relating to the Department of
61 Environmental Protection (standards of performance for new
62 stationary sources, 45 CSR 16), is authorized.

63 (e) The legislative rule filed in the State Register on July 22,
64 2013, authorized under the authority of section four, article five,
65 chapter twenty-two of this code, relating to the Department of
66 Environmental Protection (control of air pollution from
67 combustion of solid waste, 45 CSR 18), is authorized.

68 (f) The legislative rule filed in the State Register on July 22,
69 2013, authorized under the authority of section four, article five,
70 chapter twenty-two of this code, relating to the Department of
71 Environmental Protection (permits for construction and major
72 modification of major stationary sources which cause or
73 contribute to nonattainment areas, 45 CSR 19), is authorized.

74 (g) The legislative rule filed in the State Register on July 22,
75 2013, authorized under the authority of section four, article five,
76 chapter twenty-two of this code, relating to the Department of
77 Environmental Protection (control of air pollution from
78 hazardous waste treatment, storage or disposal facilities, 45 CSR
79 25), is authorized.

80 (h) The legislative rule filed in the State Register on July 22,
81 2013, authorized under the authority of section four, article five,
82 chapter twenty-two of this code, relating to the Department of
83 Environmental Protection (emission standards for hazardous air
84 pollutants, 45 CSR 34), is authorized.

85 (i) The legislative rule filed in the State Register on July 26,
86 2013, authorized under the authority of section four, article
87 eleven, chapter twenty-two of this code, modified by the
88 Department of Environmental Protection to meet the objections
89 of the Legislative Rule-Making Review Committee and refiled
90 in the State Register on November 27, 2013, relating to the
91 Department of Environmental Protection (requirements
92 governing water quality standards, 47 CSR 2), is authorized with
93 the following amendment:

94 On page thirty-seven, parameter 8.1, by striking out the
95 words "For water with pH <6.5 or >9.0";

96 And,

97 On page thirty-seven, by striking out all of parameters 8.1.1
98 and 8.1.2.

99 (j) The legislative rule filed in the State Register on July 26,
100 2013, authorized under the authority of section seven, article
101 eleven, chapter twenty-two of this code, modified by the
102 Department of Environmental Protection to meet the objections
103 of the Legislative Rule-Making Review Committee and refiled
104 in the State Register on December 18, 2013, relating to the
105 Department of Environmental Protection (state certification of
106 activities requiring federal licenses and permits, 47 CSR 5A), is
107 authorized.

108 (k) The legislative rule filed in the State Register on July 26,
109 2013, authorized under the authority of section three, article
110 twenty-two, chapter twenty-two of this code, modified by the
111 Department of Environmental Protection to meet the objections
112 of the Legislative Rule-Making Review Committee and refiled
113 in the State Register on December 17, 2013, relating to the
114 Department of Environmental Protection (voluntary remediation
115 and redevelopment, 60 CSR 3), is authorized, with the following
116 amendment:

117 On page two, subsection 2.22., line twenty-one, following
118 the words “refers to a”, by striking the “A”; and

119 On page three, subsection 2.35., line twenty-six, by striking
120 the words “Section 3 of Article 22”; and

121 On page nine, paragraph 4.3.d.6., line thirty-five, by striking
122 the character “2” at the beginning of the line; and

123 On page nine, paragraph 4.3.d.6., line forty-five, following
124 the words “greater than”, by striking the character “2”; and

125 On page ten, subdivision 5.1.d., line three, following the
126 words “W.Va. Code §22-22”, by inserting a hyphen and the
127 words ‘1, et seq.’; and

128 On page fourteen, subdivision 5.3.k., line four, following the
129 words “and practical knowledge” by striking the semi-colon; and

130 On page fifteen, subdivision 5.5.e., line three, by striking the
131 word “thirty” at the beginning of the line; and

132 On page nineteen, subparagraph 7.4.b.21.A., line twenty, by
133 renumbering the subparagraph as 7.4.b.1.A.; and

134 On page nineteen, subparagraph 7.4.b.31.B., line
135 twenty-four, by renumbering the subparagraph as 7.4.b.1.B.; and

136 On page nineteen, subparagraph 7.4.b. .1.C., line
137 twenty-nine, by renumbering the subparagraph as 7.4.b.1.C.; and

138 On page nineteen, paragraph 7.4.b.52., line thirty-three, by
139 renumbering the paragraph as 7.4.b.2.; and

140 On page nineteen, subparagraph 7.4.b.62.A., line
141 thirty-eight, by renumbering the subparagraph as 7.4.b.2.A.; and

142 On page twenty, subparagraph 7.4.b.72.B, line one, by
143 renumbering the subparagraph as 7.4.b.2.B.; and

144 On page twenty, paragraph 7.4.b.83., line five, by
145 renumbering the it as subparagraph 7.4.b.2.C.; and

146 On page twenty, subparagraph 7.4.b.105, line fifteen, by
147 renumbering the subparagraph as 7.4.b.2.D.; and

148 On page thirty-six, paragraph 10.2.b., at the beginning of
149 line sixteen, by striking the “5”, before the words “five days”;
150 and

151 On page thirty-eight, subdivision 11.4., line six, following
152 the words “have been submitted to the”, by striking the word
153 “Division” and inserting in lieu thereof the word “Department”;
154 and

155 On page thirty-eight, paragraph 12.2.a., line thirty-six,
156 following the words “applicant and determine within”, by
157 striking the word “sixty”; and

158 On page thirty-nine, paragraph 12.2.c., line fifteen, following
159 the words “final report was properly issued, he”, by inserting the
160 words “or she”.

CHAPTER 108

(Com. Sub. for S. B. 196 - By Senator Snyder)

[Passed March 7, 2014; in effect from passage.]

[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact article 4, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Education and the Arts; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and 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 authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to the Ron Yost Personal Assistance Services Board.

Be it enacted by the Legislature of West Virginia:

That article 4, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. AUTHORIZATION FOR THE DEPARTMENT OF
EDUCATION AND THE ARTS TO
PROMULGATE LEGISLATIVE RULES.**

§64-4-1. Division of Rehabilitation Services.

1 The legislative rule filed in the State Register on July 19,
2 2013, authorized under the authority of section six, article ten-1,
3 chapter eighteen of this code, modified by the Division of
4 Rehabilitation Services to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on November 5, 2013, relating to the Division of
7 Rehabilitation Services(Ron Yost Personal Assistance Services
8 Act Board, 198 CSR 1), is authorized .

CHAPTER 109

(Com. Sub. for S. B. 155 - By Senator Snyder)

[Passed March 8, 2014; in effect from passage.]

[Approved by the Governor on April 1, 2014.]

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 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 Department of Health and Human Resources to promulgate a legislative rule relating to medication administration by unlicensed personnel; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child care centers' licensing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clinical laboratory technician and technologist licensure and certification; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the Cancer Registry; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the Medical Examiner's rule for post-mortem inquiries; authorizing the Health Care Authority to promulgate a legislative rule relating to the West Virginia Health Information Network; authorizing the Bureau for Child Support Enforcement to promulgate a legislative rule relating to the bureau; repealing the Bureau for Child Support Enforcement's legislative rule relating to obtaining support from federal and state tax refunds; repealing the Bureau for Child Support Enforcement's legislative rule relating to interstate income withholding; authorizing the Bureau for Child Support Enforcement to promulgate a legislative rule relating to support enforcement activities undertaken by the bureau; and authorizing

the Bureau for Child Support Enforcement to promulgate a legislative rule relating to the distribution of support payments.

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:

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

1 (a) The legislative rule filed in the State Register on July 29,
2 2013, authorized under the authority of section eleven, article
3 five-o, chapter sixteen of this code, modified by the Department
4 of Health and Human Resources to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on November 8, 2013, relating to the Department
7 of Health and Human Resources (medication administration by
8 unlicensed personnel, 64 CSR 60), is authorized with the
9 following amendment:

10 On page four, paragraph 2.13.a.4 after the word “appliances”
11 by changing the semicolon to a period striking out the word
12 “and”.

13 (b) The legislative rule filed in the State Register on July 29,
14 2013, authorized under the authority of section four, article two-
15 b, chapter forty-nine of this code, modified by the Department of
16 Health and Human Resources to meet the objections of the
17 Legislative Rule-Making Review Committee and refiled in the
18 State Register on December 3, 2013, relating to the Department
19 of Health and Human Resources (child care centers’ licensing,
20 78 CSR 1), is authorized, with the following amendment:

21 On page nine, subdivision 4.2.b, by removing the word
22 “thirty”, the left parenthesis, the number “30” and the right
23 parenthesis, and inserting in lieu thereof, the word “ninety”, the
24 left parenthesis, the number “90” and the right parenthesis;

25 On page forty, subparagraph 13.3.a.3, line two, after the
26 word, “served” by striking out the semi-colon and the following
27 underlined words “provided that the center shall not use tables
28 with built-in multiple bucket-type seats after June 30, 2015”;

29 On page forty, by striking subdivision 13.3.b in its entirety,
30 and in lieu thereof, inserting a new subdivision 13.3.b to read as
31 follows:

32 “13.3.b. Jumpers, and infant walkers are prohibited.”

33 On page forty, after subdivision 13.3.b, by inserting a new
34 subdivision 13.3.c to read as follows:

35 “13.3.c. Play pens and play yards, if used, must be
36 manufactured after February 28, 2013, properly disinfected after
37 each use and not used for multiple children at the same time.”;

38 On page forty-three, subparagraph 13.4.i.5, line three, after
39 the word “worn” by striking out the comma, and the following
40 words, “but the use of a blanket is prohibited in the crib” and by
41 un-striking and restoring the following words, “or a thin blanket
42 used for a covering. If a blanket is used, it shall be tucked around
43 the mattress of the crib and only cover the child high as his or
44 her chest”;

45 And,

46 On page forty-eight, by striking out in its entirety
47 subdivision 14.3.d and inserting in lieu thereof a new subdivision
48 14.3.d to read as follows:

49 “14.3.d. Restrictive equipment. Infant equipment that
50 restricts movement such as swings, play pens, play yards,
51 stationary activity centers (exersaucers), infant seats, etc., if
52 used, shall only be used for short periods of time not to exceed
53 fifteen (15) minutes in a four (4) hour period.”.

§64-5-2. Bureau for Public Health.

1 (a) The legislative rule filed in the State Register on July 24,
2 2013, authorized under the authority of section four, article one,
3 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 November 5, 2013, relating to the Department
7 of Health and Human Resources (clinical laboratory technician
8 and technologist licensure and certification, 64 CSR 57), is
9 authorized.

10 (b) The legislative rule filed in the State Register on July 25,
11 2013, authorized under the authority of section four, article one,
12 chapter sixteen of this code, modified by the Department of
13 Health and Human Resources to meet the objections of the
14 Legislative Rule-Making Review Committee and refiled in the
15 State Register on December 9, 2013, relating to the Department
16 of Health and Human Resources (AIDS-related medical testing
17 and confidentiality, 64 CSR 64), is authorized with the following
18 amendments:

19 On page two, subdivision 4.1.e, by inserting the following
20 after the period, “The cost of the test not be passed through to
21 the patient by a public health department.”

22 On page six, paragraph 4.3.b.1., by striking out the words
23 “an oral” and inserting in lieu thereof the word “a”;

24 On page six, by striking out all of subparagraph 4.3.b.1.A.
25 and inserting in lieu thereof the following:

26 4.3.b.1.A. The court shall require the defendant or juvenile
27 respondent to submit to the testing not later than forty-eight
28 hours after the issuance of the order described in paragraph
29 4.3.b.1 of this subsection, unless good cause for delay is shown
30 upon a request for a hearing: *Provided*, That no such delay shall

31 cause the HIV-related testing to be administered later than forty-
32 eight hours after the filing of any indictment or information
33 regarding an adult defendant or the filing of a petition regarding
34 a juvenile respondent.

35 4.3.b.1.B. The prosecuting attorney may, upon the request of
36 the victim or the victim's parent or legal guardian, and with
37 notice to the defendant or juvenile respondent, apply to the court
38 for an order directing that an appropriate human
39 immunodeficiency virus (HIV) test or other STD test be
40 performed on a defendant charged with or a juvenile subject to
41 a petition involving the offenses of prostitution, sexual abuse,
42 sexual assault or incest.

43 On page six, by striking out all of part 4.3.b.1.A.1.;

44 On page six, by striking out all of paragraph 4.3.b.2.;

45 And renumbering the remaining paragraphs;

46 On page six, by striking out all of paragraph 4.3.b.6. and
47 inserting in lieu thereof the following:

48 4.3.b.5. The costs of testing may be charged to the defendant
49 or juvenile respondent, or to that person's medical insurance
50 provider, unless determined unable to pay by the court having
51 jurisdiction over the matter. If the defendant or juvenile is unable
52 to pay, the cost of laboratory testing for HIV testing may be
53 borne by the bureau or the local health department.

54 4.3.b.5.A. The commissioner designates and authorizes all
55 health care providers operating in regional jails, correctional or
56 juvenile facilities to administer HIV tests, either by taking blood
57 or oral specimens, and transmitting those specimens to the
58 Office of Laboratory Services in accordance with instructions set
59 forth at: [http://www.wvdhhr.org/labservices/labe/HIV/
60 index.cfm](http://www.wvdhhr.org/labservices/labe/HIV/index.cfm).

61 4.3.b.5.B. Laboratory testing done on specimens sent to the
62 Office of Laboratory Services by health care providers for
63 regional jails, correctional or juvenile facilities shall be
64 performed at no cost to the jails, facilities or health care
65 providers.;

66 And,

67 On page seven, by striking out all of subdivision 4.3.d. and
68 inserting in lieu thereof a new subdivision, designated
69 subdivision 4.3.d., to read as follows:

70 4.3.d. A person convicted or a juvenile adjudicated of the
71 offenses described in this subsection may be required to undergo
72 HIV-related testing and counseling immediately upon conviction
73 or adjudication: *Provided*, That if the person convicted or
74 adjudicated has been tested in accordance with the provisions of
75 subdivision 4.3.b. of this subsection, that person need not be
76 retested.

77 (c) The legislative rule filed in the State Register on July 24,
78 2013, authorized under the authority of section two-a, article
79 five-a, chapter sixteen of this code, modified by the Department
80 of Health and Human Resources to meet the objections of the
81 Legislative Rule-Making Review Committee and refiled in the
82 State Register on October 7, 2013, relating to the Department of
83 Health and Human Resources (Cancer Registry, 64 CSR 68), is
84 authorized.

85 (d) The legislative rule filed in the State Register on July 24,
86 2013, authorized under the authority of section three, article
87 twelve, chapter sixty-one of this code, modified by the
88 Department of Health and Human Resources to meet the
89 objections of the Legislative Rule-Making Review Committee
90 and refiled in the State Register on November 5, 2013, relating
91 to the Department of Health and Human Resources (Medical

92 Examiner rule for postmortem inquiries, 64 CSR 84), is
93 authorized.

§64-5-3. Health Care Authority.

1 The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section seven, article
3 twenty-nine-g, chapter sixteen of this code, modified by the
4 Health Care Authority to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on September 4, 2013, relating to the Health Care
7 Authority (West Virginia Health Information Network, 65 CSR
8 28), is authorized.

§64-5-4. Bureau for Child Support Enforcement.

1 (a) The legislative rule filed in the State Register on July 29,
2 2013, authorized under the authority of section one hundred five,
3 article eighteen, chapter forty-eight of this code, modified by the
4 Bureau for Child Support Enforcement to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled in
6 the State Register on December 18, 2013, relating to the Bureau
7 for Child Support Enforcement (the Bureau for Child Support
8 Enforcement, 97 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on July 29,
10 2013, authorized under the authority of section one hundred five,
11 article eighteen, chapter forty-eight of this code, relating to the
12 Bureau for Child Support Enforcement (obtaining support from
13 federal and state tax refunds, 97 CSR 3), is repealed.

14 (c) The legislative rule filed in the State Register on July 29,
15 2013, authorized under the authority of section one hundred five,
16 article eighteen, chapter forty-eight of this code, relating to the
17 Bureau for Child Support Enforcement (interstate income
18 withholding, 97 CSR 4), is repealed.

19 (d) The legislative rule filed in the State Register on July 29,
20 2013, authorized under the authority of section one hundred five,
21 article eighteen, chapter forty-eight of this code, modified by the
22 Bureau for Child Support Enforcement to meet the objections of
23 the Legislative Rule-Making Review Committee and refiled in
24 the State Register on December 18, 2013, relating to the Bureau
25 for Child Support Enforcement (support enforcement activities
26 undertaken by the Bureau for Child Support Enforcement, 97
27 CSR 6), is authorized.

28 (e) The legislative rule filed in the State Register on July 29,
29 2013, authorized under the authority of section one hundred five,
30 article eighteen, chapter forty-eight of this code, modified by the
31 Bureau for Child Support Enforcement to meet the objections of
32 the Legislative Rule-Making Review Committee and refiled in
33 the State Register on December 18, 2013, relating to the Bureau
34 for Child Support Enforcement (distribution of support
35 payments, 97 CSR 7), is authorized.

CHAPTER 110

**(Com. Sub. for H. B. 4067 - By Delegates Poore, Marcum,
Fleischauer, Frich, and Eldridge)**

[Passed March 5, 2014; in effect from passage.]
[Approved by the Governor on March 21, 2014.]

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 and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; 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 as amended by the Legislature; 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 State Fire Marshal to promulgate a legislative rule relating to certification of electrical inspectors; authorizing the Fire Commission to promulgate a legislative rule relating to the State Fire Code; authorizing the Fire Commission to promulgate a legislative rule relating to certification of home inspectors; authorizing the Regional Jail and Correctional Facility Authority to promulgate a legislative rule relating to criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the Authority; and authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law enforcement training and certification standards.

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 Fire Marshal.

1 The legislative rule filed in the State Register on July 25,
2 2013, authorized under the authority of section four, article
3 three-c, 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 3, 2013, relating to the State Fire Marshal
7 (certification of electrical inspectors, 103 CSR 1), is authorized.

§64-6-2. Fire Commission.

1 (a) The legislative rule filed in the State Register on June 19,
2 2013, authorized under the authority of section five, article three,
3 chapter twenty-nine of this code, modified by the Fire
4 Commission to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 December 3, 2013, relating to the Fire Commission (State Fire
7 Code, 87 CSR 1), is authorized, with the following amendment:

8 On page 1, subparagraph 2.1.a.1.A., in the first sentence,
9 after the words “is subject to this” by striking out the word
10 “section” and inserting in lieu thereof the word “paragraph”;

11 On page 1, subparagraph 2.1.a.1.A., in the third sentence,
12 after the words “exempted from the provisions of this” by
13 striking out the word “section” and inserting in lieu thereof the
14 word “paragraph”;

15 On page 2, subparagraph 2.1.a.1.C., in the first sentence,
16 after the words “as defined in” by striking out the word
17 “subsections” and inserting in lieu thereof the word
18 “subparagraphs”;

19 On page 2, subparagraph 2.1.a.1.E., in the first sentence,
20 after the words “in accordance with” by striking out the word
21 “Subsection” and inserting in lieu thereof the word
22 “subparagraph”;

23 On page 2, subparagraph 2.1.a.1.F., in the first sentence,
24 after the words “as defined in” by striking out the word
25 “subsections” and inserting in lieu thereof the word
26 “subparagraphs”;

27 On page 2, subparagraph 2.1.a.1.G., in the first sentence,
28 after the words “in accordance with” by striking out the word
29 “subsection” and inserting in lieu thereof the word
30 “subparagraph”;

31 On page 3, subparagraph 2.1.a.1.H., after the words “as
32 defined in” by striking out the word “Subsections” and inserting
33 in lieu thereof the word “subparagraphs”;

34 On page 3, paragraph 2.2.a.1., by striking out said paragraph
35 2.2.a.1. and inserting in lieu thereof a new paragraph 2.2.a.1 to
36 read as follows:

37 “All residential occupancies, except one or two family
38 dwellings, shall prominently display signage stating whether the
39 building contains an approved automatic sprinkler and whether
40 the windows are capable of being opened or broken in an
41 emergency.”;

42 On page 5, subsection (5) under Notes to Table 2.2.a., after
43 the words “40 feet in height as measured per” by striking out the
44 word “Section” and inserting in lieu thereof the word
45 “subparagraph”;

46 On page 7, subparagraph 2.2.d.3.E., after the words “from
47 the requirements of this” by striking out the word “subsection”
48 and inserting in lieu thereof the word “paragraph”;

49 On page 10, paragraph 2.2.i.5., after the words “comply with
50 the residential requirements of” by striking out the words
51 “subsection 11.6 of this section” and inserting in lieu thereof the
52 words “subdivision 2.2.j. of this subsection”;

53 On page 11, subparagraph 2.2.n.2.A., in the second sentence,
54 after the word “This” by striking out the word “division” and
55 inserting in lieu thereof the word “subparagraph”;

56 On page 12, part 2.2.n.2.I.1., after the words “meet the
57 requirements of” by striking out the words “Subsections 11.1 and

58 11.6” and inserting in lieu thereof the words “paragraph 2.2.d.1.
59 and subdivision 2.2.j.”;

60 On page 12, subparagraph 2.2.n.2.N., after the words “meet
61 the requirements of” by striking out the words “section 7 of this
62 Rule of Residential Occupancies” and inserting in lieu thereof
63 the words “subdivision 2.2.c. of this rule”;

64 On page 13, subparagraph 2.2.o.2.A., at the end of the third
65 sentence, after the words “pyrotechnics display as provided in
66 this” by striking out the word “section” and inserting in lieu
67 thereof the word “subdivision”;

68 On page 13, subparagraph 2.2.o.2.A., in the fourth sentence,
69 after the words “paid by the provisions of this” by striking out
70 the word “section” and inserting in lieu thereof the word
71 “subdivision”;

72 On page 13, subparagraph 2.2.o.2.A., in the last sentence,
73 after the words “permit granted under this” by striking out the
74 word “subsection” and inserting in lieu thereof the word
75 “subdivision”;

76 On page 14, paragraph 2.2.p.1., after the words “For the
77 purposes of this” by striking out the word “subsection” and
78 inserting in lieu thereof the word “subdivision”;

79 On page 17, subparagraph 2.2.q.6.D., after the words
80 “dwelling or building listed in” by striking out the word
81 “subsection” and inserting in lieu thereof the word
82 “subparagraph”;

83 On page 17, subparagraph 2.2.q.6.E., in the first sentence,
84 after the words “dwelling or building listed in” by striking out
85 the word “subsection” and inserting in lieu thereof the word
86 “subparagraph” and after the words “ground vibration and
87 airblast limits listed in” by striking out the word “subsection”
88 and inserting in lieu thereof the word “subparagraph”;

89 On page 18, subparagraph 2.2.q.6.F., in the first sentence,
90 after the words “For structures not listed in” by striking out the
91 word “subsection” and inserting in lieu thereof the word
92 “subparagraph” and in the second sentence, after the words
93 “dwelling or building listed in” by striking out the word
94 “subsection” and inserting in lieu thereof the word
95 “subparagraph”;

96 On page 20, subparagraph 2.2.w.2.E., by striking out the
97 subparagraph designation “2.2.w.2.E.” and inserting in lieu
98 thereof the subparagraph designation “2.2.u.2.E.”;

99 On page 21, subparagraph 2.2.u.2.O., in the proviso, after the
100 words “for the purposes of this” by striking out the word
101 “subsection” and inserting in lieu thereof the word
102 “subparagraph”;

103 On page 21, subparagraph 2.2.u.2.T., after the words “if
104 required by” by striking out the word “subsection” and inserting
105 in lieu thereof the word “subparagraph”;

106 On page 22, section 5, at the end of the section, after the
107 words “an appeal to the State Fire Commission as outlined in”
108 by striking out the words “section 13” and inserting in lieu
109 thereof the words “section 17”;

110 And,

111 On page 26, section 16, by striking out said section 16 in its
112 entirety and inserting in lieu thereof the words “The owner or
113 occupant of a new building, or a building that has had 50% or
114 more of the space renovated or reconstructed, shall obtain a
115 certificate of occupancy before the building is occupied or used
116 for its intended purpose.”.

117 (b) The legislative rule filed in the State Register on June 19,
118 2013, authorized under the authority of section five-b, article

119 three, chapter twenty-nine of this code, modified by the Fire
120 Commission to meet the objections of the Legislative Rule-
121 Making Review Committee and refiled in the State Register on
122 December 3, 2013, relating to the Fire Commission (certification
123 of home inspectors, 87 CSR 5), is authorized, with the following
124 amendment:

125 On page 13, subsection 18.5, after the words “in compliance
126 with West Virginia Code” by striking out the word “§ 29-3-
127 16(a)” and inserting in lieu thereof the word “§29-3-16a(a)”.

§64-6-3. Regional Jail and Correctional Facility Authority.

1 The legislative rule filed in the state register on July 26,
2 2013, authorized under the authority of section ten, article
3 twenty, chapter thirty-one of this code, modified by the Regional
4 Jail and Correctional Facility Authority to meet the objections of
5 the legislative rule-making review committee and refiled in the
6 state register on October 30, 2013, relating to the Regional Jail
7 and Correctional Facility Authority (criteria and procedures for
8 determination of projected cost per day for inmates incarcerated
9 in regional jails operated by the Authority, 94 CSR 7), is
10 authorized with the following amendment:

11 On pages one and two, section two, by striking out all of
12 subsections 2.3 and 2.4 and inserting in lieu thereof two new
13 subsections, designated subsections 2.3 and 2.4, to read a
14 follows:

15 2.3. The projected expenditure schedule will be divided by
16 the previous fiscal year’s billed average daily inmate population
17 to yield the preliminary projected cost per inmate day. The West
18 Virginia Regional Jail and Correctional Facility Board,
19 established under W. Va. Code §31-20-3, shall evaluate the
20 preliminary projected cost per inmate day to determine if
21 reductions can be implemented based on other revenues, cash

22 reserves, and cost efficiency efforts. The Board may reduce the
23 preliminary projected cost per inmate day based on adopting a
24 fiscally sound annual operating budget.

25 2.4. The Board's approved cost per inmate day shall then
26 become effective as of July 1st of the next fiscal year's budget
27 following the October projection.

**§64-6-4. Governor's Committee on Crime, Delinquency and
Correction.**

1 The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section three, article
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 10, 2013,
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.

CHAPTER 111

(Com. Sub. for S. B. 167 - By Senator Snyder)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2014.]

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 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 presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Tax Department to promulgate a legislative rule relating to the municipal sales and service and use tax administration; authorizing the State Tax Department to promulgate a legislative rule relating to the special reclamation tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the withholding or denial of personal income tax refunds from taxpayers who owe municipal or magistrate court costs; authorizing the Insurance Commissioner to promulgate a legislative rule relating to utilization review and benefit determination; authorizing the Insurance Commissioner to promulgate a legislative rule relating to a health plan insurer internal grievance procedure; authorizing the Insurance Commissioner to promulgate a legislative rule relating to external review of adverse health insurance determinations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to farm wineries; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the sale of wine; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; and authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing.

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. State Tax Department.

1 (a) The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section eleven-c, article
3 ten, 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 November 26, 2013, relating to the State Tax Department
7 (municipal sales and service and use tax administration, 110
8 CSR 28), is authorized.

9 (b) The legislative rule filed in the State Register on July 26,
10 2013, authorized under the authority of section eleven, article
11 three, chapter twenty-two of this code, modified by the State Tax
12 Department to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register on
14 November 26, 2013, relating to the State Tax Department
15 (special reclamation tax credit, 110 CSR 29), is authorized.

16 (c) The legislative rule filed in the State Register on July 26,
17 2013, authorized under the authority of section two-c, article
18 three, chapter fifty of this code, modified by the State Tax
19 Department to meet the objections of the Legislative Rule-
20 Making Review Committee and refiled in the State Register on
21 November 26, 2013, relating to the State Tax Department
22 (withholding or denial of personal income tax refunds from
23 taxpayers who owe municipal or magistrate court costs, 110 CSR
24 40), is authorized.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section four, article

3 sixteen-h, chapter thirty-three of this code, modified by the
4 Insurance Commissioner to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 State Register on November 1, 2013, relating to the Insurance
7 Commissioner (utilization review and benefit determination, 114
8 CSR 95), is authorized with the following amendments:

9 On page one, subsection 1.1., after the words “and benefit
10 determinations” by inserting a comma;

11 On page one, subsection 2.1., by striking out the word
12 “healthcare” and inserting in lieu thereof the words “health
13 care”;

14 On page two, subsection 2.6., after the word “specialty” by
15 striking out the word “as” and inserting in lieu thereof the word
16 “that”;

17 On page three, subsection 2.15., by striking out the word
18 “no” and inserting in lieu thereof the word “not”;

19 On page three, subsection 2.16., by striking out the words
20 “except as otherwise specifically exempted in this definition”
21 and inserting in lieu thereof the words “but excluding the
22 excepted benefits defined in 42 U.S.C. § 300gg-91 and as
23 otherwise specifically excepted in this rule”;

24 On page five, subsection 2.17., by striking out the word
25 “state” and inserting in lieu thereof the words “West Virginia”;

26 On page five, subsection 2.24., by striking out the word “in”
27 and inserting in lieu thereof the word “an”;

28 On page six, subsection 2.28., by striking out the word “that”
29 and inserting in lieu thereof the words “the one”;

30 On page six, subdivision 2.30.a., by striking out the words
31 “the covered person’s life, health or ability to regain maximum

32 function or in the opinion of an attending health care
33 professional with knowledge of the covered person's medical
34 condition, would subject the covered person to severe pain that
35 cannot be adequately managed without the health care service or
36 treatment that is the subject of the request." and inserting in lieu
37 thereof the words "the life or health of the covered person or the
38 ability of the covered person to regain maximum function; or";

39 On page six, after subdivision 2.30.a., by inserting a new
40 subdivision, designated subdivision 2.30.b., to read as follows:

41 2.30.b. In the opinion of an attending health care
42 professional with knowledge of the covered person's medical
43 condition, would subject the covered person to severe pain that
44 cannot be adequately managed without the health care service or
45 treatment that is the subject of the request.;

46 And by relettering the remaining subdivisions;

47 On page six, subdivision 2.30.b., by striking out "2.30.a" and
48 inserting in lieu thereof "2.30.d";

49 On page eight, subsection 6.1., by striking out the words "an
50 entity" and inserting in lieu thereof the words "a person";

51 On page eight, subsection 6.1., after the word
52 "Commissioner" by inserting the words "or by statute or
53 legislative rule";

54 On page nine, after paragraph 6.3.a.4., by inserting a new
55 paragraph, designated paragraph 6.3.a.5., to read as follows:

56 6.3.a.5. For purposes of calculating the time period for
57 refiling the benefit request or claim, the time period shall begin
58 to run upon the covered person's receipt of the notice of
59 opportunity to resubmit.;

60 On page ten, subdivision 7.1.b., by striking out the words “a
61 determination is required to be made under subsections 7.2 and
62 7.4” and inserting in lieu thereof the words “prospective and
63 retrospective review determinations are required to be made”;

64 On page eleven, paragraph 7.1.e.1., after the word “number”
65 by inserting the word “of”;

66 On page twelve, subdivision 7.2.b., by striking out the words
67 “health carrier” and inserting in lieu thereof the word “issuer”;

68 On page fourteen, subdivision 7.3.c., by striking out the
69 comma and the word “and”;

70 On page fifteen, subdivision 8.1.a., by striking out the words
71 “health carrier” and inserting in lieu thereof the word “issuer”;

72 On page fifteen, after subdivision 8.1.b., by inserting a new
73 paragraph, designated paragraph 8.1.b.1., to read as follows:

74 8.1.b.1. If the covered person has failed to provide sufficient
75 information for the issuer to determine whether, or to what
76 extent, the benefits requested are covered benefits or payable
77 under the issuer’s health benefit plan, the issuer shall notify the
78 covered person as soon as possible, but in no event later than
79 twenty-four (24) hours after receipt of the request, either orally
80 or, if requested by the covered person, in writing of this failure
81 and state what specific information is needed. The issuer shall
82 provide the covered person a reasonable period of time to submit
83 the necessary information, taking into account the circumstances,
84 but in no event less than forty-eight (48) hours after notifying the
85 covered person or the covered person’s authorized representative
86 of the failure to submit sufficient information.;

87 And by renumbering the remaining paragraphs;

88 On page seventeen, subparagraph 8.2.a.9.A., by striking out
89 “8.2.a.8” and inserting in lieu thereof “8.2.a.7”;

90 On page seventeen, subparagraph 8.2.a.9.B., by striking out
91 “subparagraph 8.2.a.9.A” and inserting in lieu thereof
92 “paragraph 8.2.a.8”;

93 On page nineteen, subdivision 9.3.d., after the words
94 “providers, paragraph” by striking out “9.3.c.3” and inserting in
95 lieu thereof “9.3.c.1”;

96 On page nineteen, subdivision 9.3.d., after the words
97 “amount in paragraph” by striking out “9.3.c.3” and inserting in
98 lieu thereof “9.3.c.1”;

99 And,

100 On page nineteen, paragraph 9.3.d.2., after the word
101 “benefits” by adding a period.

102 (b) The legislative rule filed in the State Register on July 26,
103 2013, authorized under the authority of section four, article
104 sixteen-h, chapter thirty-three of this code, modified by the
105 Insurance Commissioner to meet the objections of the
106 Legislative Rule-Making Review Committee and refiled in the
107 State Register on November 1, 2013, relating to the Insurance
108 Commissioner (health plan insurer internal grievance procedure,
109 114 CSR 96), is authorized with the following amendments:

110 On page one, section two, by striking out the heading “§114-
111 96-1. Definitions.” and inserting in lieu thereof the heading
112 “§114-96-2. Definitions.”;

113 On page one, subsection 2.1., by striking out the word
114 “healthcare” and inserting in lieu thereof the words “health
115 care”;

116 On page one, subsection 2.1., after the word “terminated” by
117 adding a period;

118 On page two, subdivision 2.3.a., by striking out the word
119 “external” and inserting in lieu thereof the word “internal”;

120 On page two, subdivision 2.3.c., after the word
121 “professional” by adding a semicolon;

122 On page two, subsection 2.6., by striking out the word “as”
123 and inserting in lieu thereof the word “that”;

124 On page three, subsection 2.15., by striking out the word
125 “no” and inserting in lieu thereof the word “not”;

126 On page four, subsection 2.18., by striking out the words
127 “except as otherwise specifically exempted in this definition”
128 and inserting in lieu thereof the words “but excluding the
129 excepted benefits defined in 42 U.S.C. § 300gg-91 and as
130 otherwise specifically excepted in this rule”;

131 On page five, subsection 2.19., by striking out the word
132 “state” and inserting in lieu thereof the words “West Virginia”;

133 On page six, subsection 2.26., by striking out the word “in”
134 and inserting in lieu thereof the word “an”;

135 On page seven, subsection 2.30., by striking out the word
136 “that” and inserting in lieu thereof the words “the one”;

137 On page seven, subdivision 2.32.c., by striking out “2.35.b”
138 and inserting in lieu thereof “2.32.d”;

139 On page nine, subsection 4.2., by striking out the words
140 “subdivision a of”;

141 On page ten, subdivision 5.4.a., after “5.4.a.” by striking out
142 the period;

143 On page eleven, after subdivision 5.6.c., by inserting a new
144 subdivision, designated subdivision 5.6.d., to read as follows:

145 5.6.d. The issuer shall make the provisions of subsection 5.4
146 known to the covered person within three working days after the
147 date of receipt of the grievance.;

148 On page thirteen, subdivision 5.8.g., by striking out the word
149 “upholds” and inserting in lieu thereof the word “denies”;

150 On page thirteen, paragraph 5.8.g.4., after the word “either”
151 by inserting the word “the”;

152 On page thirteen, paragraph 5.8.g.5., after the word
153 “circumstances” by inserting a comma;

154 On page thirteen, paragraph 5.8.g.5., by striking out the word
155 “provide” and inserting in lieu thereof the word “provided”;

156 On page thirteen, subparagraph 5.8.g.6.A., by striking out
157 “5.4.g.4” and inserting in lieu thereof “5.8.g.4”;

158 On page thirteen, subparagraph 5.8.g.6.B., by striking out
159 “5.4.g.5” and inserting in lieu thereof “5.8.g.5”;

160 On page thirteen, by striking out paragraph 5.8.h.1. in its
161 entirety;

162 On page fourteen, by striking out paragraph 5.8.h.2. in its
163 entirety;

164 And by renumbering the remaining paragraphs;

165 On page fourteen, paragraph 5.8.h.3., by striking out “if the
166 covered person decides not to file for an additional voluntary
167 review of the first level review decision involving an adverse
168 determination”;

169 On page fourteen, paragraph 5.9.a.3., after the words
170 “notices” by striking out the comma;

171 On page fifteen, subdivision 6.4.b., after “6.4.b.” by striking
172 out the period;

173 On page sixteen, subdivision 6.5.d., after the semicolon by
174 adding the word “and”;

175 On page sixteen, by striking out subdivision 6.5.e. in its
176 entirety;

177 And by relettering the remaining subdivision;

178 On page sixteen, by striking out paragraphs 6.5.e.1 and
179 6.5.e.2 in their entirety;

180 On page sixteen, subsection 7.2., by striking out “5.1” and
181 inserting in lieu thereof “7.1”;

182 On page eighteen, subparagraph 7.8.a.7.A., after the words
183 “as well as” by inserting the word “a”;

184 On page eighteen, subparagraph 7.8.a.7.A., after the word
185 “reaching” by inserting the word “the”;

186 On page nineteen, subparagraph 7.8.a.7.E., after the word
187 “circumstances” by inserting a comma;

188 On page nineteen, part 7.8.a.7.F.3., after the word “et” by
189 striking out the period;

190 On page nineteen, part 7.8.a.7.F.6., after the word “claim” by
191 inserting a comma;

192 And,

193 On page twenty, after subparagraph 7.8.b.1.B., by inserting
194 a new subparagraph, designated subparagraph 7.8.b.1.C., to read
195 as follows:

196 7.8.b.1.C. Include in the English versions of all notices a
197 statement prominently displayed in any applicable non-English
198 language clearly indicating how to access the language services
199 provided by the carrier.

200 (c) The legislative rule filed in the State Register on July 26,
201 2013, authorized under the authority of section four, article
202 sixteen-h, chapter thirty-three of this code, modified by the
203 Insurance Commissioner to meet the objections of the
204 Legislative Rule-Making Review Committee and refiled in the
205 State Register on November 1, 2013, relating to the Insurance
206 Commissioner (external review of adverse health insurance
207 determinations, 114 CSR 97), is authorized with the following
208 amendments:

209 On page one, subsection 2.1., after the word “terminated” by
210 adding period;

211 On page two, subdivision 2.3.c., after the word
212 “professional” by adding a semicolon;

213 On page two, subdivision 2.4.c., by striking out “2.4a and
214 2.4b” and inserting in lieu thereof “2.4.a and 2.4.b”;

215 On page two, subdivision 2.4.d., by striking out “2.4a, 2.4b
216 and 2.4c” and inserting in lieu thereof “2.4.a, 2.4.b and 2.4.c”;

217 On page three, subsection 2.7., after the word
218 “Commissioner” by adding a period;

219 On page three, subsection 2.12., after the words “Emergency
220 medical condition” by striking out the single quotation mark and
221 inserting in lieu thereof a double quotation mark;

222 On page four, subsection 2.17., by striking out the words
223 “except as otherwise specifically exempted in this definition”
224 and inserting in lieu thereof the words “but excluding the

225 excepted benefits defined in 42 U.S.C. § 300gg-91 and as
226 otherwise specifically excepted in this rule”;

227 On page eight, subsection 3.1., by striking out the words “A
228 written” and inserting in lieu thereof the words “An issuer shall
229 notify the covered person in writing of the covered person’s right
230 to request an external review. Such a written”;

231 On page eight, subdivision 3.1.c., by striking out the words
232 “subsection 15.1” and inserting in lieu thereof the words “section
233 14”;

234 On page nine, paragraph 3.1.e.1., before the words “would
235 seriously” by striking out the comma;

236 On page nine, paragraph 3.1.f.1., after the word “life” by
237 striking out the comma and inserting in lieu thereof the words
238 “or health or”;

239 On page ten, subsection 5.3., by striking out the words
240 “expedited review of a grievance involving an adverse
241 determination” and inserting in lieu thereof the words “expedited
242 internal review of a grievance involving an adverse
243 determination pursuant to W. Va. Code of St. R. §114-96”;

244 On page ten, subdivision 5.3.a., after the word “Code” by
245 inserting the word “of”;

246 On page eleven, subsection 6.2., after the word
247 “consideration” by striking out the word “on” and inserting in
248 lieu thereof the word “of”;

249 On page twelve, subdivision 6.5.a, by striking out the words
250 “two business days” and inserting in lieu thereof the words “one
251 business day”;

252 On page thirteen, subdivision 6.6.d., by striking out the word
253 “internal” and inserting in lieu thereof the word “independent”;

254 On page thirteen, subsection 6.8., after the words “receipt of
255 the request for an external review” by inserting the words “and
256 no later than one business day after making the decision”;

257 On page seventeen, subdivision 8.5.b., after “8.5.b.” by
258 striking out the period;

259 On page seventeen, subdivision 8.5.c., by striking out “8.8”
260 and inserting in lieu thereof “8.9”;

261 On page eighteen, subsection 8.6., after “IRO” by striking
262 out the comma;

263 On page eighteen, subdivision 8.6.a., by striking out the
264 word “dely” and inserting in lieu thereof the word “delay”;

265 On page nineteen, paragraph 8.9.a.2., after the words
266 “services or treatments” by inserting the words “would not be
267 substantially increased over those of available standard health
268 care services or treatments”;

269 On page twenty, subdivision 8.11.b., by striking out “8.12.d”
270 and inserting in lieu thereof “8.11.d”;

271 On page twenty-one, subdivision 8.11.c., after “8.11.c”, by
272 inserting a period;

273 On page twenty-one, subdivision 8.11.d., after “8.11.d”, by
274 inserting a period;

275 On page twenty-one, paragraph 8.11.d.1., after “8.11.d.1”, by
276 inserting a period;

277 On page twenty-one, paragraph 8.11.d.2., after “8.11.d.2”, by
278 inserting a period;

279 On page twenty-one, paragraph 8.11.d.3., after “8.11.d.3”, by
280 inserting a period;

281 On page twenty-one, paragraph 8.11.d.3., by striking the
282 words “pursuant to subdivision 8.11.a”;

283 On page twenty-two, subsection 8.12., by striking out the
284 word “amount” and inserting in lieu thereof the word “among”;

285 On page twenty-three, subdivision 9.2.f., after the word
286 “parties” by striking out the comma;

287 On page twenty-three, paragraph 9.2.f.1., after “IRO” by
288 striking out the comma and the words “except that a party that
289 unreasonably refuses to stipulate to limit the record may be taxed
290 by the court for the additional costs involved”;

291 On page twenty-four, subsection 10.2, by striking out the
292 word “as” and inserting in lieu thereof a comma;

293 On page twenty-five, subdivision 10.4.c., by striking out
294 subdivision 10.4.c. in its entirety;

295 On page twenty-seven, paragraph 11.4.a.2., after the word
296 “review” by inserting a comma and the words “any known close
297 relative of the covered person,”;

298 On page twenty-seven, after paragraph 11.4.a.3., by inserting
299 two new paragraphs, designated paragraph, 11.4.a.4. and
300 11.4.a.5., to read as follows:

301 11.4.a.4. Any administrator, fiduciary, employee or sponsor
302 of an employee welfare benefit plan as defined in 29 U.S.C.
303 1002(1), if any, under which the covered person’s request for
304 external review arises;

305 11.4.a.5. A trade association of group health plans or issuers,
306 or a trade association of health care providers;

307 And by renumbering the remaining paragraphs;

308 On page twenty-seven, subdivision 11.4.b., by striking out
309 all of subdivision 11.4.b. and inserting in lieu thereof a new
310 subdivision, designated subdivision 11.4.b., to read as follows:

311 11.4.b. In determining whether an IRO or a clinical reviewer
312 of the IRO has a material professional, familial or financial
313 conflict of interest for purposes of subdivision 11.4.a, the
314 Commissioner may disregard the mere appearance of a conflict
315 of interest.;

316 On page twenty-eight, section twelve, by striking out section
317 twelve in its entirety;

318 And by renumbering the remaining sections;

319 On page twenty-eight, subsection 13.1., by striking out
320 "13.1.a" and inserting in lieu thereof "12.1.a"

321 On page twenty-nine, paragraph 13.2.b.2., by striking out
322 "paragraph 13.2.b.2" and inserting in lieu thereof "paragraph
323 12.2.b.1";

324 On page thirty, subsection 15.2, by striking out "15.1" and
325 inserting in lieu thereof "14.1";

326 On page thirty, subsection 15.3, by striking out "15.2" and
327 inserting in lieu thereof "14.2";

328 And,

329 On page thirty, after subsection 15.3, by adding a new
330 section, designated section fifteen, to read as follows:

331 §114-97-15. Penalties. Any issuer failing to comply with the
332 requirements of this rule is subject to the penalties prescribed in
333 W. Va. Code §33-3-11.

§64-7-3. Alcohol Beverage Control Commission.

1 (a) The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section ten, article seven,
3 chapter sixty of this code, modified by the Alcohol Beverage
4 Control Commission to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on October 31, 2013, relating to the Alcohol Beverage
7 Commission (private club licensing, 175 CSR 2), is authorized.

8 (b) The legislative rule filed in the State Register on July 26,
9 2013, authorized under the authority of section sixteen, article
10 two, chapter sixty of this code, modified by the Alcohol
11 Beverage Control Commission to meet the objections of the
12 Legislative Rule-Making Review Committee and refiled in the
13 State Register on October 31, 2013, relating to the Alcohol
14 Beverage Commission (farm wineries, 175 CSR 3), is
15 authorized.

16 (c) The legislative rule filed in the State Register on July 26,
17 2013, authorized under the authority of section twenty-three,
18 article eight, chapter sixty of this code, modified by the Alcohol
19 Beverage Control Commission to meet the objections of the
20 Legislative Rule-Making Review Committee and refiled in the
21 State Register on October 31, 2013, relating to the Alcohol
22 Beverage Commission (sale of wine, 175 CSR 4), is authorized.

23 (d) The legislative rule filed in the State Register on July 26,
24 2013, authorized under the authority of section twenty-two,
25 article sixteen, chapter eleven of this code, modified by the
26 Alcohol Beverage Control Commission to meet the objections of
27 the Legislative Rule-Making Review Committee and refiled in
28 the State Register on October 31, 2013, relating to the Alcohol
29 Beverage Commission (nonintoxicating beer licensing and
30 operations procedures, 176 CSR 1), is authorized.

§64-7-4. Racing Commission.

1 The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section six, article
3 twenty-three, chapter nineteen of this code, modified by the
4 Racing Commission to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on October 31, 2013, relating to the Racing
7 Commission (thoroughbred racing, 178 CSR 1), is authorized
8 with the following amendment:

9 On page fifteen, subsection 8.5.b., line twenty-two,
10 following the words “stewards shall have authority to” by
11 striking the word “charge”, and inserting in lieu thereof “issue a
12 ruling citing”; and

13 On page eighteen, subsection 9.2., line six, following the
14 words “health certificates”, by striking the word “Coggins” and
15 inserting in lieu thereof “current negative Coggins test for equine
16 infectious anemia (EIA)”.

CHAPTER 112

(Com. Sub. for S. B. 165 - By Senator Snyder)

[Passed March 7, 2014; in effect from passage.]

[Approved by the Governor on March 20, 2014.]

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; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing the Office of Administrative Hearings to promulgate a legislative rule relating to appeal procedures; and authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways.

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. Office of Administrative Hearings.

1 The legislative rule filed in the State Register on July 26,
2 2013, 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 19, 2013, relating to the Office of
7 Administrative Hearings (appeal procedures, 105 CSR 1), is
8 authorized.

§64-8-2. Commissioner of the Division of Highways.

1 The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section seven, article
3 eighteen, chapter twenty-two of this code, relating to the
4 Commissioner of the Division of Highways (transportation of
5 hazardous wastes upon the roads and highways, 157 CSR 7), is
6 authorized.

CHAPTER 113

**(Com. Sub. for H. B. 4039 - By Delegates Poore, Marcum,
Eldridge, Fleischauer and Frich)**

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 26, 2014.]

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 the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; 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 as amended by the Legislature; 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 Municipal Pensions Oversight Board to promulgate a legislative rule relating to policemen's and firemen's pensions disability calculation; authorizing the Real Estate Commission to promulgate a legislative rule relating to requirements in licensing real estate brokers, associate brokers and salespersons and the conduct of a brokerage business; authorizing the Real Estate Commission to promulgate a legislative rule relating to a schedule of fees; authorizing the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program; authorizing the Real Estate Appraiser Licensing and

Certification Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to renewal of licensure or certification; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to a schedule of fees; repealing the Treasurer's Office legislative rule relating to procedure for deposit of funds in the Treasurer's Office by state agencies; authorizing the Treasurer's Office to promulgate a legislative rule relating to the procedure for deposit of monies with the office by state agencies; authorizing the Treasurer's Office to promulgate a legislative rule relating to the selection of state depositories for disbursement accounts through competitive bidding; authorizing the Treasurer's Office to promulgate a legislative rule relating to the selection of state depositories for receipt accounts; repealing the Treasurer's Office legislative rule relating to rules for the reporting of debt capacity; authorizing the Treasurer's Office to promulgate a legislative rule relating to reporting debt; authorizing the Treasurer's Office to promulgate a legislative rule relating to procedures for fees in collections by charge, credit or debit card or by electronic payment; authorizing the Treasurer's Office to promulgate a legislative rule relating to providing services to political subdivisions; authorizing the Bureau of Senior Services to promulgate a legislative rule relating to the In-home Care Worker Registry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to a schedule of charges for inspection services: fruit; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to the licensure of speech-pathology and audiology; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to speech-language pathology and audiology assistants; authorizing

the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to disciplinary and complaint procedures for speech-language pathology and audiology; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to a code of ethics; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to the regulation of chiropractic practice; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to fees pertaining to the practice of chiropractic; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees established by the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of dental corporations and dental practice ownership; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to dental advertising; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to continuing education requirements; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to administration of anesthesia by dentists; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the expanded duties of dental hygienists and dental assistants; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to mobile dental facilities and portable dental units; authorizing the State Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to policies regulating licensure of the licensed practical nurse; authorizing the State Board of Examiners for Licensed Practical Nurses to promulgate

a legislative rule relating to fees for services rendered by the Board and supplemental renewal fee for the Center for Nursing; authorizing the State Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to continuing competence; authorizing the Board of Pharmacy to promulgate a legislative rule relating to continuing education for licensure of pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring; authorizing the Board of Sanitarians to promulgate a legislative rule relating to the practice of public health sanitation; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the registration of veterinary technicians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to a schedule of fees; and authorizing the Infrastructure and Jobs Development Council to promulgate a legislative rule relating to the Council.

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. Municipal Pensions Oversight Board.

1 The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section eighteen-a,
3 article twenty-two, chapter eight of this code, modified by the
4 Municipal Pensions Oversight Board to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled in

6 the State Register on November 25, 2013, relating to the
7 Municipal Pensions Oversight Board (policemen's and firemen's
8 pensions disability calculation, 211 CSR 1), is authorized.

§64-9-2. Real Estate Commission.

1 (a) The legislative rule filed in the State Register on July 25,
2 2013, authorized under the authority of section eight, article
3 forty, chapter thirty of this code, modified by the Real Estate
4 Commission to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 December 3, 2013, relating to the Real Estate Commission
7 (requirements in licensing real estate brokers, associate brokers
8 and salespersons and the conduct of brokerage business, 174
9 CSR 1), is authorized.

10 (b) The legislative rule filed in the State Register on June 24,
11 2013, authorized under the authority of section eight, article
12 forty, chapter thirty of this code, modified by the Real Estate
13 Commission to meet the objections of the Legislative Rule-
14 Making Review Committee and refiled in the State Register on
15 November 12, 2013 relating to the Real Estate Commission
16 (schedule of fees, 174 CSR 2), is authorized.

§64-9-3. State Election Commission.

1 The legislative rule filed in the State Register on July 11,
2 2013, authorized under the authority of section fourteen, article
3 twelve, chapter three of this code, modified by the State Election
4 Commission to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 August 6, 2013, relating to the State Election Commission (West
7 Virginia Supreme Court of Appeals Public Campaign Financing
8 Pilot Program, 146 CSR 5), is authorized.

§64-9-4. Real Estate Appraiser Licensing and Certification Board.

1 (a) The legislative rule filed in the State Register on
2 February 4, 2014, authorized under the authority of section nine,

3 article thirty-eight, chapter thirty of this code, relating to the
4 Real Estate Appraiser Licensing and Certification Board
5 (requirements for licensure and certification, 190 CSR 2), is
6 authorized with the following amendment:

7 On page thirty-two, by striking out the words “10.2.p. One
8 roster: thirty-five dollars (\$35); Roster subscription fee;” and
9 inserting in lieu thereof the following:

10 10.2.q. One roster: thirty-five dollars (\$35); 10.2.r. Roster
11 subscription fee: fifty dollars (\$50);

12 And by relettering the remaining subdivisions.

13 On page 43, subdivision 11.8.b, line one, by striking out the
14 words and date “Effective January 1, 2015” and on line four after
15 after the words “certification number” and the period, by striking
16 out the words and date “Effective January 1, 2015”.

17 (b) The legislative rule filed in the State Register on July 26,
18 2013, authorized under the authority of section nine, article
19 thirty-eight, chapter thirty of this code, modified by the Real
20 Estate Appraiser Licensing and Certification Board to meet the
21 objections of the Legislative Rule-Making Review Committee
22 and refiled in the State Register on December 23, 2013, relating
23 to the Real Estate Appraiser Licensing and Certification Board
24 (renewal of licensure or certification, 190 CSR 3), is authorized,
25 with the following amendments:

26 On page 1, subsection 1.3, after the words “Filing Date. —”
27 by striking out the word “April”;

28 On page 1, subsection 1.4, after the words “Effective Date.
29 —” by striking out the word “April”;

30 On page 1, subsection 2.3, after the words “each 60” by
31 striking out the words “minute segment of instruction” and

32 inserting in lieu thereof the words “minutes actual classroom
33 instruction”;

34 On page 1, underlined subsection 2.7, after the words “W.
35 Va. Code” by striking the words “§30-38 et seq.” and inserting
36 in lieu thereof the words “§30-38-1 et seq.” and after the words
37 “Requirements for Licensure and Certification” by striking out
38 the reference “190CSR2, subdivision 11.2” and inserting in lieu
39 thereof the reference “190CSR2, subsection 11”;

40 On page 2, section 3.2, by underlining the words “License
41 renewals are due 30 days prior to September 30” and after the
42 words “delinquent license fee” by inserting the words “pursuant
43 to 190 CSR 2”;

44 On page 2, subsection 4.1, after the words “classroom hours”
45 by inserting the words “or classroom hours of distance
46 education” and after the words “renewal term” by inserting the
47 words”: *Provided*, That with the exception of the 7-hour USPAP
48 course, no credit shall be awarded for completion of a continuing
49 education course on the same topic more than once every three
50 (3) years”;

51 On page 2, paragraph 4.1.b.2, after the word “Arbitration” by
52 underlining the comma and space;

53 On page 3, subsection 4.2, by removing the underlining of
54 “4.2” and by striking out the words “Beginning in 2015” and
55 inserting in lieu thereof the words “Effective January 1, 2015”;

56 On page 3, after subsection 4.4, by inserting a new
57 subsection “4.5. The board may grant credit for up to seven (7)
58 hours of a licensee’s continuing education requirement to
59 teachers of appraisal courses which the board has approved and
60 for which the board grants credit.” and by renumbering the
61 following subsection;

62 And,

63 On page 4, subsection 5.4, by striking out the words
64 “subdivisions 5.1.g., 6.1.h., or 6.1.i.”.

§64-9-5. Massage Therapy Licensure Board.

1 The legislative rule filed in the State Register on July 23,
2 2013, authorized under the authority of section seven, article
3 thirty-six, chapter thirty of this code, relating to the Massage
4 Therapy Licensure Board (schedule of fees, 194 CSR 4), is
5 authorized.

§64-9-6. Treasurer’s Office.

1 (a) The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section two, article two,
3 chapter twelve of this code, relating to the Treasurer’s Office
4 (procedure for deposit of funds in the Treasurer’s Office by state
5 agencies, 112 CSR 1), is repealed.

6 (b) The legislative rule filed in the State Register on July 26,
7 2013, authorized under the authority of section two, article two,
8 chapter twelve of this code, modified by the Treasurer’s Office
9 to meet the objections of the Legislative Rule-Making Review
10 Committee and refiled in the State Register on November 12,
11 2013, relating to the Treasurer’s Office (procedure for deposit of
12 monies with the Office by state agencies, 112 CSR 4), is
13 authorized.

14 (c) The legislative rule filed in the State Register on July 26,
15 2013, authorized under the authority of section two, article one,
16 chapter twelve of this code, modified by the Treasurer’s Office
17 to meet the objections of the Legislative Rule-Making Review
18 Committee and refiled in the State Register on November 12,
19 2013, relating to the Treasurer’s Office (selection of state
20 depositories for disbursement accounts through competitive
21 bidding, 112 CSR 6), is authorized.

22 (d) The legislative rule filed in the State Register on July 26,
23 2013, authorized under the authority of section two, article one,
24 chapter twelve of this code, modified by the Treasurer's Office
25 to meet the objections of the Legislative Rule-Making Review
26 Committee and refiled in the State Register on November 12,
27 2013, relating to the Treasurer's Office (selection of state
28 depositories for receipt accounts, 112 CSR 7), is authorized.

29 (e) The legislative rule filed in the Office of the Secretary of
30 State and made effective May 7, 1998, authorized under the
31 authority of section four, article six-b, chapter twelve of this
32 code, relating to the Treasurer's Office (rules for the reporting of
33 debt capacity, 112 CSR 9), and pursuant to the proposal to repeal
34 the same filed in the Office of the Secretary of State on July 26,
35 2013, is repealed.

36 (f) The legislative rule filed in the State Register on July 26,
37 2013, authorized under the authority of section seven, article six-
38 a, chapter twelve of this code, modified by the Treasurer's
39 Office to meet the objections of the Legislative Rule-Making
40 Review Committee and refiled in the State Register on
41 November 13, 2013, relating to the Treasurer's Office (reporting
42 debt, 112 CSR 10), is authorized, with the following
43 amendments:

44 On page two, following subsection 2.2, beginning on line
45 seven, by inserting a new subsection 2.3 to read as follows:

46 "2.3. "Division" means the Division of Debt Management in
47 the office of the State Treasurer.", and by redesignating the
48 remaining subsections accordingly;

49 And,

50 On page six, subsection 7.1, line twenty-eight, following the
51 word "June" and the number "30" by inserting the words "of the
52 next preceding fiscal year".

53 (g) The legislative rule filed in the State Register on July 26,
54 2013, authorized under the authority of section six, article three-
55 a, chapter thirteen of this code, modified by the Treasurer's
56 Office to meet the objections of the Legislative Rule-Making
57 Review Committee and refiled in the State Register on
58 November 15, 2013, relating to the Treasurer's Office
59 (procedures for fees in collections by charge, credit or debit card
60 or by electronic payment, 112 CSR 12), is authorized, with the
61 following amendment:

62 On page four, subsection 5.5, beginning on line nineteen,
63 following the words "timely or", by striking out the words "if the
64 spending unit has not been authorized to collect convenience
65 fees".

66 (h) The legislative rule filed in the State Register on July 26,
67 2013, authorized under the authority of section six, article three-
68 a, chapter twelve of this code, modified by the Treasurer's
69 Office to meet the objections of the Legislative Rule-Making
70 Review Committee and refiled in the State Register on
71 November 12, 2013, relating to the Treasurer's Office (providing
72 services to political subdivisions, 112 CSR 13), is authorized,
73 with the following amendments:

74 On page two, subsection 2.5, line two, following the words
75 "the unpaid balance", by striking out the words the remainder of
76 the sentence;

77 On page three, subsection 2.16, line one, by striking out the
78 words "spending unit or";

79 And,

80 On page three, subsection 2.23, by striking out the
81 subsection in its entirety and re-designating the remaining
82 subsection accordingly.

§64-9-7. Bureau of Senior Services.

1 The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section fifteen, article
3 five-p, chapter sixteen of this code, relating to the Bureau of
4 Senior Services (In-home Care Worker Registry, 76 CSR 2), is
5 authorized with the following amendment:

6 On page three, section 7, by striking out all of subsection
7 7.3.;

§64-9-8. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section five, article two,
3 chapter nineteen of this code, modified by the Commissioner of
4 Agriculture to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the State Register on
6 September 30, 2013, relating to the Commissioner of Agriculture
7 (schedule of charges for inspection services: fruit, 61 CSR 8B),
8 is authorized.

9 (b) The legislative rule filed in the State Register on July 24,
10 2013, authorized under the authority of section five, article two-
11 c, chapter nineteen of this code, modified by the Commissioner
12 of Agriculture to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the State Register on
14 October 2, 2013, relating to the Commissioner of Agriculture
15 (auctioneers, 61 CSR 11B), is authorized.

16 (c) The legislative rule filed in the State Register on July 23,
17 2013, authorized under the authority of section three, article two-
18 b, chapter nineteen of this code, relating to the Commissioner of
19 Agriculture (inspection of meat and poultry, 61 CSR 16), is
20 authorized with the following amendment:

§16-16-9. Poultry Exemptions.

1 9.1 A poultry producer who otherwise meets the
2 requirements of the exemption for poultry producers that

3 slaughter or process 20,000 or fewer birds per calendar year
4 under the federal Poultry Products Inspection Act, 21 U. S. C.
5 464(c) (3), may not keep a poultry flock of more than 3,000 birds
6 at any one time.

**§64-9-9. Board of Examiners for Speech-Language Pathology and
Audiology.**

1 (a) The legislative rule filed in the State Register on July 25,
2 2013, authorized under the authority of section seven, article
3 thirty-two, chapter thirty of this code, modified by the Board of
4 Examiners for Speech-Language Pathology and Audiology to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on December 18,
7 2013, relating to the Board of Examiners for Speech-Language
8 Pathology and Audiology (licensure of speech-pathology and
9 audiology, 29 CSR 1), is authorized.

10 (b) The legislative rule filed in the State Register on July 25,
11 2013, authorized under the authority of section seven, article
12 thirty-two, chapter thirty of this code, modified by the Board of
13 Examiners for Speech-Language Pathology and Audiology to
14 meet the objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on November 26,
16 2013, relating to the Board of Examiners for Speech-Language
17 Pathology and Audiology (speech-language pathology and
18 audiology assistants, 29 CSR 2), is authorized, with the
19 following amendment:

20 On page 1, subsection 2.3, at the beginning of the subsection,
21 by striking out the words “Indirect/General supervision:
22 Indirect/General” and inserting in lieu thereof the words
23 “Indirect supervision: Indirect”;

24 On page 1, after subsection 2.6, by adding a new subsection
25 2.7, to read as follows:

26 “2.7. Medically fragile patient/client: A medically fragile
27 patient/client means a patient/client who has any condition that
28 interferes with the airway, breathing, and/or circulatory system.”,

29 And by renumbering the remaining subsections accordingly;

30 On page 2, subsection 4.1, subdivision (f), at the beginning
31 of subsection (f), by restoring the stricken first sentence;

32 On page 3, subsection 4.1, subdivision (h), by striking out
33 said subdivision (h) and inserting a new subdivision (h) to read
34 as follows:

35 “(h) Provide 20% direct supervision and 10% indirect
36 supervision for the first ninety (90) days, and thereafter ensure
37 that he or she has direct contact with each patient/client at least
38 once for every two weeks of treatment provided: *Provided*, That
39 supervisors shall provide 100% direct supervision of an assistant
40 who is providing treatment to a medically fragile patient/client.”;

41 On page 3, subsection 4.1, subdivision (o), after the words
42 “ethical responsibility” by striking out the words “patient/client
43 services provided or omitted”; and

44 On page 3, subsection 4.1, subdivision (u), by striking out
45 subdivision (u) in its entirety and inserting in lieu thereof a new
46 subdivision (u) to read as follows:

47 “(u) Accurately document all direct and indirect supervisory
48 activities on forms prescribed by the board, and submit the same
49 annually upon application for renewal of registration”.

50 (c) The legislative rule filed in the State Register on July 25,
51 2013, authorized under the authority of section seven, article
52 thirty-two, chapter thirty of this code, modified by the Board of
53 Examiners for Speech-Language Pathology and Audiology to
54 meet the objections of the Legislative Rule-Making Review

55 Committee and refiled in the State Register on November 26,
56 2013, relating to the Board of Examiners for Speech-Language
57 Pathology and Audiology (disciplinary and complaint procedures
58 for speech-language pathology and audiology, 29 CSR 4), is
59 authorized.

60 (d) The legislative rule filed in the State Register on July 25,
61 2013, authorized under the authority of section seven, article
62 thirty-two, chapter thirty of this code, relating to the Board of
63 Examiners for Speech-Language Pathology and Audiology (code
64 of ethics, 29 CSR 5), is authorized.

§64-9-10. Board of Chiropractic Examiners.

1 (a) The legislative rule filed in the State Register on July 25,
2 2013, authorized under the authority of section five, article
3 sixteen, chapter thirty of this code, modified by the Board of
4 Chiropractic Examiners to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on December 12, 2013, relating to the Board of
7 Chiropractic Examiners (regulation of chiropractic practice, 4
8 CSR 1), is authorized, with the following amendment:

9 On page 4, subsection 6.4, after the words “is prohibited” by
10 striking out the words “as outlined in W. Va. Code § 30-16-20”.

11 (b) The legislative rule filed in the State Register on July 25,
12 2013, authorized under the authority of section five, article
13 sixteen, chapter thirty of this code, relating to the Board of
14 Chiropractic Examiners (fees pertaining to the practice of
15 chiropractic, 4 CSR 6), is authorized.

§64-9-11. Board of Dental Examiners.

1 (a) The legislative rule filed in the State Register on July 22,
2 2013, authorized under the authority of section six, article four,
3 chapter thirty of this code, relating to the Board of Dental

4 Examiners (rule for the West Virginia Board of Dental
5 Examiners, 5 CSR 1), is authorized.

6 (b) The legislative rule filed in the State Register on July 22,
7 2013, authorized under the authority of section one thousand
8 three hundred four, article thirteen, chapter thirty-one-b of this
9 code, relating to the Board of Dental Examiners (formation and
10 approval of professional limited liability companies, 5 CSR 2),
11 is authorized.

12 (c) The legislative rule filed in the State Register on July 24,
13 2013, authorized under the authority of section six, article four,
14 chapter thirty of this code, modified by the Board of Dental
15 Examiners to meet the objections of the Legislative Rule-
16 Making Review Committee and refiled in the State Register on
17 November 22, 2013, relating to the Board of Dental Examiners
18 (fees established by the Board, 5 CSR 3), is authorized, with the
19 following amendment:

20 On page 1, subsection 2.4, by striking out said subsection 2.4
21 in its entirety and re-designating the remaining subsections
22 accordingly.

23 (d) The legislative rule filed in the State Register on July 22,
24 2013, authorized under the authority of section six, article four,
25 chapter thirty of this code, relating to the Board of Dental
26 Examiners (formation and approval of dental corporations; and
27 dental practice ownership, 5 CSR 6), is authorized.

28 (e) The legislative rule filed in the State Register on July 22,
29 2013, authorized under the authority of section six, article four,
30 thirty of this code, relating to the Board of Dental Examiners
31 (dental advertising, 5 CSR 8), is authorized.

32 (f) The legislative rule filed in the State Register on July 22,
33 2013, authorized under the authority of section five-a, article
34 nine, chapter sixty-a of this code, modified by the Board of

35 Dental Examiners to meet the objections of the Legislative Rule-
36 Making Review Committee and refiled in the State Register on
37 October 31, 2013, relating to the Board of Dental Examiners
38 (practitioner requirements for accessing the West Virginia
39 controlled substances monitoring program database, 5 CSR 10),
40 is authorized.

41 (g) The legislative rule filed in the State Register on July 24,
42 2013, authorized under the authority of section six, article four,
43 chapter thirty of this code, relating to the Board of Dental
44 Examiners (continuing education requirements, 5 CSR 11), is
45 authorized.

46 (h) The legislative rule filed in the State Register on July 24,
47 2013, authorized under the authority of section six, article four,
48 chapter thirty of this code, relating to the Board of Dental
49 Examiners (administration of anesthesia by dentists, 5 CSR 12),
50 is authorized.

51 (i) The legislative rule filed in the State Register on July 22,
52 2013, authorized under the authority of section six, article four,
53 chapter thirty of this code, relating to the Board of Dental
54 Examiners (expanded duties of dental hygienists and dental
55 assistants, 5 CSR 13), is authorized.

56 (j) The legislative rule filed in the State Register on July 24,
57 2013, authorized under the authority of section six, article four,
58 chapter thirty of this code, modified by the Board of Dental
59 Examiners to meet the objections of the Legislative Rule-
60 Making Review Committee and refiled in the State Register on
61 November 22, 2013, relating to the Board of Dental Examiners
62 (mobile dental facilities and portable dental units, 5 CSR 14), is
63 authorized, with the following amendments:

64 On page 1, subsection 2.2, after the words “American Dental
65 Association” by striking out the words “beginning not later than
66 one year of age”;

67 On page 1, subsection 2.4, after the words “to employ” by
68 inserting the words “or contract with”;

69 On page 2, subsection 4.4, subdivision (a), after the words
70 “telephone number of each” by striking out the words “dentist or
71 dental hygienist” and inserting in lieu thereof the words “dentist,
72 dental hygienist or operator”;

73 On page 3, subsection 4.4, subdivision (g), after the words
74 “statement that the applicant” by striking out the word “posses”
75 and inserting in lieu thereof the word “possesses”; and

76 On page 7, subsection 8.3, after the words “written report for
77 the” by striking out the word “proceeding” and inserting in lieu
78 thereof the word “preceding”.

§64-9-12. State Board of Examiners for Licensed Practical Nurses.

1 (a) The legislative rule filed in the State Register on April
2 29, 2013, authorized under the authority of section six, article
3 seven-a, chapter thirty of this code, modified by the State Board
4 of Examiners for Licensed Practical Nurses to meet the
5 objections of the Legislative Rule-making Review Committee
6 and refiled in the State Register on October 1, 2013, relating to
7 the State Board of Examiners for Licensed Practical Nurses
8 (policies regulating licensure of the licensed practical nurse, 10
9 CSR 2), is authorized, with the following amendment:

10 On page 1, subdivision 2.1.c., after the citation “10 CSR 1”
11 by striking out the words “or a board approved program from
12 another US jurisdiction” and inserting in lieu thereof the words
13 “program approved by a board that licenses Licensed Practical
14 Nurses in another state or US territory.”.

15 (b) The legislative rule filed in the State Register on April
16 29, 2013, authorized under the authority of section seven, article
17 seven-a, chapter thirty of this code, modified by the State Board
18 of Examiners for Licensed Practical Nurses to meet the

19 objections of the Legislative Rule-Making Review Committee
20 and refiled in the State Register on July 26, 2013, relating to the
21 State Board of Examiners for Licensed Practical Nurses (fees for
22 services rendered by the Board and supplemental renewal fee for
23 the Center for Nursing, 10 CSR 4), is authorized.

24 (c) The legislative rule filed in the State Register on April
25 29, 2013, authorized under the authority of section five, article
26 seven-a, chapter thirty of this code, modified by the State Board
27 of Examiners for Licensed Practical Nurses to meet the
28 objections of the Legislative Rule-Making Review Committee
29 and refiled in the State Register on September 4, 2013, relating
30 to the State Board of Examiners for Licensed Practical Nurses
31 (continuing competence, 10 CSR 6), is authorized.

§64-9-13. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on October
2 18, 2013, 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
6 December 20, 2013, relating to the Board of Pharmacy
7 (continuing education for licensure of pharmacists, 15 CSR 3),
8 is authorized, with the following amendment:

9 On page 2, subsection 2.9, after the words “National
10 Association of Boards of Pharmacy” by adding the words
11 “(NABP) and”.

12 (b) The legislative rule filed in the State Register on October
13 18, 2013, authorized under the authority of section six, article
14 nine, chapter sixty-a of this code, modified by the Board of
15 Pharmacy to meet the objections of the Legislative Rule-Making
16 Review Committee and refiled in the State Register on
17 December 20, 2013, relating to the Board of Pharmacy
18 (controlled substances monitoring, 15 CSR 8), is authorized.

§64-9-14. Sanitarians.

1 The legislative rule filed in the State Register on July 24,
2 2013, authorized under the authority of section six, article
3 seventeen, chapter thirty of this code, relating to the Board of
4 Sanitarians (practice of public health sanitation, 20 CSR 4), is
5 authorized.

§64-9-15. Board of Professional Surveyors.

1 The legislative rule filed in the State Register on July 23,
2 2013, authorized under the authority of section six, article
3 thirteen-a, chapter thirty of this code, relating to the Board of
4 Professional Surveyors (examination and licensing of
5 professional surveyors in West Virginia, 23 CSR 1), is
6 authorized.

§64-9-16. Board of Veterinary Medicine.

1 (a) The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section six, article ten,
3 chapter thirty of this code, modified by the Board of Veterinary
4 Medicine to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the State Register on
6 November 5, 2013, relating to the Board of Veterinary Medicine
7 (registration of veterinary technicians, 26 CSR 3), is authorized.

8 (b) The legislative rule filed in the State Register on July 26,
9 2013, authorized under the authority of section six, article ten,
10 chapter thirty of this code, relating to the Board of Veterinary
11 Medicine (certified animal euthanasia technicians, 26 CSR 5), is
12 authorized.

13 (c) The legislative rule filed in the State Register on July 26,
14 2013, authorized under the authority of section six, article ten,
15 chapter thirty of this code, modified by the Board of Veterinary
16 Medicine to meet the objections of the Legislative Rule-Making
17 Review Committee and refiled in the State Register on

18 November 5, 2013, relating to the Board of Veterinary Medicine
19 (schedule of fees, 26 CSR 6), is authorized.

§64-9-17. Infrastructure and Jobs Development Council.

1 The legislative rule filed in the State Register on July 9,
2 2013, authorized under the authority of section four, article
3 fifteen-a, chapter thirty-one of this code, modified by the
4 Infrastructure and Jobs Development Council to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on July 29, 2013, relating to the
7 Infrastructure and Jobs Development Council (Infrastructure and
8 Jobs Development Council, 167 CSR 1), is authorized.

CHAPTER 114

(Com. Sub. for S. B. 140 - By Senator Snyder)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 26, 2014.]

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 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 presented to and recommended by the Legislative

Rule-Making Review Committee and as amended by the Legislature; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to assessing health and safety violation penalties; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the program for the sharing of information between employers; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening, standards and procedure; authorizing the Division of Labor to promulgate a legislative rule relating to the Wage Payment and Collection Act; authorizing the Division of Labor to promulgate a legislative rule relating to employer wage bonds; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motorboating; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to the electronic registration of wildlife.

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 10. AUTHORIZATION FOR BUREAU OF
COMMERCE TO PROMULGATE
LEGISLATIVE RULES.**

§64-10-1. Office of Miners' Health, Safety and Training.

1 (a) The legislative rule filed in the State Register on March
2 26, 2013, authorized under the authority of section six, article
3 one, chapter twenty-two-a of this code, relating to the Office of
4 Miners' Health, Safety and Training (assessing health and safety
5 violation penalties, 56 CSR 12), is authorized.

6 (b) The legislative rule filed in the State Register on July 26,
7 2013, authorized under the authority of section four, article one,
8 chapter twenty-two-a of this code, relating to the Office of

9 Miners' Health, Safety and Training (program for the sharing of
10 information between employers, 56 CSR 18), is authorized.

11 (c) The legislative rule filed in the State Register on March
12 26, 2013, authorized under the authority of section fourteen,
13 article six, chapter twenty-two-a of this code, modified by the
14 Office of Miners' Health, Safety and Training to meet the
15 objections of the Legislative Rule-Making Review Committee
16 and refiled in the State Register on December 20, 2013, relating
17 to the Office of Miners' Health, Safety and Training (substance
18 abuse screening, standards and procedure, 56 CSR 19), is
19 authorized with the following amendments:

20 On page two, after subsection 3.7, by inserting a new
21 subsection, designated subsection 3.8, to read as follows:

22 3.8. Duly licensed, mental health professional. The term
23 "duly licensed, mental health professional" means a psychiatrist,
24 psychologist, professional counselor or substance abuse
25 counselor in the United States who is licensed by, and in good
26 standing with, the licensing authority of the jurisdiction in which
27 the person practices.;

28 And by renumbering the remaining subsections;

29 On page four, subsection 3.17, by striking out the word
30 "accidents" and inserting in lieu thereof the word "accident";

31 On page six, by striking out all of subsection 4.7 and
32 inserting in lieu thereof a new subsection, designated subsection
33 4.7, to read as follows:

34 4.7. Any applicant, who is adversely affected by a decision
35 of the Director following a hearing on an application for safety-
36 sensitive certification, may petition for judicial review of the
37 Director's decision in the Circuit Court of Kanawha County or

38 in the circuit court of the county in which the applicant resides,
39 pursuant to the provisions of W. Va. Code § 29A-5-4.;

40 On page six, subsection 4.8, by striking out the word “shall”
41 and inserting in lieu thereof the word “may”;

42 On page six, subsection 5.2, by striking out subsection 5.2 in
43 its entirety and inserting in lieu thereof, a new subsection 5.2 to
44 read as follows: “Every employer’s program shall at a minimum
45 comply with all state mine laws relevant to substance abuse
46 screening, standards and procedures.”;

47 On page seven, subdivision 5.3.5, by striking out the word
48 “Pphencyclidine” and inserting in lieu thereof the word
49 “Phencyclidine”;

50 On page eight, subsection 5.5, by striking out “5.5” and
51 inserting in lieu thereof “5.6”;

52 And by renumbering the remaining subsections;

53 On page nine, subsection 5.11, by striking out the subsection
54 in its entirety, and inserting in lieu thereof a new subsection
55 5.11., as follows:

56 “5.11 Every employer shall notify the director, on a form
57 prescribed by the director, within seven (7) days of any of the
58 following:

59 5.11.a A positive drug or alcohol test of a certified person,
60 whether it be a pre-employment test, random test, reasonable
61 suspicion test, or post-accident test;

62 5.11.b. The refusal of a certified person to submit a sample;

63 5.11.c. A certified person possessing a substituted sample or
64 an adulterated sample; or

65 5.11.d. A certified person submitting a substituted sample or
66 an adulterated sample.”

67 On page nine, after subdivision 5.11.d. by inserting two new
68 subsections designated 5.12. and 5.13., to read as follows:

69 “5.12. When the employer submits the completed
70 notification form prescribed by the director, the employer shall
71 also submit a copy of the laboratory test results showing the
72 substances tested for and the results of the test.

73 5.13. A notice pursuant to subdivision 5.11., shall result in
74 the immediate temporary suspension of all certificates held by
75 the certified person who failed the screening, pending a hearing
76 before the board of appeals, except in the case of a certified
77 person who is subject to a collective bargaining agreement, in
78 which case the notification pursuant subsection 5.11., shall not
79 result in the immediate temporary suspension of any certificate
80 held by the certified person who is subject to a collective
81 bargaining agreement unless and until the arbitration is
82 concluded and the discharge is upheld, and no certificate held by
83 a certified person who is subject to a collective bargaining
84 agreement shall be suspended or revoked unless the discharge is
85 upheld in arbitration.”

86 And by renumbering the remaining subsections;

87 On page eleven, subdivision 6.1.2, by striking out the words
88 “Notify the Board of Appeals” and inserting in lieu thereof the
89 words “Notify the Director”;

90 On page eleven, subsection 6.2, by striking out the words
91 “notify the Board of Appeals” and inserting in lieu thereof the
92 words “notify the Director”;

93 On page fourteen, subsection 8.1, by striking out the words
94 “is found, by a preponderance of the evidence, to have: failed”

95 and inserting in lieu thereof the words “has entered into a
96 treatment plan agreement as specified in subsection 9.1 of this
97 rule or who is found, by a preponderance of the evidence, to
98 have failed”;

99 On page fourteen, by striking out all of subsection 8.2 and
100 inserting in lieu thereof three new subsections, designated
101 subsections 8.2, 8.3 and 8.4, to read as follows:

102 8.2. Any person requesting a hearing who intends to
103 challenge the sample collection methods, the laboratory test
104 results, the medical review officer’s verification of the
105 laboratory test result or the chemical test of breath, shall notify
106 the Director of his or her intent. The person shall submit the
107 notification in writing, either in person or by mail to the
108 Director, at least fourteen (14) days prior to the hearing date. The
109 notification shall specify, in detail, the challenge the person
110 intends to make.

111 8.3. If the person requesting the hearing submits notification
112 in writing to the Director that he/she intends to challenge the
113 laboratory test results of the medical review officer’s verification
114 of the laboratory test result, that person shall have the split
115 sample tested, at his/her expense, at a SAMSHA-certified
116 laboratory and those results verified by a medical review officer.
117 The split sample results and the results of the split sample
118 verification by a medical review officer shall be provided to the
119 Director and the original medical review officer. No other form
120 of evidence shall be admissible to challenge the laboratory test
121 result of the medical review officer’s verification of the
122 laboratory test result.

123 8.4. If a person fails to comply with the notification
124 requirements of this section, then the sample collection methods,
125 the laboratory test results, the medical review officer’s
126 verification of the laboratory test result, or the chemical test of

127 breath shall be admissible as though the person and the Director
128 had stipulated to their admissibility.;

129 And by renumbering the remaining subsections;

130 On page fifteen, subdivision 9.1.1, by striking out the words
131 “treatment at a facility licensed by the State of West Virginia in
132 substance abuse” and inserting in lieu thereof the words
133 “treatment, counseling and after-care under the supervision of a
134 duly licensed, mental health professional”;

135 On page fifteen, subdivision 9.1.2, by striking out the words
136 “treatment at a facility licensed by the State of West Virginia in
137 substance abuse” and inserting in lieu thereof the words
138 “treatment, counseling and after-care under the supervision of a
139 duly licensed, mental health professional”;

140 On page fifteen, subdivision 9.1.3, by striking out the words
141 “treatment at a facility licensed by the State of West Virginia in
142 substance abuse” and inserting in lieu thereof the words
143 “treatment, counseling and after-care under the supervision of a
144 duly licensed, mental health professional”;

145 And,

146 On page sixteen, after subdivision 9.1.4, by adding the
147 following:

148 “9.1.5. An admission by the individual that he or she has
149 failed or refused a drug and alcohol test for the first time and that
150 a second failure or refusal shall result in the permanent
151 revocation of all mining certifications issued to him or her. 9.2.
152 The Director shall review all Treatment Agreements and shall
153 not approve any Agreement that does not comply with this rule.

154 9.3. The Director shall insure an individual has satisfied all
155 conditions for reinstatement before reinstating any certificate.”

§64-10-2. Division of Labor.

1 (a) The legislative rule filed in the State Register on July 23,
2 2013, authorized under the authority of section thirteen, article
3 five, chapter twenty-one of this code, modified by the Division
4 of Labor to meet the objections of the Legislative Rule-Making
5 Review Committee and refiled in the State Register on
6 November 5, 2013, relating to the Division of Labor (Wage
7 Payment and Collection Act, 42 CSR 5), is authorized with the
8 following amendments:

9 On page three, after subsection 4.2., by inserting a new
10 subsection, designated subsection 4.3., to read as follows:

11 4.3. An employer shall keep posted in a place accessible to
12 all employees an abstract of the West Virginia Wage Payment
13 and Collection law prepared and provided by the Commissioner.;

14 On page four, by striking out all of subsection 7.2. and
15 inserting in lieu thereof a new subsection, designated subsection
16 7.2., to read as follows:

17 7.2. The scheduled payday for a railroad company shall
18 occur within the time periods specified by West Virginia Code
19 §21-5-2. The scheduled payday for every employer other than a
20 railroad company shall occur at least once every 2 weeks, unless
21 otherwise authorized by special agreement as provided in section
22 eight of this rule.;

23 On page five, after subsection 8.2., by inserting a new
24 subsection, designated subsection 8.3. to read as follows:

25 8.3. The Commissioner shall notify all employees identified
26 by the employer and provide each employee with an opportunity
27 to respond to the petition.

28 And by renumbering the remaining subsections;

29 On page five, subsection 8.4, by striking out the words
30 “After the hearing,” and inserting in lieu thereof the words
31 “Following the submission of the petition, the responses of the
32 affected employees, and the holding of the hearing, if any.”;

33 And,

34 On page seven, subsection 10.6, by striking out the words
35 “established by” and inserting in lieu thereof the words
36 “specified in the written demand of”.

37 (b) The legislative rule filed in the State Register on July 23,
38 2013, authorized under the authority of section thirteen, article
39 five, chapter twenty-one of this code, modified by the Division
40 of Labor to meet the objections of the Legislative Rule-Making
41 Review Committee and refiled in the State Register on
42 November 5, 2013, relating to the Division of Labor (employer
43 wage bonds, 42 CSR 33), is authorized.

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

1 (a) The legislative rule filed in the State Register on July 25,
2 2013, authorized under the authority of section twenty-three,
3 article seven, chapter twenty of this code, relating to the Division
4 of Natural Resources (special motorboating, 58 CSR 27), is
5 authorized.

6 (b) The legislative rule filed in the State Register on July 25,
7 2013, authorized under the authority of section four, article two,
8 chapter twenty of this code, modified by the Division of Natural
9 Resources to meet the objections of the Legislative Rule-Making
10 Review Committee and refiled in the State Register on October
11 8, 2013, relating to the Division of Natural Resources (electronic
12 registration of wildlife, 58 CSR 72), is authorized.

CHAPTER 115

**(Com. Sub. for H. B. 4347 - By Delegates Shott, Sponaugle,
Sobonya, Manchin, Lane, Poore and Pino)**

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2014.]

AN ACT to amend and reenact §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, all relating to creating an affirmative defense to an action to enforce a lien.

Be it enacted by the Legislature of West Virginia:

That §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. MECHANICS' LIENS.

§38-2-21. Effect of payment by owner to contractor or subcontractor.

1 (a) No payment by the owner to any contractor or
2 subcontractor of any part or all of the contract price for the
3 erection and construction of any a building, structure or
4 improvement appurtenant to a building, structure or
5 improvement or for any part or section of a work may affect,
6 impair or limit the lien of the subcontractor, laborer, or
7 materialman or furnisher of machinery or other necessary
8 material or equipment, as provided in this article, except as
9 otherwise provided in this article.

10 (b) Notwithstanding any provisions of this code to the
11 contrary, it is an affirmative defense, or an affirmative partial
12 defense, as the case may be, in any action to enforce a lien

13 pursuant to this article that the owner is not indebted to the
14 contractor or is indebted to the contractor for less than the
15 amount of the lien sought to be perfected, when:

16 (1) The property is an existing single-family dwelling;

17 (2) The property is a residence constructed by the owner or
18 under a contract entered into by the owner prior to its occupancy
19 as the owner's primary residence; or

20 (3) The property is a single-family, owner-occupied
21 dwelling, including a residence constructed and sold for
22 occupancy as a primary residence. This subdivision does not
23 apply to a developer or builder of multiple residences except for
24 the residence that is occupied as the primary residence of the
25 developer or builder.

**§38-2-34. Time within which suit to enforce lien may be brought;
right of other lienors to intervene.**

1 (a) Unless an action to enforce any lien authorized by this
2 article is commenced in a circuit court within six months after
3 the person desiring to avail himself or herself of the court has
4 filed his or her notice in the clerk's office, as provided in this
5 article, the lien shall be discharged; but an action commenced by
6 any person having a lien shall, for the purpose of preserving the
7 same, inure to the benefit of all other persons having a lien under
8 this article on the same property, and persons may intervene in
9 the action for the purpose of enforcing their liens.

10 (b) Notwithstanding any provisions of this code to the
11 contrary, it is an affirmative defense, or an affirmative partial
12 defense, as the case may be, in any action to enforce a lien
13 pursuant to this article that the owner is not indebted to the
14 contractor or is indebted to the contractor for less than the
15 amount of the lien sought to be perfected, when:

16 (1) The property is an existing single-family dwelling;

17 (2) The property is a residence constructed by the owner or
18 under a contract entered into by the owner prior to its occupancy
19 as his or her primary residence; or

20 (3) The property is a single-family, owner-occupied
21 dwelling, including a residence constructed and sold for
22 occupancy as a primary residence. This subdivision does not
23 apply to a developer or builder of multiple residences except for
24 the residence that is occupied as the primary residence of the
25 developer or builder.

26 (c) As used in subsection (b):

27 (1) 'Dwelling' or 'residence' means any building or structure
28 intended for habitation, in whole or part, and includes, but is not
29 limited to, any house, apartment, mobile home, house trailer,
30 modular home, factory-built home and any adjacent
31 outbuildings.

32 (2) 'Outbuilding' means any building or structure which
33 adjoins, is part of, belongs to, or is used in connection with a
34 dwelling, and shall include, but not be limited to, any garage,
35 shop, shed, barn or stable.

CHAPTER 116

**(H. B. 4421 - By Delegates White, Skaff, Boggs, Barrett,
Craig, A. Evans, Manchin, Reynolds, Storch,
Swartzmiller and Marcum)
[By Request of the Lottery Commission]**

[Passed March 4, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-30, relating to

payment of lottery prizes; and permitting additional forms of payments consistent with current banking practices.

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 §29-22-30, to read as follows:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-30. Methods of payment for lottery prizes.

- 1 Notwithstanding any provision of this article or any rule to
- 2 the contrary, the lottery shall pay a prize to a claimant by check,
- 3 electronic funds transfer or any other method of payment
- 4 acceptable to the Federal Reserve System.

CHAPTER 117

(Com. Sub. for H. B. 4217 - By Delegates Perdue, Fleischauer, Campbell, Ellington, Morgan and Stephens)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §9-5-22 and §9-5-23, all relating to Medicaid; requiring the Bureau of Medical Services to submit an annual report to the Legislature; requiring certain information to be included in the report; requiring website publication of certain information.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §9-5-22 and §9-5-23, all to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.**§9-5-22. Medicaid managed care reporting.**

1 (a) Beginning January 1, 2016, and annually thereafter, the
2 Bureau for Medical Services shall submit an annual report by
3 May of that year to the Joint Committee on Government and
4 Finance and the Legislative Oversight Commission on Health
5 and Human Resources Accountability that includes, but is not
6 limited to, the following information for all managed care
7 organizations:

8 (1) The name and geographic service area of each managed
9 care organization that has contracted with the bureau.

10 (2) The total number of health care providers in each
11 managed care organization broken down by provider type and
12 specialty and by each geographic service area.

13 (3) The monthly average and total of the number of members
14 enrolled in each organization broken down by eligibility group.

15 (4) The percentage of clean claims paid each provider type
16 within thirty calendar days and the average number of days to
17 pay all claims for each managed care organization

18 (5) The number of claims denied or pending by each managed
19 care organization.

20 (6) The number and dollar value of all claims paid to non-
21 network providers by claim type for each managed care
22 organization.

23 (7) The number of members choosing the managed care
24 organization and the number of members auto-enrolled into each
25 managed care organization, broken down by managed care
26 organization.

27 (8) The amount of the average per member per month
28 payment and total payments paid to each managed care
29 organization.

30 (9) A comparison of nationally recognized health outcomes
31 measures as required by the contracts the managed care
32 organizations have with the bureau.

33 (10) A copy of the member and provider satisfaction survey
34 report for each managed care organization.

35 (11) A copy of the annual audited financial statements for
36 each managed care organization.

37 (12) A brief factual narrative of any sanctions levied by the
38 department against a managed care network.

39 (13) The number of members, broken down by each
40 managed care organization, filing a grievance or appeal and the
41 total number and percentage of grievances or appeals that
42 reversed or otherwise resolved a decision in favor of the
43 member.

44 (14) The number of members receiving unduplicated
45 outpatient emergency services and urgent care services, broken
46 down by managed care organization.

47 (15) The number of total inpatient Medicaid days broken
48 down by managed care organization and aggregated by facility
49 type.

50 (16) The following information concerning pharmacy
51 benefits broken down by each managed care organization and by
52 month:

53 (A) Total number of prescription claims;

- 54 (B) Total number of prescription claims denied;
- 55 (C) Average adjudication time for prescription claims;
- 56 (D) Total number of prescription claims adjudicated within
57 thirty days;
- 58 (E) Total number of prescription claims adjudicated within
59 ninety days;
- 60 (F) Total number of prescription claims adjudicated after
61 thirty days; and
- 62 (G) Total number of prescription claims adjudicated after
63 ninety days.
- 64 (17) The total number of authorizations by service.
- 65 (18) Any other metric or measure which the Bureau of
66 Medical Services deems appropriate for inclusion in the report.
- 67 (19) For those managed care plans that are accredited by a
68 national accreditation organization they shall report their most
69 recent annual quality ranking for their Medicaid plans offered in
70 West Virginia.
- 71 (20) The medical loss ratio and the administrative cost of
72 each managed care organization and the amount of money
73 refunded to the state if the contract contains a medical loss ratio.
- 74 (b) The report required in subsection (a) of this section shall
75 also include information regarding fee-for-service providers that
76 is comparable to that required in subsection (a) of this section for
77 managed care organizations: *Provided*, That any report regarding
78 Medicaid fee for service should be designed to determine the
79 medical and pharmacy costs for those benefits similar to ones

80 provided by the managed care organizations and the data shall be
81 reflective of the population served.

82 (c) The report required in subsection (a) of this section shall
83 also include for each of the five most recent fiscal years, annual
84 cost information for both managed care organizations and fee-
85 for-service providers of the Medicaid program expressed in
86 terms of:

87 (1) Aggregate dollars expended by both managed care
88 organizations and fee-for-service providers of the Medicaid
89 programs per fiscal years; and

90 (2) Annual rate of cost inflation from prior fiscal year for
91 both managed care organizations and fee-for-service providers
92 of the Medicaid program.

§9-5-23. Bureau of Medical Services information.

1 (a) The Bureau of Medical Services shall publish all
2 informational bulletins, health plan advisories, and guidance
3 published by the department concerning the Medicaid program
4 on the department's website.

5 (b) The bureau shall publish all Medicaid state plan
6 amendments and any formal correspondence within seventy-two
7 hours of receipt of the correspondence submission to the Centers
8 for Medicare and Medicaid Services.

9 (c) The bureau shall publish all formal responses by the
10 Centers for Medicare and Medicaid Services regarding any state
11 plan amendment on the department's website within seventy-two
12 hours of receipt of the correspondence.

CHAPTER 118

(Com. Sub. for H. B. 4363 - By Delegates Perdue,
Ferro, Diserio and Poore)

[Passed March 7, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-1A-12, relating to creating an independent informal dispute resolution process available to behavioral health providers licensed by the Department of Health and Human Resources for orders or citations of deficient practice; and providing that the independent informal dispute resolution process does not affect the ability of a licensee to seek administrative and judicial review of an order or citation of deficient practice.

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 §27-1A-12, to read as follows:

ARTICLE 1A. DEPARTMENT OF HEALTH.

§27-1A-12. Independent Informal Dispute Resolution.

- 1 (a) A behavioral health provider licensed by the Department
- 2 of Health and Human Resources adversely affected by an order
- 3 or citation of a deficient practice issued pursuant to this article
- 4 or pursuant to federal law may request to use the independent
- 5 informal dispute resolution process established by this section.
- 6 A licensee may contest a cited deficiency as contrary to rule,

7 regulation or law or unwarranted by the facts, or any
8 combination thereof.

9 (b) The independent informal dispute resolution process is
10 not a formal evidentiary proceeding and utilization of the
11 independent informal dispute resolution process does not waive
12 the right of the licensee to request a formal hearing with the
13 secretary.

14 (c) The independent informal dispute resolution process
15 shall consist of the following:

16 (1) The secretary shall transmit to the licensee a statement of
17 deficiencies attributed to the licensee and request that the
18 licensee submit a plan of correction addressing the cited
19 deficiencies no later than ten working days following the last day
20 of the survey or inspection, or no later than ten working days
21 following the last day of a complaint investigation. Notification
22 of the availability of the independent informal dispute resolution
23 process and an explanation of the independent informal dispute
24 resolution process shall be included in the transmittal.

25 (2) When the licensee returns its plan of correction to the
26 secretary, the licensee may request, in writing, to participate in
27 the independent informal dispute resolution process to protest or
28 refute all or part of the cited deficiencies within ten working
29 days. The secretary may not release the final report until all
30 dispute processes are resolved.

31 (3) The Secretary of the West Virginia Department of Health
32 and Human Resources (hereinafter "secretary") shall approve
33 and establish a panel of at least three independent review
34 providers: *Provided*, That in lieu of establishing a panel, the
35 secretary may use an existing panel of approved independent
36 review providers. The secretary shall contract with the
37 independent review providers to conduct the independent
38 informal dispute resolution processes. Each independent review

39 provider shall be accredited by the Utilization Review
40 Accreditation Commission. When a licensee requests an
41 independent informal dispute resolution process, the secretary
42 shall choose one independent review provider from the approved
43 panel to conduct the process.

44 (4) The secretary shall refer the request to an independent
45 review provider from the panel of certified independent review
46 providers approved by the department within five working days
47 of receipt of the written request for the independent informal
48 dispute resolution process made by a licensee. The secretary
49 shall vary the selection of the independent review providers on
50 a rotating basis. The secretary shall acknowledge in writing to
51 the licensee that the request for independent review has been
52 received and forwarded to the independent review provider. The
53 notice shall include the name and professional address of the
54 independent review provider.

55 (5) The independent review provider shall hold an
56 independent informal dispute resolution conference, unless
57 additional time is requested by either the licensee, the
58 Department of Health and Human Resources or the independent
59 review provider and approved by the secretary, within ten
60 working days of receipt of the written request for the
61 independent informal dispute resolution process made by a
62 licensee. The licensee or the Department of Health and Human
63 Resources may submit additional information before the
64 independent informal dispute resolution conference.

65 (6) Neither the secretary nor the licensee may be
66 accompanied by counsel during the independent informal dispute
67 resolution conference. The manner in which the independent
68 informal dispute resolution conference is held is at the discretion
69 of the licensee, but is limited to:

70 (A) A review of written information submitted by the
71 licensee;

72 (B) A telephonic conference; or

73 (C) A face-to-face conference held at a mutually agreed
74 upon location.

75 (7) If the independent review provider determines the need
76 for additional information, clarification or discussion at the
77 conclusion of the independent informal dispute resolution
78 conference, the secretary and the licensee shall present the
79 requested information.

80 (8) The independent review provider shall make a
81 determination within ten working days of receipt of any
82 additional information as provided in subdivision (7) of this
83 section or the conclusion of the independent informal dispute
84 resolution conference, based upon the facts and findings
85 presented, and shall transmit a written decision containing the
86 rationale for its determination to the secretary.

87 (9) If the secretary disagrees with the determination, the
88 secretary may reject the determination made by the independent
89 review provider and shall issue an order setting forth the
90 rationale for the reversal of the independent review provider's
91 decision to the licensee within ten working days of receiving the
92 independent review provider's determination.

93 (10) If the secretary accepts the determination, the secretary
94 shall issue an order affirming the independent review provider's
95 determination within ten working days of receiving the
96 independent review provider's determination.

97 (11) If the independent review provider determines that the
98 original statement of deficiencies should be changed as a result
99 of the independent informal dispute resolution process and the
100 secretary accepts the determination, the secretary shall transmit
101 a revised statement of deficiencies to the licensee within ten
102 working days of the independent review provider's
103 determination.

104 (12) The licensee shall submit a revised plan to correct any
105 remaining deficiencies to the secretary within ten working days
106 of receipt of the secretary's order and the revised statement of
107 deficiencies.

108 (d) Under the following circumstances, the licensee is
109 responsible for certain costs of the independent informal dispute
110 resolution review, which shall be remitted to the secretary within
111 sixty days of the informal conference order:

112 (1) If the licensee requests a face-to-face conference, the
113 licensee shall pay any costs incurred by the independent review
114 provider that exceed the cost of a telephonic conference,
115 regardless of which party ultimately prevails;

116 (2) If the independent review provider's decision supports
117 the entirety of the originally written contested deficiency or
118 adverse action taken by the secretary, the licensee shall
119 reimburse the secretary for the cost charged by the independent
120 review provider; or

121 (3) If the independent review provider's decision supports
122 some of the originally written contested deficiencies, but not all
123 of them, the licensee shall reimburse the secretary for the cost
124 charged by the independent review provider on a pro-rata basis
125 as determined by the secretary.

126 (e) Establishment of the independent informal dispute
127 resolution process does not preclude licensees from utilizing
128 other informal dispute resolution processes provided by statute
129 or rule in lieu of the independent informal dispute resolution
130 process.

131 (f) Administrative and judicial review of a decision rendered
132 through the independent informal dispute resolution process may
133 be made in accordance with article five, chapter twenty-nine-a
134 of this code.

135 (g) Any decision issued by the secretary as a result of the
136 independent informal dispute resolution process shall be made
137 effective from the date of issuance.

138 (h) The pendency of administrative or judicial review does
139 not prevent the secretary or a licensee from obtaining injunctive
140 relief as provided by statute or rule.

CHAPTER 119

(Com. Sub. for S. B. 315 - By Senator Wells)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 20, 2014.]

AN ACT to amend and reenact §15-1J-3 and §15-1J-4 of the Code of West Virginia, 1931, as amended, all relating to authorizing the West Virginia Military Authority to administer national security, homeland security and other military-related or military-sponsored programs; redefining “employee”; expanding with whom the authority may contract to include any state, territory or the District of Columbia; and authorizing the authority to accept and use funds from the federal government, any state and other specified entities for the purposes of national security, homeland security and other military-related or military-sponsored programs.

Be it enacted by the Legislature of West Virginia:

That §15-1J-3 and §15-1J-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1J. WEST VIRGINIA MILITARY AUTHORITY ACT.**§15-1J-3. Definitions.**

1 As used in this article, unless the content clearly indicates
2 otherwise:

3 (a) “Authority” means the West Virginia Military Authority.

4 (b) “BRIM” means the West Virginia Board of Risk and
5 Insurance Management.

6 (c) “Guard” means West Virginia National Guard, including
7 its army and air components.

8 (d) “Employee” means any person who, within the at-will
9 employment relationship, is hired to perform duties related to
10 national security, homeland security and other military-related
11 or -sponsored programs.

12 (e) “PEIA” means Public Employees Insurance Act.

13 (f) “PERS” means Public Employees Retirement System.

§15-1J-4. Establishment and general powers of the authority.

1 (a) The West Virginia Military Authority is hereby
2 established to administer national security, homeland security
3 and other military-related or -sponsored programs. (b) The
4 authority will be administered by the Adjutant General and the
5 Adjutant General’s department.

6 (c) Funds provided by the federal government and any state
7 funds authorized by appropriation of the Legislature used as a
8 required match to secure federal funding for programs
9 administered by the authority pursuant to this section shall be
10 administered by the Adjutant General subject to the provisions
11 of article eleven, chapter four of this code.

12 (d) Except as otherwise prohibited by statute, the authority,
13 as a governmental instrumentality exercising public powers of
14 the state, shall have and may exercise all powers necessary or
15 appropriate to carry out the purpose of this article, including the
16 authority to:

17 (1) Execute cooperative agreements between the guard and
18 the federal and/or state governments;

19 (2) Contract on behalf of the guard with the federal
20 government, its instrumentalities and agencies, any state,
21 territory or the District of Columbia and its agencies and
22 instrumentalities, municipalities, foreign governments, public
23 bodies, private corporations, partnerships, associations and
24 individuals;

25 (3) Use funds administered by the authority pursuant to
26 subsection (c) of this section for the maintenance, construction
27 or reconstruction of capital repair and replacement items as
28 necessary and approved by the authority;

29 (4) Accept and use funds from the federal government, its
30 instrumentalities and agencies, any state, territory or the District
31 of Columbia and its agencies and instrumentalities,
32 municipalities, foreign governments, public bodies, private
33 corporations, partnerships, associations and individuals for the
34 purposes of national security, homeland security and other
35 military-related or -sponsored programs;

36 (5) Procure insurance with state funds through BRIM
37 covering property and other assets of the authority in amounts
38 and from insurers that BRIM determines necessary;

39 (6) Hire employees at an appropriate salary equivalent to a
40 competitive wage rate;

41 (7) Enroll employees in PERS, PEIA and workers'
42 compensation and unemployment programs, or their equivalents:

43 *Provided*, That the authority, through the receipt of federal
44 and/or state funds, pays the required employer contributions;

45 (8) Cooperate with economic development agencies in
46 efforts to promote the expansion of industrial, commercial and
47 manufacturing in the state;

48 (9) Develop a human resources division that will administer
49 and manage its employees and receive state matching funds as
50 necessary to ensure maximum federal funds are secured;

51 (10) Due to the at-will employment relationship with the
52 authority, its employees may not avail themselves of the state
53 grievance procedure as set forth in article six-a, chapter twenty-
54 nine of this code; and

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

CHAPTER 120

(Com. Sub. for H. B. 4480 - By Delegates Craig and Skaff)
[By Request of the Department of Environmental Protection]

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §22-2-4 of the Code of West Virginia, 1931, as amended, relating to the Acid Mine Drainage and Abatement Fund; investment of funds; retention of earnings; and requiring restoration of interest earnings previously defaulted into the state's general revenue account.

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 up to thirty percent of the
53 funds allocated to the state in any year through the grants made
54 available under paragraphs (1) and (5), subsection (g) of Section

55 402 of the federal Surface Mining Control and Reclamation Act
56 of 1977, as amended, for the purpose of protecting, repairing,
57 replacing, constructing or enhancing facilities relating to water
58 supply, including water distribution facilities and treatment
59 plants, to replace water supplies adversely affected by coal
60 surface-mining practices.

61 (B) If the adverse effects on water supplies referred to in this
62 subdivision occurred both prior to and after 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 ten percent of
68 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
106 to paragraphs (1) and (5), subsection (g), Section 402 of the
107 federal 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 121

**(Com. Sub. for S. B. 623 - By Senators Palumbo,
Tucker and Snyder)**

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §22A-1A-1 of the Code of West Virginia, 1931, as amended, relating to Office of Miners' Health,

Safety and Training administration and substance abuse; and requiring employers to notify the director of a positive drug or alcohol test, refusing to submit a sample, possessing a substituted sample, submitting a substituted sample, possessing an adulterated sample or submitting an adulterated sample.

Be it enacted by the Legislature of West Virginia:

That §22A-1A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

1 (a) Every employer of certified persons, as defined in section
2 two, article one of this chapter, shall implement a substance
3 abuse screening policy and program that shall, at a minimum,
4 include:

5 (1) A preemployment, ten-panel urine test for the following
6 and any other substances as set out in rules adopted by the Office
7 of Miners' Health, Safety and Training:

8 (A) Amphetamines;

9 (B) Cannabinoids/THC;

10 (C) Cocaine;

11 (D) Opiates;

12 (E) Phencyclidine (PCP);

13 (F) Benzodiazepines;

- 14 (G) Propoxyphene;
- 15 (H) Methadone;
- 16 (I) Barbiturates; and
- 17 (J) Synthetic narcotics.

18 Split samples shall be collected by providers who are
19 certified as complying with standards and procedures set out in
20 the United States Department of Transportation's rule, 49 C. F.
21 R. Part 40, which may be amended from time to time by
22 legislative rule of the Office of Miners' Health, Safety and
23 Training. Collected samples shall be tested by laboratories
24 certified by the United States Department of Health and Human
25 Services, Substance Abuse and Mental Health Services
26 Administration (SAMHSA) for collection and testing.
27 Notwithstanding the provisions of this subdivision, the mine
28 operator may implement a more stringent substance abuse
29 screening policy and program;

30 (2) A random substance abuse testing program covering the
31 substances referenced in subdivision (1) of this subsection.
32 "Random testing" means that each person subject to testing has
33 a statistically equal chance of being selected for testing at
34 random and at unscheduled times. The selection of persons for
35 random testing shall be made by a scientifically valid method,
36 such as a random number table or a computer-based random
37 number generator that is matched with the persons' Social
38 Security numbers, payroll identification numbers or other
39 comparable identifying numbers; and

40 (3) Review of the substance abuse screening program with
41 all persons required to be tested at the time of employment, upon
42 a change in the program and annually thereafter.

43 (b) For purposes of this subsection, preemployment testing
44 shall be required upon hiring by a new employer, rehiring by a

45 former employer following a termination of the
46 employer/employee relationship or transferring to a West
47 Virginia mine from an employer's out-of-state mine to the extent
48 that any substance abuse test required by the employer in the
49 other jurisdiction does not comply with the minimum standards
50 for substance abuse testing required by this article. Furthermore,
51 the provisions of this section apply to all employers that employ
52 certified persons who work in mines, regardless of whether that
53 employer is an operator, contractor, subcontractor or otherwise.

54 (c) (1) Every employer shall notify the director, on a form
55 prescribed by the director, within seven (7) days of any of the
56 following:

57 (A) A positive drug or alcohol test of a certified person,
58 whether it be a preemployment test, random test, reasonable
59 suspicion test or post-accident test;

60 (B) The refusal of a certified person to submit a sample;

61 (C) A certified person possessing a substituted sample or an
62 adulterated sample; or

63 (D) A certified person submitting a substituted sample or an
64 adulterated sample.

65 (2) With respect to any certified person subject to a
66 collective bargaining agreement, the employer shall notify the
67 director, on a form prescribed by the director, within seven (7)
68 days of any of the following: *Provided*, That notification
69 pursuant to this subdivision shall not result in the immediate
70 temporary suspension, suspension or revocation of any
71 certificate held by a certified person who is subject to a
72 collective bargaining agreement unless and until the arbitration
73 is concluded and the discharge is upheld:

74 (A) A positive drug or alcohol test of a certified person,
75 whether it be a preemployment test, random test, reasonable
76 suspicion test or post-accident test;

77 (B) The refusal of a certified person to submit a sample;

78 (C) A certified person possessing a substituted sample or an
79 adulterated sample; or

80 (D) A certified person submitting a substituted sample or an
81 adulterated sample.

82 (3) When the employer submits the completed notification
83 form prescribed by the director, the employer shall also submit
84 a copy of the laboratory test results showing the substances
85 tested for and the results of the test.

86 (4) Notice shall result in the immediate temporary
87 suspension of all certificates held by the certified person who
88 failed the screening, pending a hearing before the board of
89 appeals pursuant to section two of this article: *Provided*, That
90 notification pursuant to this subsection shall not result in the
91 immediate temporary suspension of any certificate held by a
92 certified person who is subject to a collective bargaining
93 agreement unless and until the arbitration is concluded and the
94 discharge is upheld, and no certificate held by a certified person
95 who is subject to a collective bargaining agreement shall be
96 suspended or revoked unless the discharge is upheld in
97 arbitration: *Provided, however*, That if the certified person
98 terminates his or her employment or voluntarily removes himself
99 or herself from the grievance or arbitration procedure, the
100 certified person may be immediately, temporarily decertified
101 pursuant to this article.

102 (d) Suspension or revocation of a certified person's
103 certificate as a miner or other miner specialty in another
104 jurisdiction by the applicable regulatory or licensing authority
105 for substance abuse-related matters shall result in the director
106 immediately and temporarily suspending the certified person's
107 West Virginia certificate until such time as the certified person's
108 certification is reinstated in the other jurisdiction.

109 (e) The provisions of this article shall not be construed to
110 preclude an employer from developing or maintaining a drug and
111 alcohol abuse policy, testing program or substance abuse
112 program that exceeds the minimum requirements set forth in this
113 section. The provisions of this article shall also not be construed
114 to require an employer to alter, amend, revise or otherwise
115 change, in any respect, a previously established substance abuse
116 screening policy and program that meets or exceeds the
117 minimum requirements set forth in this section. The provisions
118 of this article shall require an employer to subject its employees
119 who as part of their employment are regularly present at a mine
120 and who are employed in a safety-sensitive position to
121 preemployment and random substance abuse tests: *Provided,*
122 That each employer shall retain the discretion to establish the
123 parameters of its substance abuse screening policy and program
124 so long as it meets the minimum requirements of this article. For
125 purposes of this section, a “safety-sensitive position” means an
126 employment position where the employee’s job responsibilities
127 include duties and activities that involve the personal safety of
128 the employee or others working at a mine.

CHAPTER 122

**(Com. Sub. for S. B. 603 - By Senators Kirkendoll, Stollings,
Miller, Facemire, Cann, Edgell, Green, D. Hall, McCabe,
Unger, Kessler (Mr. President), Plymale and Jenkins)**

[Passed March 6, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §22A-2-43 of the Code of West Virginia, 1931, as amended, relating to testing for the presence of methane in underground mines; requiring automatic de-

energization or shut down of equipment when a machine-mounted methane monitor indicates a methane concentration of one and five-tenths percent; and removing the requirement that the Board of Coal Mine Health and Safety promulgate a legislative rule defining the term “sustained period”.

Be it enacted by the Legislature of West Virginia:

That §22A-2-43 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. UNDERGROUND MINES.

§22A-2-43. Actions to detect and respond to excess methane.

1 The following actions are required to detect and respond to
2 excess methane. Subsections (a) through (f) of this section pertain
3 to methane testing with hand-held devices:

4 (a) *Hand-held testing required.* — In any mine, no electrical
5 equipment or permissible diesel-powered equipment may be
6 brought in by the last open crosscut until a qualified person tests
7 for methane. If one percent or more methane is present, the
8 equipment may not be taken into the area until the methane
9 concentration is reduced to less than one percent. Thereafter,
10 subsequent methane examinations shall be made at least every
11 twenty minutes while any electrical or diesel-powered equipment
12 is present and energized.

13 (b) *Location of tests.* — Tests for methane concentrations
14 under this section shall be made at least twelve inches from the
15 roof, face, ribs and floor.

16 (c) *Working places and intake air courses.* —

17 (1) When one percent or more methane is present in a
18 working place or an intake air course, including an air course in

19 which a belt conveyor is located or in an area where mechanized
20 mining equipment is being installed or removed:

21 (A) Except intrinsically safe atmospheric monitoring
22 systems (AMS), electrically powered equipment in the affected
23 area shall be de-energized and other mechanized equipment shall
24 be shut off.

25 (B) Changes or adjustments shall be made at once to the
26 ventilation system to reduce the concentration of methane to less
27 than one percent.

28 (C) No other work shall be permitted in the affected area
29 until the methane concentration is less than one percent.

30 (2) When one and five-tenths percent or more methane is
31 present in a working place or an intake air course, including an
32 air course in which a belt conveyor is located or in an area where
33 mechanized mining equipment is being installed or removed:

34 (A) Except for the mine foreman, assistant mine foreman
35 or individuals authorized by the mine foreman or assistant mine
36 foreman, all individuals shall be withdrawn from the affected
37 area. If a federal or state mine inspector is present in the area of
38 the mine where one and five-tenths percent or more of methane
39 is detected, the federal or state mine inspector and the miners'
40 representative, if any, may remain in the area with the mine
41 foreman, assistant mine foreman or other individuals authorized
42 by the mine foreman or assistant mine foreman.

43 (B) Except for intrinsically safe AMS, electrically powered
44 equipment in the affected area shall be disconnected at the power
45 source.

46 (d) *Return air split.*—

47 (1) When one percent or more methane is present in a return
48 air split between the last working place on a working section and

49 where that split of air meets another split of air or the location at
50 which the split is used to ventilate seals or worked-out areas,
51 changes or adjustments shall be made at once to the ventilation
52 system to reduce the concentration of methane in the return air
53 to less than one percent.

54 (2) When one and five-tenths percent or more methane is
55 present in a return air split between the last working place on a
56 working section and where that split of air meets another split of
57 air or the location where the split is used to ventilate seals or
58 worked-out areas, except for the mine foreman, assistant mine
59 foreman or individuals authorized by the mine or assistant mine
60 foreman, all individuals shall be withdrawn from the affected
61 area. If a federal or state mine inspector is present in the area of
62 the mine where one and five-tenths percent or more of methane
63 is detected, the federal or state mine inspector and the miners'
64 representative, if any, may remain in the area with the mine
65 foreman, assistant mine foreman or other individuals authorized
66 by the mine foreman or assistant mine foreman.

67 (3) Other than intrinsically safe AMS, equipment in the
68 affected area shall be de-energized, electric power shall be
69 disconnected at the power source and other mechanized
70 equipment shall be shut off.

71 (4) No other work shall be permitted in the affected area
72 until the methane concentration in the return air is less than one
73 percent.

74 (e) *Return air split alternative.* —

75 (1) The provisions of this paragraph may apply if:

76 (A) The quantity of air in the split ventilating the active
77 workings is at least twenty-seven thousand cubic feet per minute
78 in the last open crosscut or the quantity specified in the approved
79 ventilation plan, whichever is greater.

80 (B) The methane content of the air in the split is
81 continuously monitored during mining operations by an AMS
82 that gives a visual and audible signal on the working section
83 when the methane in the return air reaches one and five-tenths
84 percent and the methane content is monitored as specified in the
85 approved ventilation plan.

86 (C) Rock dust is continuously applied with a mechanical
87 duster to the return air course during coal production at a
88 location in the air course immediately outby the most inby
89 monitoring point.

90 (2) When one and five-tenths percent or more methane is
91 present in a return air split between a point in the return opposite
92 the section loading point and where that split of air meets
93 another split of air or where the split of air is used to ventilate
94 seals or worked-out areas:

95 (A) Changes or adjustments shall be made at once to the
96 ventilation system to reduce the concentration of methane in the
97 return air below one and five-tenths percent.

98 (B) Except for the mine foreman, assistant mine foreman or
99 individuals authorized by the mine foreman or assistant mine
100 foreman, all individuals shall be withdrawn from the affected
101 area. If a federal or state mine inspector is present in the area of
102 the mine where one and five-tenths percent or more of methane
103 is detected, the federal or state mine inspector and the miners'
104 representative, if any, may remain in the area with the mine
105 foreman, assistant mine foreman or other individuals authorized
106 by the mine foreman or assistant mine foreman.

107 (C) Except for intrinsically safe AMS, equipment in the
108 affected area shall be de-energized, electric power shall be
109 disconnected at the power source and other mechanized
110 equipment shall be shut off.

111 (D) No other work shall be permitted in the affected area
112 until the methane concentration in the return air is less than one
113 and five-tenths percent.

114 (f) *Bleeders and other return air courses.*—

115 The concentration of methane in a bleeder split of air
116 immediately before the air in the split joins another split of air,
117 or in a return air course other than as described in subsections (d)
118 and (e) of this section, shall not exceed two percent.

119 (g) *Machine-mounted methane monitors.* —

120 (1) Approved methane monitors shall be installed and
121 maintained on all face cutting machines, continuous miners,
122 longwall face equipment and other mechanized equipment used
123 to extract coal or load coal within the working place.

124 (2) The sensing device for methane monitors on longwall
125 shearing machines shall be installed at the return air end of the
126 longwall face. An additional sensing device also shall be
127 installed on the longwall shearing machine, downwind and as
128 close to the cutting head as practicable. An alternative location
129 or locations for the sensing device required on the longwall
130 shearing machine may be approved in the ventilation plan.

131 (3) The sensing devices of methane monitors shall be
132 installed as close to the working face as practicable.

133 (4) Methane monitors shall be maintained in permissible and
134 proper operating condition and shall be calibrated with a known
135 air-methane mixture at least once every fifteen days and a record
136 of the calibration shall be recorded with ink or indelible pencil
137 by the person performing the calibration in a book prescribed by
138 the director and maintained on the surface. Calibration records
139 shall be retained for inspection for at least one year from the date
140 of the test. To assure that methane monitors are properly

141 maintained and calibrated, the operator shall use persons
142 properly trained in the maintenance, calibration and
143 permissibility of methane monitors to calibrate and maintain the
144 devices.

145 (h) *Automatic de-energization of electrical equipment or*
146 *shut down of diesel equipment.* —

147 When the methane concentration at any machine-mounted
148 methane monitor reaches one percent, the monitor shall give a
149 warning signal. The warning signal device of the methane
150 monitor shall be visible to a person operating the equipment on
151 which the monitor is mounted. The methane monitor shall
152 automatically de-energize electric equipment or shut down
153 diesel-powered equipment on which it is mounted when:

154 (1) The methane concentration at any machine-mounted
155 methane monitor reaches one and five-tenths percent; or

156 (2) The monitor is not operating properly.

157 The machine may not again be started in that place until the
158 methane concentration measured by the methane monitor is less
159 than one percent.

CHAPTER 123

**(Com. Sub. for H. B. 2954 - By Delegates Caputo,
Tomblin and R. Phillips)**

[Passed March 8, 2014; in effect from passage.]

[Approved by the Governor on March 26, 2014.]

AN ACT to amend and reenact §22A-11-2 of the Code of West Virginia, 1931, as amended, relating to requiring that members of

the Mine Safety Technology Task Force, except ex officio members are paid the same compensation and expense reimbursement as members of the Legislature are paid for each day or portion thereof engaged in the discharge of their interim duties.

Be it enacted by the Legislature of West Virginia:

That §22A-11-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-2. Mine Safety Technology Task Force continued; membership; method of nomination and appointment.

1 (a) The Mine Safety Technology Task Force is continued,
2 and commencing July 1, 2010, is a separate independent task
3 force within the Department of Commerce.

4 (b) The task force shall consist of seven voting members and
5 two ex officio, nonvoting members who are appointed as
6 specified in this section:

7 (1) The Governor shall appoint, by and with the advice and
8 consent of the Senate, three members to represent the viewpoint
9 of operators in this state. When these members are to be
10 appointed, the Governor shall request from the major trade
11 association representing operators in this state a list of three
12 nominees for each position on the task force. All nominees shall
13 be persons with special experience and competence in coal mine
14 health and safety. There shall be submitted with the list, a
15 summary of the qualifications of each nominee. For purposes of
16 this subdivision, the major trade association representing
17 operators in this state is that association which represents
18 operators accounting for over one half of the coal produced in

19 mines in this state in the year prior to the year in which the
20 appointment is to be made.

21 (2) The Governor shall appoint, by and with the advice and
22 consent of the Senate, three members who can reasonably be
23 expected to represent the viewpoint of the working miners of this
24 state. When members are to be appointed, the Governor shall
25 request from the major employee organization representing coal
26 miners within this state a list of three nominees for each position
27 on the task force. The highest ranking official within the major
28 employee organization representing coal miners within this state
29 shall submit a list of three nominees for each position on the
30 board. The nominees shall have a background in coal mine
31 health and safety.

32 (3) The Governor shall appoint, by and with the advice and
33 consent of the Senate, one certified mine safety professional
34 from the College of Engineering and Mineral Resources at West
35 Virginia University;

36 (4) The Health and Safety Administrator, pursuant to section
37 six, article six of this chapter, shall serve as a member of the task
38 force as an ex officio, nonvoting member; and

39 (5) The Director of the Office of Miner's Health, Safety and
40 Training or his or her designee, shall serve as an ex officio,
41 nonvoting member.

42 (c) Each appointed member of the task force shall serve at
43 the will and pleasure of the Governor.

44 (d) Whenever a vacancy on the task force occurs,
45 nominations and appointments shall be made in the manner
46 prescribed in this section: *Provided*, That in the case of an
47 appointment to fill a vacancy, nominations of three persons for
48 each vacancy shall be requested by and submitted to the
49 Governor within thirty days after the vacancy occurs by the

50 major trade association or major employee organization, if any,
51 which nominated the person whose seat on the task force is
52 vacant.

53 (e) Each member, except ex officio members, of the task
54 force shall be paid the same compensation, and each member of
55 the task force shall be paid the same expense reimbursement, as
56 is paid to members of the Legislature for their interim duties as
57 recommended by the Citizens Legislative Compensation
58 Commission and authorized by law for each day or portion
59 thereof engaged in the discharge of official duties. In the event
60 the expenses are paid by a third party, the member shall not be
61 reimbursed by the state. The reimbursement shall be paid out of
62 the State Treasury upon a requisition upon the State Auditor,
63 properly certified by the Office of Miners' Health, Safety and
64 Training. An employer shall not prohibit a member of the task
65 force from exercising leave of absence from his or her place of
66 employment in order to attend a meeting of the task force or a
67 meeting of a subcommittee of the task force, or to prepare for a
68 meeting of the task force, any contract of employment to the
69 contrary notwithstanding.

CHAPTER 124

**(Com. Sub. for H. B. 4283 - By Delegates Barrett, Barill, Barker,
Diserio, Lawrence, Manypenny, Marcum, D. Poling,
Reynolds, Sponaugle and Young)**

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §21-5C-1, §21-5C-2 and §21-5C-4 of
the Code of West Virginia, 1931, as amended, all relating to

minimum wage; providing definition for employer; establishing minimum wage amounts; establishing credit amount to employers for employees customarily receiving gratuities and certain other benefits.

Be it enacted by the Legislature of West Virginia:

That §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted all to read as follows:

**ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS
STANDARDS FOR EMPLOYEES.**

§21-5C-1. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of labor or his
3 or her duly authorized representatives.

4 (b) "Wage and hour director" means the wage and hour
5 director appointed by the commissioner of labor as chief of the
6 wage and hour division.

7 (c) "Wage" means compensation due an employee by reason
8 of his or her employment.

9 (d) "Employ" means to hire or permit to work.

10 (e) "Employer" includes the State of West Virginia, its
11 agencies, departments and all its political subdivisions, any
12 individual, partnership, association, public or private
13 corporation, or any person or group of persons acting directly or
14 indirectly in the interest of any employer in relation to an
15 employee; and who employs during any calendar week six or
16 more employees as herein defined in any one separate, distinct
17 and permanent location or business establishment.

18 (f) "Employee" includes any individual employed by an
19 employer but shall not include: (1) Any individual employed by
20 the United States; (2) any individual engaged in the activities of
21 an educational, charitable, religious, fraternal or nonprofit
22 organization where the employer-employee relationship does not
23 in fact exist, or where the services rendered to such organizations
24 are on a voluntary basis; (3) newsboys, shoeshine boys, golf
25 caddies, pinboys and pin chasers in bowling lanes; (4) traveling
26 salesmen and outside salesmen; (5) services performed by an
27 individual in the employ of his or her parent, son, daughter or
28 spouse; (6) any individual employed in a bona fide professional,
29 executive or administrative capacity; (7) any person whose
30 employment is for the purpose of on-the-job training; (8) any
31 person having a physical or mental handicap so severe as to
32 prevent his or her employment or employment training in any
33 training or employment facility other than a nonprofit sheltered
34 workshop; (9) any individual employed in a boys or girls
35 summer camp; (10) any person sixty-two years of age or over
36 who receives old-age or survivors benefits from the social
37 security administration; (11) any individual employed in
38 agriculture as the word agriculture is defined in the Fair Labor
39 Standards Act of 1938, as amended; (12) any individual
40 employed as a fire fighter by the state or agency thereof; (13)
41 ushers in theaters; (14) any individual employed on a part-time
42 basis who is a student in any recognized school or college; (15)
43 any individual employed by a local or interurban motorbus
44 carrier; (16) so far as the maximum hours and overtime
45 compensation provisions of this article are concerned, any
46 salesman, parts man or mechanic primarily engaged in selling or
47 servicing automobiles, trailers, trucks, farm implements, aircraft
48 if employed by a nonmanufacturing establishment primarily
49 engaged in the business of selling such vehicles to ultimate
50 purchasers; (17) any employee with respect to whom the United
51 States Department of Transportation has statutory authority to
52 establish qualifications and maximum hours of service; (18) any

53 person employed on a per diem basis by the Senate, the House
54 of Delegates, or the Joint Committee on Government and
55 Finance of the Legislature of West Virginia, other employees of
56 the Senate or House of Delegates designated by the presiding
57 officer thereof, and additional employees of the Joint Committee
58 on Government and Finance designated by such joint committee;
59 or (19) any person employed as a seasonal employee of a
60 commercial whitewater outfitter where the seasonal employee
61 works less than seven months in any one calendar year and, in
62 such case, only for the limited purpose of exempting the seasonal
63 employee from the maximum wage provisions of section three
64 of this article.

65 (g) "Workweek" means a regularly recurring period of one
66 hundred sixty-eight hours in the form of seven consecutive
67 twenty-four hour periods, need not coincide with the calendar
68 week, and may begin any day of the calendar week and any hour
69 of the day.

70 (h) "Hours worked", in determining for the purposes of
71 sections two and three of this article, the hours for which an
72 employee is employed, there shall be excluded any time spent in
73 changing clothes or washing at the beginning or end of each
74 workday, time spent in walking, riding or traveling to and from
75 the actual place of performance of the principal activity or
76 activities which such employee is employed to perform and
77 activities which are preliminary to or postliminary to said
78 principal activity or activities, subject to such exceptions as the
79 commissioner may by rules and regulations define.

§21-5C-2. Minimum wages.

1 (a) *Minimum wage:*

2 (1) After June 30, 2006, every employer shall pay to each of
3 his or her employees wages at a rate not less than \$5.85 per hour.

4 (2) After June 30, 2007, every employer shall pay to each of
5 his or her employees wages at a rate not less than \$6.55 per hour.

6 (3) After June 30, 2008, every employer shall pay to each of
7 his or her employees wages at a rate not less than \$7.25 per hour.

8 (4) After January 1, 2015, every employer shall pay to each
9 of his or her employees wages at a rate not less than \$8.00 per
10 hour.

11 (5) After January 1, 2016, every employer shall pay to each
12 of his or her employees wages at a rate not less than \$8.75 per
13 hour.

14 (6) When the federal minimum hourly wage as prescribed by
15 29 U.S.C. §206(a)(1) is equal to or greater than the wage rate
16 prescribed in the applicable provision of this subsection, every
17 employer shall pay to each of his or her employees wages at a
18 rate of not less than the federal minimum hourly wage as
19 prescribed by 29 U.S.C. §206(a)(1). The minimum wage rates
20 required under this subparagraph shall be thereafter adjusted in
21 accordance with adjustments made in the federal minimum
22 hourly rate. The adoption of the federal minimum wage provided
23 by this subdivision includes only the federal minimum hourly
24 rate prescribed in 29 U.S.C. §206(a)(1) and does not include
25 other wage rates, or conditions, exclusions, or exceptions to the
26 federal minimum hourly wage rate. In addition, adoption of the
27 federal minimum hourly wage rate does not extend or modify the
28 scope or coverage of the minimum wage rate required under this
29 subdivision.

30 (b) *Training wage:*

31 (1) Notwithstanding the provisions set forth in subsection (a)
32 of this section to the contrary, an employer may pay an
33 employee first hired after January 1, 2015, a subminimum
34 training wage not less than \$6.40 per hour.

35 (2) An employer may not pay the subminimum training
36 wage set forth in subdivision (1) of this subsection to any
37 individual:

38 (i) Who has attained or attains while an employee of the
39 employer, the age of twenty years; or

40 (ii) For a cumulative period of not more than ninety days per
41 employee: *Provided*, That if any business has not been in
42 operation for more than ninety days at the time the employer
43 hired the employee, the employer may pay the employee the
44 subminimum training wage set forth in subdivision (1) of this
45 subsection for an additional period not to exceed ninety days.

46 (3) When the federal subminimum training wage as
47 prescribed by 29 U.S.C. §206(g)(1) is equal to or greater than the
48 wage rate prescribed in subdivision (1) of this subsection, every
49 employer shall pay to each of his or her employees wages at a
50 rate of not less than the federal minimum hourly wage as
51 prescribed by 29 U.S.C. §206(g)(1). The minimum wage rates
52 required under this subparagraph shall be thereafter adjusted in
53 accordance with adjustments made in the federal minimum
54 hourly rate. The adoption of the federal minimum wage provided
55 by this subdivision includes only the federal minimum hourly
56 rate prescribed in 29 U.S.C. §206(g)(1) and does not include
57 other wage rates, or conditions, exclusions, or exceptions to the
58 federal minimum hourly wage rate. In addition, adoption of the
59 federal minimum hourly wage rate does not extend or modify the
60 scope or coverage of the minimum wage rate required under this
61 subdivision.

62 (c) Notwithstanding any provision or definition to the
63 contrary, the wages established pursuant to this section are
64 applicable to all individuals employed by the State of West
65 Virginia, its agencies, and departments, regardless if the
66 employee or employer are subject to any federal act relating to
67 minimum wage: *Provided*, That at no time may the minimum

68 wage established pursuant to this section fall below the federal
69 minimum hourly wage as prescribed by 29 U.S.C. §206(a)(1).

§21-5C-4. Credits.

1 In determining whether an employer is paying an employee
2 wages and overtime compensation as provided in sections two
3 and three of this article, there shall be provided in accordance
4 with the regulations which shall be promulgated by the
5 commissioner a credit to the employer of seventy percent of the
6 hourly rate of the amount paid an employee customarily
7 receiving gratuities, and a reasonable credit for board and
8 lodging furnished to an employee. The commissioner shall
9 promulgate regulations relating to maximum allowances to
10 employers for room and board furnished to employees:
11 *Provided*, That the employer shall be required to furnish to the
12 commissioner upon request, documentary evidence that the
13 employee is receiving at least seventy percent of the minimum
14 wage in gratuities or is receiving room and lodging in
15 accordance with the rules and regulations promulgated by the
16 commissioner.

CHAPTER 125

(S. B. 380 - By Senators Beach and Stollings)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2014.]

AN ACT to amend and reenact §17A-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17A-6-1 of said code, all relating to off-road vehicles; and updating statutory definitions to reflect new categories of vehicles and standard accessories.

Be it enacted by the Legislature of West Virginia:

That §17A-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17A-6-1 be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.

1 Except as otherwise provided in this chapter, the following
2 words and phrases, when used in this chapter, shall have the
3 meanings respectively ascribed to them in this article:

4 (a) “Vehicle” means every device in, upon or by which any
5 person or property is or may be transported or drawn upon a
6 highway, excepting devices moved by human power or used
7 exclusively upon stationary rails or tracks.

8 (b) “Motor vehicle” means every vehicle which is self
9 propelled and every vehicle which is propelled by electric power
10 obtained from overhead trolley wires, but not operated upon
11 rails.

12 (c) “Motorcycle” means every motor vehicle, including
13 motor-driven cycles and mopeds as defined in sections five and
14 five-a, article one, chapter seventeen-c of this code, having a
15 saddle for the use of the rider and designed to travel on not more
16 than three wheels in contact with the ground, but excluding a
17 tractor.

18 (d) “School bus” means every motor vehicle owned by a
19 public governmental agency and operated for the transportation
20 of children to or from school or privately owned and operated for
21 compensation for the transportation of children to or from
22 school.

23 (e) "Bus" means every motor vehicle designed to carry more
24 than seven passengers and used to transport persons; and every
25 motor vehicle, other than a taxicab, designed and used to
26 transport persons for compensation.

27 (f) "Truck tractor" means every motor vehicle designed and
28 used primarily for drawing other vehicles and not so constructed
29 as to carry a load other than a part of the weight of the vehicle
30 and load so drawn.

31 (g) "Farm tractor" means every motor vehicle designed and
32 used primarily as a farm implement for drawing plows, mowing
33 machines and other implements of husbandry.

34 (h) "Road tractor" means every motor vehicle designed, used
35 or maintained for drawing other vehicles and not so constructed
36 as to carry any load thereon either independently or any part of
37 the weight of a vehicle or load so drawn.

38 (i) "Truck" means every motor vehicle designed, used or
39 maintained primarily for the transportation of property.

40 (j) "Trailer" means every vehicle with or without motive
41 power designed for carrying persons or property and for being
42 drawn by a motor vehicle and so constructed that no part of its
43 weight rests upon the towing vehicle, but excluding recreational
44 vehicles.

45 (k) "Semitrailer" means every vehicle with or without
46 motive power designed for carrying persons or property and for
47 being drawn by a motor vehicle and so constructed that some
48 part of its weight and that of its load rests upon or is carried by
49 another vehicle.

50 (l) "Pole trailer" means every vehicle without motive power
51 designed to be drawn by another vehicle and attached to the
52 towing vehicle by means of a reach, or pole, or by being boomed

53 or otherwise secured to the towing vehicle and ordinarily used
54 for transporting long or irregularly shaped loads such as poles,
55 pipes or structural members capable, generally, of sustaining
56 themselves as beams between the supporting connections.

57 (m) "Specially constructed vehicles" means every vehicle of
58 a type required to be registered hereunder not originally
59 constructed under a distinctive name, make, model or type by a
60 generally recognized manufacturer of vehicles and not materially
61 altered from its original construction.

62 (n) "Reconstructed vehicle" means every vehicle of a type
63 required to be registered hereunder materially altered from its
64 original construction by the removal, addition or substitution of
65 essential parts, new or used.

66 (o) "Essential parts" means all integral and body parts of a
67 vehicle of a type required to be registered hereunder, the
68 removal, alteration or substitution of which would tend to
69 conceal the identity of the vehicle or substantially alter its
70 appearance, model, type or mode of operation.

71 (p) "Foreign vehicle" means every vehicle of a type required
72 to be registered hereunder brought into this state from another
73 state, territory or country other than in the ordinary course of
74 business by or through a manufacturer or dealer and not
75 registered in this state.

76 (q) "Implement of husbandry" means every vehicle which is
77 designed for or adapted to agricultural purposes and used by the
78 owner thereof primarily in the conduct of his or her agricultural
79 operations, including, but not limited to, trucks used for spraying
80 trees and plants: *Provided*, That the vehicle may not be let for
81 hire at any time.

82 (r) "Special mobile equipment" means every self-propelled
83 vehicle not designed or used primarily for the transportation of

84 persons or property and incidentally operated or moved over the
85 highways, including, without limitation, road construction or
86 maintenance machinery, ditch-digging apparatus, stone crushers,
87 air compressors, power shovels, graders, rollers, well drillers,
88 wood-sawing equipment, asphalt spreaders, bituminous mixers,
89 bucket loaders, ditchers, leveling graders, finishing machines,
90 motor graders, road rollers, scarifiers, earth-moving carryalls,
91 scrapers, drag lines, rock-drilling equipment and earth-moving
92 equipment. The foregoing enumeration shall be deemed partial
93 and may not operate to exclude other such vehicles which are
94 within the general terms of this subdivision.

95 (s) "Pneumatic tire" means every tire in which compressed
96 air is designed to support the load.

97 (t) "Solid tire" means every tire of rubber or other resilient
98 material which does not depend upon compressed air for the
99 support of the load.

100 (u) "Metal tire" means every tire the surface of which in
101 contact with the highway is wholly or partly of metal or other
102 hard, nonresilient material.

103 (v) "Commissioner" means the Commissioner of Motor
104 Vehicles of this state.

105 (w) "Division" means the Division of Motor Vehicles of this
106 state acting directly or through its duly authorized officers and
107 agents.

108 (x) "Person" means every natural person, firm,
109 copartnership, association or corporation.

110 (y) "Owner" means a person who holds the legal title to a
111 vehicle, or in the event a vehicle is the subject of an agreement
112 for the conditional sale or lease thereof with the right of purchase
113 upon performance of the conditions stated in the agreement and

114 with an immediate right of possession vested in the conditional
115 vendee or lessee, or in the event a mortgagor of a vehicle is
116 entitled to possession, then the conditional vendee or lessee or
117 mortgagor shall be deemed the owner for the purpose of this
118 chapter.

119 (z) "Nonresident" means every person who is not a resident
120 of this state.

121 (aa) "Dealer" or "dealers" is a general term meaning,
122 depending upon the context in which used, either a new motor
123 vehicle dealer, used motor vehicle dealer, factory-built home
124 dealer, recreational vehicle dealer, trailer dealer or motorcycle
125 dealer, as defined in section one, article six of this chapter, or all
126 of the dealers or a combination thereof and, in some instances,
127 a new motor vehicle dealer or dealers in another state.

128 (bb) "Registered dealer" or "registered dealers" is a general
129 term meaning, depending upon the context in which used, either
130 a new motor vehicle dealer, used motor vehicle dealer, house
131 trailer dealer, trailer dealer, recreational vehicle dealer or
132 motorcycle dealer, or all of the dealers or a combination thereof,
133 licensed under the provisions of article six of this chapter.

134 (cc) "Licensed dealer" or "licensed dealers" is a general term
135 meaning, depending upon the context in which used, either a
136 new motor vehicle dealer, used motor vehicle dealer, house
137 trailer dealer, trailer dealer, recreational vehicle dealer or
138 motorcycle dealer, or all of the dealers or a combination thereof,
139 licensed under the provisions of article six of this chapter.

140 (dd) "Transporter" means every person engaged in the
141 business of delivering vehicles of a type required to be registered
142 hereunder from a manufacturing, assembling or distributing
143 plant to dealers or sales agents of a manufacturer.

144 (ee) "Manufacturer" means every person engaged in the
145 business of constructing or assembling vehicles of a type
146 required to be registered hereunder at a place of business in this
147 state which is actually occupied either continuously or at regular
148 periods by the manufacturer where his or her books and records
149 are kept and a large share of his or her business is transacted.

150 (ff) "Street" or "highway" means the entire width between
151 boundary lines of every way publicly maintained when any part
152 thereof is open to the use of the public for purposes of vehicular
153 travel.

154 (gg) "Motorboat" means any vessel propelled by an
155 electrical, steam, gas, diesel or other fuel-propelled or -driven
156 motor, whether or not the motor is the principal source of
157 propulsion, but may not include a vessel which has a valid
158 marine document issued by the bureau of customs of the United
159 States government or any federal agency successor thereto.

160 (hh) "Motorboat trailer" means every vehicle designed for
161 or ordinarily used for the transportation of a motorboat.

162 (ii) "All-terrain vehicle" (ATV) means any motor vehicle
163 designed for off-highway use and designed to travel on not less
164 than three low-pressure or nonhighway tires, is fifty inches or
165 less in width and intended by the manufacturer to be used by a
166 single operator or is specifically designed by the manufacturer
167 with seating for each passenger. "All-terrain vehicle" and
168 "ATV" does not include mini trucks, golf carts, riding
169 lawnmowers or tractors.

170 (jj) "Travel trailer" means every vehicle, mounted on
171 wheels, designed to provide temporary living quarters for
172 recreational, camping or travel use of such size or weight as not
173 to require special highway movement permits when towed by a
174 motor vehicle and of gross trailer area less than four hundred
175 square feet.

176 (kk) "Fold-down camping trailer" means every vehicle
177 consisting of a portable unit mounted on wheels and constructed
178 with collapsible partial sidewalls which fold for towing by
179 another vehicle and unfold at the camp site to provide temporary
180 living quarters for recreational, camping or travel use.

181 (ll) "Motor home" means every vehicle, designed to provide
182 temporary living quarters, built into an integral part of or
183 permanently attached to a self-propelled motor vehicle, chassis
184 or van including: (1) Type A motor home built on an incomplete
185 truck chassis with the truck cab constructed by the second stage
186 manufacturer; (2) Type B motor home consisting of a van-type
187 vehicle which has been altered to provide temporary living
188 quarters; and (3) Type C motor home built on an incomplete van
189 or truck chassis with a cab constructed by the chassis
190 manufacturer.

191 (mm) "Snowmobile" means a self-propelled vehicle
192 intended for travel primarily on snow and driven by a track or
193 tracks in contact with the snow and steered by a ski or skis in
194 contact with the snow.

195 (nn) "Recreational vehicle" means a motorboat, motorboat
196 trailer, all-terrain vehicle, travel trailer, fold-down camping
197 trailer, motor home or snowmobile.

198 (oo) "Mobile equipment" means every self-propelled vehicle
199 not designed or used primarily for the transportation of persons
200 or property over the highway but which may infrequently or
201 incidentally travel over the highways among job sites, equipment
202 storage sites or repair sites, including farm equipment,
203 implements of husbandry, well drillers, cranes and wood-sawing
204 equipment. (pp) "Factory-built home" includes mobile homes,
205 house trailers and manufactured homes.

206 (qq) "Manufactured home" has the same meaning as the
207 term is defined in section two, article nine, chapter twenty-one

208 of this code which meets the federal Manufactured Housing
209 Construction and Safety Standards Act of 1974 (42 U. S.
210 C.§5401, *et seq.*), effective on June 15, 1976, and the federal
211 manufactured home construction and safety standards and
212 regulations promulgated by the Secretary of the United States
213 Department of Housing and Urban Development.

214 (rr) “Mobile home” means a transportable structure that is
215 wholly, or in substantial part, made, fabricated, formed or
216 assembled in manufacturing facilities for installation or
217 assembly and installation on a building site and designed for
218 long-term residential use and built prior to enactment of the
219 federal Manufactured Housing Construction and Safety
220 Standards Act of 1974 (42 U. S. C.§5401, *et seq.*), effective on
221 June 15, 1976, and usually built to the voluntary industry
222 standard of the American National Standards Institute (ANSI)—
223 A119.1 standards for mobile homes.

224 (ss) “House trailers” means all trailers designed and used for
225 human occupancy on a continual nonrecreational basis, but may
226 not include fold-down camping and travel trailers, mobile homes
227 or manufactured homes.

228 (tt) “Parking enforcement vehicle” means a motor vehicle
229 which does not fit into any other classification of vehicle in this
230 chapter, has three or four wheels and is designed for use in an
231 incorporated municipality by a city, county, state or other
232 governmental entity primarily for parking enforcement or other
233 governmental purposes with an operator area with sides
234 permanently enclosed with rigid construction and a top which
235 may be convertible, sealed beam headlights, turn signals, brake
236 lights, horn, at least one rearview mirror on each side and such
237 other equipment that will enable it to pass a standard motorcycle
238 vehicle inspection.

239 (uu) “Low-speed vehicle” means a four-wheeled motor
240 vehicle whose attainable speed in one mile on a paved level

241 surface is more than twenty miles per hour but not more than
242 twenty-five miles per hour.

243 (vv) "Utility terrain vehicle" means any motor vehicle with
244 four or more low-pressure or nonhighway tires designed for off-
245 highway use and is greater than fifty inches in width. "Utility
246 terrain vehicle" does not include mini trucks, golf carts, riding
247 lawnmowers or tractors.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES;
TEMPORARY PLATES OR MARKERS.**

§17A-6-1. Definitions.

1 (a) Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) "New motor vehicle dealer" means every person (other
4 than agents and employees, if any, while acting within the scope
5 of their authority or employment), engaged in, or held out to the
6 public to be engaged in, the business in this state of selling five
7 or more new motor vehicles or new and used motor vehicles in
8 any fiscal year of a type required to be registered under the
9 provisions of this chapter, except, for the purposes of this article
10 only, motorcycles.

11 (2) "Used motor vehicle dealer" means every person (other
12 than agents and employees, if any, while acting within the scope
13 of their authority or employment), engaged in, or held out to the
14 public to be engaged in, the business in this state of selling five
15 or more used motor vehicles in any fiscal year of a type required
16 to be registered under the provisions of this chapter, except, for
17 the purposes of this article only, motorcycles.

18 (3) "House trailer dealer" means every person (other than
19 agents and employees, if any, while acting within the scope of

20 their authority or employment), engaged in, or held out to the
21 public to be engaged in, the business in this state of selling new
22 or used house trailers, or both, or new or used, or both, house
23 trailers and trailers or new or used, or both, manufactured homes
24 and mobile homes.

25 (4) "Trailer dealer" means every person (other than agents
26 and employees, if any, while acting within the scope of their
27 authority or employment), engaged in, or held out to the public
28 to be engaged in, the business in this state of selling new or used
29 trailers.

30 (5) "Motorcycle dealer" means every person (other than
31 agents and employees, if any, while acting within the scope of
32 their authority or employment), engaged in, or held out to the
33 public to be engaged in, the business in this state of selling new
34 or used motorcycles.

35 (6) "Used parts dealer" means every person (other than
36 agents and employees, if any, while acting within the scope of
37 their authority or employment), engaged in, or held out to the
38 public to be engaged in, the business in this state of selling any
39 used appliance, accessory, member, portion or other part of any
40 vehicle.

41 (7) "Wrecker/dismantler/rebuilder" means every person
42 (other than agents and employees, if any, while acting within the
43 scope of their authority or employment), engaged in, or held out
44 to the public to be engaged in, the business in this state of
45 dealing in wrecked or damaged motor vehicles or motor vehicle
46 parts for the purpose of selling the parts thereof or scrap
47 therefrom or who is in the business of rebuilding salvage motor
48 vehicles for the purpose of resale to the public.

49 (8) "New motor vehicles" means all motor vehicles, except
50 motorcycles and used motor vehicles, of a type required to be
51 registered under the provisions of this chapter.

52 (9) "Used motor vehicles" means all motor vehicles, except
53 motorcycles, of a type required to be registered under the
54 provisions of this chapter which have been sold and operated, or
55 which have been registered or titled, in this or any other state or
56 jurisdiction.

57 (10) "House trailers" means all trailers designed and used for
58 human occupancy on a continual nonrecreational basis, but may
59 not include fold-down camping and travel trailers, mobile homes
60 or manufactured homes.

61 (11) "Trailers" means all types of trailers other than house
62 trailers, and shall include, but not be limited to, pole trailers and
63 semitrailers but excluding recreational vehicles.

64 (12) "Sales instrument" means any document resulting from
65 the sale of a vehicle, which shall include, but not be limited to,
66 a bill of sale, invoice, conditional sales contract, chattel
67 mortgage, chattel trust deed, security agreement or similar
68 document.

69 (13) "Sell", "sale" or "selling", in addition to the ordinary
70 definitions of the terms, includes offering for sale, soliciting
71 sales of, negotiating for the sale of, displaying for sale or
72 advertising for sale, any vehicle, whether at retail, wholesale or
73 at auction. "Selling", in addition to the ordinary definition of that
74 term, also includes buying and exchanging.

75 (14) "Applicant" means any person making application for
76 an original or renewal license certificate under the provisions of
77 this article.

78 (15) "Licensee" means any person holding any license
79 certificate issued under the provisions of this article.

80 (16) "Predecessor" means the former owner or owners or
81 operator or operators of any new motor vehicle dealer business
82 or used motor vehicle dealer business.

83 (17) "Established place of business" means, in the case of a
84 new motor vehicle dealer, a permanent location, not a temporary
85 stand or other temporary quarters, owned or leased by the
86 licensee or applicant and actually occupied or to be occupied by
87 him or her, as the case may be, which is or is to be used
88 exclusively for the purpose of selling new motor vehicles or new
89 and used motor vehicles, which shall have space under roof for
90 the display of at least one new motor vehicle and facilities and
91 space therewith for the servicing and repair of at least one motor
92 vehicle, which servicing and repair facilities and space is
93 adequate and suitable to carry out servicing and to make repairs
94 necessary to keep and carry out all representations, warranties
95 and agreements made or to be made by the dealer with respect to
96 motor vehicles sold by him or her, which is easily accessible to
97 the public, which conforms to all applicable laws of this state
98 and the ordinances of the municipality in which it is located, if
99 any, which displays thereon at least one permanent sign, clearly
100 visible from the principal public street or highway nearest the
101 location and clearly stating the business which is or shall be
102 conducted thereat, and which has adequate facilities to keep,
103 maintain and preserve records, papers and documents necessary
104 to carry on the business and to make the business available to
105 inspection by the commissioner at all reasonable times:
106 *Provided*, That each established place of business shall have a
107 display area which may be outside or inside or a combination
108 thereof of at least one thousand two hundred square feet which
109 is to be used exclusively for the display of vehicles which are
110 offered for sale by the dealer, office space of at least one
111 hundred forty-four square feet and a telephone listed in the name
112 of the dealership. Each established place of business shall be
113 open to the public a minimum of twenty hours per week at least
114 forty weeks per calendar year with at least ten of those hours
115 being between the hours of 9:30 a.m. and 8:30 p.m., Monday
116 through Saturday: *Provided, however*, That the requirement of
117 exclusive use is met even though: (A) Some new and any used

118 motor vehicles sold or to be sold by the dealer or sold or are to
119 be sold at a different location or locations not meeting the
120 definition of an established place of business of a new motor
121 vehicle dealer, if each location is or is to be served by other
122 facilities and space of the dealer for the servicing and repair of
123 at least one motor vehicle, adequate and suitable as aforesaid,
124 and each location used for the sale of some new and any used
125 motor vehicles otherwise meets the definition of an established
126 place of business of a used motor vehicle dealer; (B) house
127 trailers, trailers or motorcycles are sold or are to be sold thereat,
128 if, subject to the provisions of section five of this article, a
129 separate license certificate is obtained for each type of vehicle
130 business, which license certificate remains unexpired,
131 unsuspended and unrevoked; (C) farm machinery is sold thereat;
132 (D) accessory, gasoline and oil, or storage departments are
133 maintained thereat, if the departments are operated for the
134 purpose of furthering and assisting in the licensed business or
135 businesses; and (E) the established place of business has an
136 attached single residential rental unit with an outside separate
137 entrance and occupied by a person or persons with no financial
138 or operational interest in the dealership where the established
139 place of business has space under roof for the display of at least
140 three new motor vehicles and facilities and space therewith for
141 the concurrent servicing and repair of at least two motor vehicles
142 and otherwise meets the requirements set forth in this
143 subdivision.

144 (18) "Farm machinery" means all machines and tools used
145 in the production, harvesting or care of farm products.

146 (19) "Established place of business", in the case of a used
147 motor vehicle dealer, means a permanent location, not a
148 temporary stand or other temporary quarters, owned or leased by
149 the licensee or applicant and actually occupied or to be occupied
150 by him or her, as the case may be, which is or is to be used
151 exclusively for the purpose of selling used motor vehicles, which

152 shall have facilities and space therewith for the servicing and
153 repair of at least one motor vehicle, which servicing and repair
154 facilities and space shall be adequate and suitable to carry out
155 servicing and to make repairs necessary to keep and carry out all
156 representations, warranties and agreements made or to be made
157 by the dealer with respect to used motor vehicles sold by him or
158 her, which is easily accessible to the public, conforms to all
159 applicable laws of this state, and the ordinances of the
160 municipality in which it is located, if any, which displays
161 thereon at least one permanent sign, clearly visible from the
162 principal public street or highway nearest the location and
163 clearly stating the business which is or shall be conducted
164 thereat, and which has adequate facilities to keep, maintain and
165 preserve records, papers and documents necessary to carry on the
166 business and to make the business available to inspection by the
167 commissioner at all reasonable times: *Provided*, That each
168 established place of business shall have a display area which
169 may be outside or inside or a combination thereof of at least one
170 thousand two hundred square feet which is to be used
171 exclusively for the display of vehicles which are offered for sale
172 by the dealer, office space of at least one hundred forty-four
173 square feet and a telephone listed in the name of the dealership.
174 Each established place of business shall be open to the public a
175 minimum of twenty hours per week at least forty weeks per
176 calendar year with at least ten of those hours being between the
177 hours of 9:30 a.m. and 8:30 p.m., Monday through Saturday:
178 *Provided, however*, That if a used motor vehicle dealer has
179 entered into a written agreement or agreements with a person or
180 persons owning or operating a servicing and repair facility or
181 facilities adequate and suitable as aforesaid, the effect of which
182 agreement or agreements is to provide the servicing and repair
183 services and space in like manner as if the servicing and repair
184 facilities and space were located in or on the dealer's place of
185 business, then, so long as the agreement or agreements are in
186 effect, it is not necessary for the dealer to maintain the servicing

187 and repair facilities and space at the place of business in order
188 for the place of business to be an established place of business as
189 herein defined: *Provided further*, That the requirement of
190 exclusive use is met even though: (A) House trailers, trailers or
191 motorcycles are sold or are to be sold thereat, if, subject to the
192 provisions of section five of this article, a separate license
193 certificate is obtained for each type of vehicle business, which
194 license certificate remains unexpired, unsuspended and
195 unrevoked; (B) farm machinery is sold thereat; (C) accessory,
196 gasoline and oil, or storage departments are maintained thereat,
197 if the departments are operated for the purpose of furthering and
198 assisting in the licensed business or businesses; and (D) the
199 established place of business has an attached single residential
200 rental unit with an outside separate entrance and occupied by a
201 person or persons with no financial or operational interest in the
202 dealership where the established place of business has space
203 under roof for the display of at least three motor vehicles and
204 facilities and space therewith for the concurrent servicing and
205 repair of at least two motor vehicles and otherwise meets the
206 requirements set forth herein.

207 (20) "Established place of business", in the case of a house
208 trailer dealer, trailer dealer, recreational vehicle dealer,
209 motorcycle dealer, used parts dealer and wrecker or dismantler,
210 means a permanent location, not a temporary stand or other
211 temporary quarters, owned or leased by the licensee or applicant
212 and actually occupied or to be occupied by the licensee, as the
213 case may be, which is easily accessible to the public, which
214 conforms to all applicable laws of this state and the ordinances
215 of the municipality in which it is located, if any, which displays
216 thereon at least one permanent sign, clearly visible from the
217 principal public street or highway nearest the location and
218 clearly stating the business which is or shall be conducted
219 thereat, and which has adequate facilities to keep, maintain and
220 preserve records, papers and documents necessary to carry on the

221 business and to make the business available to inspection by the
222 commissioner at all reasonable times.

223 (21) "Manufacturer" means every person engaged in the
224 business of reconstructing, assembling or reassembling vehicles
225 with a special type body required by the purchaser if the vehicle
226 is subject to the title and registration provisions of this code.

227 (22) "Transporter" means every person engaged in the
228 business of transporting vehicles to or from a manufacturing,
229 assembling or distributing plant to dealers or sales agents of a
230 manufacturer, or purchasers.

231 (23) "Recreational vehicle dealer" means every person (other
232 than agents and employees, if any, while acting within the scope
233 of their authority or employment), engaged in, or held out to the
234 public to be engaged in, the business in this state of selling new
235 or used recreational vehicles, or both.

236 (24) "Motorboat" means any vessel propelled by an
237 electrical, steam, gas, diesel or other fuel-propelled or -driven
238 motor, whether or not the motor is the principal source of
239 propulsion, but does not include a vessel which has a valid
240 marine document issued by the bureau of customs of the United
241 States government or any federal agency successor thereto.

242 (25) "Motorboat trailer" means every vehicle designed for
243 or ordinarily used for the transportation of a motorboat.

244 (26) "All-terrain vehicle" (ATV) means any motor vehicle
245 designed for off-highway use and designed to travel on not less
246 than three low-pressure or nonhighway tires, is fifty inches or
247 less in width and intended by the manufacturer to be used by a
248 single operator or is specifically designed by the manufacturer
249 with seating for each passenger. "All-terrain vehicle" and
250 "ATV" does not include mini trucks, golf carts, riding
251 lawnmowers or tractors.

252 (27) "Travel trailer" means every vehicle, mounted on
253 wheels, designed to provide temporary living quarters for
254 recreational, camping or travel use of such size or weight as not
255 to require special highway movement permits when towed by a
256 motor vehicle and of gross trailer area less than four hundred
257 square feet.

258 (28) "Fold-down camping trailer" means every vehicle
259 consisting of a portable unit mounted on wheels and constructed
260 with collapsible partial sidewalls which fold for towing by
261 another vehicle and unfold at the camp site to provide temporary
262 living quarters for recreational, camping or travel use.

263 (29) "Motor home" means every vehicle, designed to
264 provide temporary living quarters, built into an integral part of
265 or permanently attached to a self-propelled motor vehicle,
266 chassis or van including: (1) Type A motor home built on an
267 incomplete truck chassis with the truck cab constructed by the
268 second-stage manufacturer; (2) Type B motor home consisting
269 of a van-type vehicle which has been altered to provide
270 temporary living quarters; and (3) Type C motor home built on
271 an incomplete van or truck chassis with a cab constructed by the
272 chassis manufacturer.

273 (30) "Snowmobile" means a self-propelled vehicle intended
274 for travel primarily on snow and driven by a track or tracks in
275 contact with the snow and steered by a ski or skis in contact with
276 the snow.

277 (31) "Recreational vehicle" means a motorboat, motorboat
278 trailer, all-terrain vehicle, travel trailer, fold-down camping
279 trailer, motor home, snowmobile or utility-terrain vehicle.

280 (32) "Major component" means any one of the following
281 subassemblies of a motor vehicle: (A) Front clip assembly
282 consisting of fenders, grille, hood, bumper and related parts; (B)
283 engine; (C) transmission; (D) rear clip assembly consisting of

284 quarter panels and floor panel assembly; or (E) two or more
285 doors.

286 (33) "Factory-built home" includes mobile homes, house
287 trailers and manufactured homes.

288 (34) "Manufactured home" has the same meaning as the
289 term is defined in section two, article nine, chapter twenty-one
290 of this code which meets the National Manufactured Housing
291 Construction and Safety Standards Act of 1974 (42 U. S.
292 C.§5401 et seq.), effective on June 15, 1976, and the federal
293 manufactured home construction and safety standards and
294 regulations promulgated by the Secretary of the United States
295 Department of Housing and Urban Development.

296 (35) "Mobile home" means a transportable structure that is
297 wholly, or in substantial part, made, fabricated, formed or
298 assembled in manufacturing facilities for installation or
299 assembly and installation on a building site and designed for
300 long-term residential use and built prior to enactment of the
301 federal Manufactured Housing Construction and Safety
302 Standards Institute (ANSI) — A119.1 standards for mobile
303 homes.

304 (36) "Utility terrain vehicle" means any motor vehicle with
305 four or more low-pressure or nonhighway tires designed for off-
306 highway use and is greater than fifty inches in width. "Utility
307 terrain vehicle" does not include mini trucks, golf carts, riding
308 lawnmowers or tractors.

309 (b) Under no circumstances whatever may the terms "new
310 motor vehicle dealer", "used motor vehicle dealer", "house
311 trailer dealer", "trailer dealer", "recreational vehicle dealer",
312 "motorcycle dealer", "used parts dealer" or "wrecker/dismantler/
313 rebuilder" be construed or applied under this article in such a
314 way as to include a banking institution, insurance company,
315 finance company, or other lending or financial institution, or

316 other person, the state or any agency or political subdivision
317 thereof, or any municipality, who or which owns or comes in
318 possession or ownership of, or acquires contract rights, or
319 security interests in or to, any vehicle or vehicles or any part
320 thereof and sells the vehicle or vehicles or any part thereof for
321 purposes other than engaging in and holding out to the public to
322 be engaged in the business of selling vehicles or any part thereof.

323 (c) It is recognized that throughout this code the term
324 “trailer” or “trailers” is used to include, among other types of
325 trailers, house trailers. It is also recognized that throughout this
326 code the term “trailer” or “trailers” is seldom used to include
327 semitrailers or pole trailers. However, for the purposes of this
328 article only, the term “trailers” has the meaning ascribed to it in
329 subsection (a) of this section.

CHAPTER 126

(Com. Sub. for S. B. 434 - By Senator Beach)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §17C-5A-3a of the Code of West Virginia, 1931, as amended, relating to the establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program; allowing the deferral of the revocation period for certain driving under the influence offenses through participation in the program; waiving the revocation period for certain driving under the influence offenses upon successful completion of the program for a period including the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period; providing that

acceptance into the program constitutes a waiver of the administrative hearing and that the Office of Administrative Hearings shall conduct no hearing on a matter on which a person is actively participating in the program; and making technical and descriptive corrections.

Be it enacted by the Legislature of West Virginia:

That §17C-5A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR
SUSPENSION AND REVOCATION OF
LICENSES FOR DRIVING UNDER THE
INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES OR
DRUGS.**

**§17C-5A-3a. Establishment of and participation in the Motor
Vehicle Alcohol Test and Lock Program.**

1 (a) (1) The Division of Motor Vehicles shall control and
2 regulate a Motor Vehicle Alcohol Test and Lock Program for
3 persons whose licenses have been revoked pursuant to this
4 article or the provisions of article five of this chapter or have
5 been convicted under section two, article five of this chapter, or
6 who are serving a term of a conditional probation pursuant to
7 section two-b, article five of this chapter.

8 (2) The program shall include the establishment of a user's
9 fee for persons participating in the program which shall be paid
10 in advance and deposited into the Driver's Rehabilitation Fund:
11 *Provided*, That on and after July 1, 2007, any unexpended
12 balance remaining in the Driver's Rehabilitation Fund shall be
13 transferred to the Motor Vehicle Fees Fund created under the
14 provisions of section twenty-one, article two, chapter seventeen-

15 a of this code and all further fees collected shall be deposited in
16 that fund.

17 (3) (A) Except where specified otherwise, the use of the term
18 “program” in this section refers to the Motor Vehicle Alcohol
19 Test and Lock Program.

20 (B) The Commissioner of the Division of Motor Vehicles
21 shall propose legislative rules for promulgation in accordance
22 with the provisions of chapter twenty-nine-a of this code for the
23 purpose of implementing the provisions of this section. The rules
24 shall also prescribe those requirements which, in addition to the
25 requirements specified by this section for eligibility to
26 participate in the program, the commissioner determines must be
27 met to obtain the commissioner’s approval to operate a motor
28 vehicle equipped with a motor vehicle alcohol test and lock
29 system.

30 (C) Nothing in this section may be construed to prohibit day
31 report or community correction programs authorized pursuant to
32 article eleven-c, chapter sixty-two of this code, or a home
33 incarceration program authorized pursuant to article eleven-b,
34 chapter sixty-two of this code, from being a provider of motor
35 vehicle alcohol test and lock systems for eligible participants as
36 authorized by this section.

37 (4) For purposes of this section, a “motor vehicle alcohol test
38 and lock system” means a mechanical or computerized system
39 which, in the opinion of the commissioner, prevents the
40 operation of a motor vehicle when, through the system’s
41 assessment of the blood alcohol content of the person operating
42 or attempting to operate the vehicle, the person is determined to
43 be under the influence of alcohol.

44 (5) The fee for installation and removal of ignition interlock
45 devices shall be waived for persons determined to be indigent by
46 the Department of Health and Human Resources pursuant to

47 section three, article five-a, chapter seventeen-c of this code. The
48 commissioner shall establish by legislative rule, proposed
49 pursuant to article three, chapter twenty-nine-a of this code,
50 procedures to be followed with regard to persons determined by
51 the Department of Health and Human Resources to be indigent.
52 The rule shall include, but is not limited to, promulgation of
53 application forms; establishment of procedures for the review of
54 applications; and the establishment of a mechanism for the
55 payment of installations for eligible offenders.

56 (6) On or before January 15 of each year, the Commissioner
57 of the Division of Motor Vehicles shall report to the Legislature
58 on:

59 (A) The total number of offenders participating in the
60 program during the prior year;

61 (B) The total number of indigent offenders participating in
62 the program during the prior year;

63 (C) The terms of any contracts with the providers of ignition
64 interlock devices; and

65 (D) The total cost of the program to the state during the prior
66 year.

67 (b) (1) Any person whose license is revoked for the first time
68 pursuant to this article or the provisions of article five of this
69 chapter is eligible to participate in the program when the
70 person's minimum revocation period as specified by subsection
71 (c) of this section has expired and the person is enrolled in or has
72 successfully completed the safety and treatment program or
73 presents proof to the commissioner within sixty days of
74 receiving approval to participate by the commissioner that he or
75 she is enrolled in a safety and treatment program: *Provided*, That
76 anyone whose license is revoked for the first time for driving
77 with a blood alcohol concentration of fifteen hundredths of one

78 percent or more, by weight, must participate in the program
79 when the person's minimum revocation period as specified by
80 subsection (c) of this section has expired and the person is
81 enrolled in or has successfully completed the safety and
82 treatment program or presents proof to the commissioner within
83 sixty days of receiving approval to participate by the
84 commissioner that he or she is enrolled in a safety and treatment
85 program.

86 (2) Any person whose license has been suspended for
87 driving a motor vehicle while under the age of twenty-one years
88 with an alcohol concentration in his or her blood of two
89 hundredths of one percent or more, by weight, but less than eight
90 hundredths of one percent, by weight, is eligible to participate in
91 the program after thirty days have elapsed from the date of the
92 initial suspension, during which time the suspension was actually
93 in effect: *Provided*, That in the case of a person under the age of
94 eighteen, the person is eligible to participate in the program after
95 thirty days have elapsed from the date of the initial suspension,
96 during which time the suspension was actually in effect or after
97 the person's eighteenth birthday, whichever is later. Before the
98 commissioner approves a person to operate a motor vehicle
99 equipped with a motor vehicle alcohol test and lock system, the
100 person must agree to comply with the following conditions:

101 (A) If not already enrolled, the person shall enroll in and
102 complete the educational program provided in subsection (d),
103 section three of this article at the earliest time that placement in
104 the educational program is available, unless good cause is
105 demonstrated to the commissioner as to why placement should
106 be postponed;

107 (B) The person shall pay all costs of the educational
108 program, any administrative costs and all costs assessed for any
109 suspension hearing.

110 (3) Notwithstanding the provisions of this section to the
111 contrary, a person eligible to participate in the program under
112 this subsection may not operate a motor vehicle unless approved
113 to do so by the commissioner.

114 (c) A person who participates in the program under
115 subdivision (1), subsection (b) of this section is subject to a
116 minimum revocation period and minimum period for the use of
117 the ignition interlock device as follows:

118 (1) For a person whose license has been revoked for a first
119 offense for six months for driving under the influence of alcohol,
120 or a combination of alcohol and any controlled substance or
121 other drug, or with a blood alcohol concentration of eight
122 hundredths of one percent, by weight, but less than fifteen
123 hundredths, by weight, the minimum period of revocation for
124 participation in the test and lock program is fifteen days and the
125 minimum period for the use of the ignition interlock device is
126 one hundred twenty-five days;

127 (2) For a person whose license has been revoked for a first
128 offense for refusing a secondary chemical test, the minimum
129 period of revocation for participation in the test and lock
130 program is forty-five days and the minimum period for the use
131 of the ignition interlock device is one year;

132 (3) For a person whose license has been revoked for a first
133 offense for driving with a blood alcohol concentration of fifteen
134 hundredths of one percent or more, by weight, the minimum
135 period of revocation for participation in the test and lock
136 program is forty-five days and the minimum period for the use
137 of the ignition interlock device is two hundred seventy days;

138 (4) For a person whose license has been revoked for a first
139 offense for driving under the influence of alcohol, or a
140 combination of alcohol and any controlled substance or other
141 drug, or with a blood alcohol concentration of eight hundredths

142 of one percent or more, by weight, or did drive a motor vehicle
143 while under the age of twenty-one years with an alcohol
144 concentration in his or her blood of two hundredths of one
145 percent or more, by weight, but less than eight hundredths of one
146 percent, by weight, and while driving does any act forbidden by
147 law or fails to perform any duty imposed by law, which act or
148 failure proximately causes the death of any person within one
149 year next following the act or failure, and commits the act or
150 failure in reckless disregard of the safety of others and when the
151 influence of alcohol, controlled substances or drugs is shown to
152 be a contributing cause to the death, the minimum period of
153 revocation before the person is eligible for participation in the
154 test and lock program is twelve months and the minimum period
155 for the use of the ignition interlock device is two years;

156 (5) For a person whose license has been revoked for a first
157 offense for driving under the influence of alcohol, or a
158 combination of alcohol and any controlled substance or other
159 drug, or with a blood alcohol concentration of eight hundredths
160 of one percent or more, by weight, and while driving does any
161 act forbidden by law or fails to perform any duty imposed by law
162 in the driving of the vehicle, which act or failure proximately
163 causes the death of any person within one year next following
164 the act or failure, the minimum period of revocation is six
165 months and the minimum period for the use of the ignition
166 interlock device is two years;

167 (6) For a person whose license has been revoked for a first
168 offense for driving under the influence of alcohol, or a
169 combination of alcohol and any controlled substance or other
170 drug, or with a blood alcohol concentration of eight hundredths
171 of one percent or more, by weight, and while driving does any
172 act forbidden by law or fails to perform any duty imposed by law
173 in the driving of the vehicle, which act or failure proximately
174 causes bodily injury to any person other than himself or herself,
175 the minimum period of revocation for participation in the

176 program is two months and the minimum period for the use of
177 the ignition interlock device is one year;

178 (7) For a person whose license has been revoked for a first
179 offense for driving under the influence of alcohol, or a
180 combination of alcohol and any controlled substance or other
181 drug, or with a blood alcohol concentration of eight hundredths
182 of one percent or more, by weight, and while driving has on or
183 within the motor vehicle one or more other persons who are
184 unemancipated minors who have not reached their sixteenth
185 birthday, the minimum period of revocation for participation in
186 the program is two months and the minimum period for the use
187 of the ignition interlock device is ten months.

188 (d) Notwithstanding any provision of the code to the
189 contrary, a person shall participate in the program if the person
190 is convicted under section two, article five of this chapter or the
191 person's license is revoked under section two of this article or
192 section seven, article five of this chapter and the person was
193 previously either convicted or his or her license was revoked
194 under any provision cited in this subsection within the past ten
195 years. The minimum revocation period for a person required to
196 participate in the program under this subsection is one year and
197 the minimum period for the use of the ignition interlock device
198 is two years, except that the minimum revocation period for a
199 person required to participate because of a violation for driving
200 while under the age of twenty-one with a blood alcohol
201 concentration of two hundredths of one percent, or more, by
202 weight, but less than eight hundredths of one percent, or more,
203 by weight, is two months and the minimum period of
204 participation is one year. The division shall add an additional
205 two months to the minimum period for the use of the ignition
206 interlock device if the offense was committed while a minor was
207 in the vehicle. The division shall add an additional six months to
208 the minimum period for the use of the ignition interlock device
209 if a person other than the driver received injuries. The division

210 shall add an additional two years to the minimum period for the
211 use of the ignition interlock device if a person other than the
212 driver is injured and the injuries result in that person's death.
213 The division shall add one year to the minimum period for the
214 use of the ignition interlock device for each additional previous
215 conviction or revocation within the past ten years. Any person
216 required to participate under this subsection must have an
217 ignition interlock device installed on every vehicle he or she
218 owns or operates.

219 (e)(1) If a person applies for and is accepted into the Motor
220 Vehicle Alcohol Test and Lock Program prior to the effective
221 date of the revocation, the commissioner shall defer the
222 revocation period of such person under the provisions of this
223 section. Such deferral shall continue throughout the applicable
224 minimum period for the use of the ignition interlock device plus
225 an additional period equal to the applicable minimum revocation
226 period. If a person successfully completes all terms of the Motor
227 Vehicle Alcohol Test and Lock Program for a period equal to the
228 minimum period for the use of the ignition interlock device
229 pursuant to subsection (c) of this section, plus any applicable
230 minimum revocation period, the commissioner shall waive the
231 revocation period.

232 (2) The application and acceptance of a person into the
233 Motor Vehicle Alcohol Test and Lock Program pursuant to this
234 subdivision (1) constitutes an automatic waiver of their right to
235 an administrative hearing. The Office of Administrative
236 Hearings may not conduct a hearing on a matter which is the
237 basis for a person actively participating in the Motor Vehicle
238 Alcohol Test and Lock Program.

239 (f) Notwithstanding any other provision in this code, a
240 person whose license is revoked for driving under the influence
241 of drugs is not eligible to participate in the Motor Vehicle
242 Alcohol Test and Lock Program.

243 (g) An applicant for the test and lock program may not have
244 been convicted of any violation of section three, article four,
245 chapter seventeen-b of this code for driving while the applicant's
246 driver's license was suspended or revoked within the six-month
247 period preceding the date of application for admission to the test
248 and lock program unless such is necessary for employment
249 purposes.

250 (h) Upon permitting an eligible person to participate in the
251 program, the commissioner shall issue to the person, and the
252 person is required to exhibit on demand, a driver's license which
253 shall reflect that the person is restricted to the operation of a
254 motor vehicle which is equipped with an approved motor vehicle
255 alcohol test and lock system.

256 (i) The commissioner may extend the minimum period of
257 revocation and the minimum period of participation in the
258 program for a person who violates the terms and conditions of
259 participation in the program as found in this section, or
260 legislative rule, or any agreement or contract between the
261 participant and the division or program service provider. If the
262 commissioner finds that any person participating in the program
263 pursuant to section two-b, article five of this chapter must be
264 removed therefrom for violation(s) of the terms and conditions
265 thereof, he or she shall notify the person, the court that imposed
266 the term of participation in the program and the prosecuting
267 attorney in the county wherein the order imposing participation
268 in the program was entered.

269 (j) A person whose license has been suspended for a first
270 offense of driving while under the age of twenty-one with a
271 blood alcohol concentration of two hundredths of one percent, or
272 more, by weight, but less than eight hundredths of one percent,
273 or more, by weight, who has completed the educational program
274 and who has not violated the terms required by the commissioner
275 of the person's participation in the program is entitled to the

276 reinstatement of his or her driver's license six months from the
277 date the person is permitted to operate a motor vehicle by the
278 commissioner. When a license has been reinstated pursuant to
279 this subsection, the records ordering the suspension, records of
280 any administrative hearing, records of any blood alcohol test
281 results and all other records pertaining to the suspension shall be
282 expunged by operation of law: *Provided*, That a person is
283 entitled to expungement under the provisions of this subsection
284 only once. The expungement shall be accomplished by
285 physically marking the records to show that the records have
286 been expunged and by securely sealing and filing the records.
287 Expungement has the legal effect as if the suspension never
288 occurred. The records may not be disclosed or made available
289 for inspection and in response to a request for record
290 information, the commissioner shall reply that no information is
291 available. Information from the file may be used by the
292 commissioner for research and statistical purposes so long as the
293 use of the information does not divulge the identity of the
294 person.

295 (k) In addition to any other penalty imposed by this code,
296 any person who operates a motor vehicle not equipped with an
297 approved motor vehicle alcohol test and lock system during that
298 person's participation in the Motor Vehicle Alcohol Test and
299 Lock Program is guilty of a misdemeanor and, upon conviction
300 thereof, shall be confined in jail for a period not less than one
301 month nor more than six months and fined not less than \$100 nor
302 more than \$500. Any person who attempts to bypass the alcohol
303 test and lock system is guilty of a misdemeanor and, upon
304 conviction thereof, shall be confined in jail not more than six
305 months and fined not less than \$100 nor more than \$1,000:
306 *Provided*, That notwithstanding any provision of this code to the
307 contrary, a person enrolled and participating in the test and lock
308 program may operate a motor vehicle solely at his or her job site
309 if the operation is a condition of his or her employment. For the
310 purpose of this section, "job site" does not include any street or

311 highway open to the use of the public for purposes of vehicular
312 traffic.

CHAPTER 127

(H. B. 2477 - By Delegates Overington, Barill and Perdue)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2014.]

AN ACT to amend and reenact §17C-15-23 of the Code of West Virginia, 1931, as amended, relating to permitting certain auxiliary lighting on motorcycles.

Be it enacted by the Legislature of West Virginia:

That §17C-15-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-23. Lighting equipment on motorcycles, motor-driven cycles and mopeds.

1 The head lamp or head lamps upon every motorcycle, motor-
2 driven cycle and moped may be of the single-beam or
3 multiple-beam type but in either event shall comply with the
4 requirements and limitations as follows:

5 (1) Every head lamp or head lamps shall be of sufficient
6 intensity to reveal a person or a vehicle at a distance of not less
7 than one hundred feet when the motorcycle, motor-driven cycle
8 or moped is operated at any speed less than twenty-five miles per
9 hour and at a distance of not less than two hundred feet when it
10 is operated at a speed of twenty-five or more miles per hour.

11 (2) If the motorcycle, motor-driven cycle or moped is
12 equipped with a multiple-beam type head lamp or head lamps
13 the upper beam shall meet the minimum requirements set forth
14 above and not exceed the limitations set forth in section twenty
15 (a) of this article and the lowermost beam shall meet the
16 requirements applicable to a lowermost distribution of light as
17 set forth in section twenty (b) of this article.

18 (3) If the motorcycle, motor-driven cycle or moped is
19 equipped with a single-beam lamp or lamps, the lamp or lamps
20 shall be so aimed that when the vehicle is loaded none of the
21 high-intensity portion of light, at a distance of twenty-five feet
22 ahead, shall project higher than the level of the center of the
23 lamp from which it comes.

24 (4) (A) Subject to paragraph (B) of this subdivision, a
25 motorcycle may be equipped with, and an operator of a
26 motorcycle may use, the following auxiliary lighting:

27 (i) Amber and white illumination;

28 (ii) Standard bulb running lights; or

29 (iii) Light-emitting diode pods and strips.

30 (B) Lighting under this subdivision shall be:

31 (i) Nonblinking;

32 (ii) Nonflashing;

33 (iii) Nonoscillating; and

34 (iv) Directed toward the engine and the drive train of the
35 motorcycle to prevent interference with the driver's operation of
36 the vehicle.

CHAPTER 128

(Com. Sub. for S. B. 427 - By Senator Beach)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §17D-2A-2, §17D-2A-5 and §17D-2A-7 of the Code of West Virginia, 1931, as amended, all relating to requiring a certificate of insurance to be in effect during the entire term of the vehicle registration period; permitting a discretionary electronic acknowledgment exception; clarifying that certain security provisions do not apply to commercial vehicles insured under commercial auto coverage; removing the requirement that insurance companies must notify the Division of Motor Vehicles when a policyholder's vehicle insurance has been canceled; removing an outdated reporting requirement; clarifying and increasing the penalties for vehicle owners who do not have the required security in effect; replacing the driver's license suspension penalty of a person who knowingly operates a vehicle without the required security with a provision stating that a person who is not the vehicle owner and who is convicted of operating a motor vehicle that does not have the required security shall have the conviction placed on the driver's license record; directing that fees collected for reinstatement of a driver's license be deposited in the Motor Vehicle Fees Fund; and prohibiting the Division of Motor Vehicles from taking action against a person cited for driving without insurance if the citation is received by the division more than one year from the date of the offense.

Be it enacted by the Legislature of West Virginia:

That §17D-2A-2, §17D-2A-5 and §17D-2A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.**§17D-2A-2. Scope of article.**

1 This article applies to the operation of all motor vehicles
2 required to be registered or operated on the roads and highways
3 to have the security in effect, as provided in section three, article
4 two-a of this chapter, with the exception of motor vehicles
5 owned by the state, any of its political subdivisions or by the
6 federal government.

7 For the purposes of this article, “commercial auto coverage”
8 is defined as any coverage provided to an insured, regardless of
9 number of vehicles or entity covered, under a commercial
10 coverage form and rated from a commercial manual approved by
11 the Department of Insurance. This article does not apply to
12 commercial vehicles insured under commercial auto coverage;
13 however, insurers of such vehicles may participate on a
14 voluntary basis.

§17D-2A-5. Minimum policy term.

1 No policy of motor vehicle liability insurance issued or
2 delivered for issuance in this state shall be contracted for a
3 period of less than ninety days: *Provided*, That the Insurance
4 Commissioner may establish exceptions thereto by rules
5 proposed for legislative approval pursuant to chapter twenty-
6 nine-a of this code.

**§17D-2A-7. Suspension or revocation of license, registration;
reinstatement.**

1 (a) Any owner of a motor vehicle, subject to this article, who
2 fails to have the required security in effect at the time such
3 vehicle is registered or being operated upon the roads or
4 highways shall have his or her driver’s license suspended by the
5 Commissioner of the Division of Motor Vehicles and shall have
6 his or her motor vehicle registration revoked as follows:

7 (1) For the first offense, the commissioner shall suspend the
8 driver's license for thirty days and until such time as he or she
9 presents current proof of insurance on all currently registered
10 vehicles: *Provided*, That if an owner complies with this
11 subdivision, and pays a penalty fee of \$200 before the effective
12 date, the driver's license suspension of thirty days may not be
13 imposed and the vehicle registration revocation may not be
14 imposed and no reinstatement fees are required. Any fees
15 collected under the provisions of this subsection shall be
16 deposited in the Motor Vehicle Fees Fund established in
17 accordance with section twenty-one, article two, chapter
18 seventeen-a of this code.

19 (2) For the second or subsequent offense within five years,
20 the commissioner shall suspend the owner's driver's license for
21 a period of ninety days and shall revoke the owner's vehicle
22 registration until he or she presents to the Division of Motor
23 Vehicles the proof of security required by this article.

24 (3) If the motor vehicle is titled and registered in more than
25 one name, the commissioner shall suspend the driver's license of
26 only one of the owners.

27 (b) Any person who is not the vehicle owner and is
28 convicted of operating a motor vehicle upon the roads or
29 highways of this state which does not have the security required
30 by this article shall have the conviction placed on his or her
31 driver's license record.

32 (c) The division may not suspend or revoke a driver's license
33 under this article for any citation of driving without insurance
34 that is received by the division from a court that is more than one
35 year from the date of the offense.

36 (d) The commissioner may withdraw a suspension of a
37 driver's license or revocation of a motor vehicle registration and
38 refund any penalty or reinstatement fees at any time provided

39 that the commissioner is satisfied that there was not a violation
40 of the provisions of required security related to operation of a
41 motor vehicle upon the roads or highways of this state by such
42 person. The commissioner may request additional information as
43 needed in order to make such determination.

44 (e) A person may not have his or her driver's license
45 suspended or motor vehicle registration revoked under this
46 section unless he or she and any lienholder noted on the
47 certificate of title are first given written notice of such
48 suspension or revocation sent by certified mail, at least thirty
49 days prior to the effective date of such suspension or revocation,
50 and upon that person's written request, he or she shall be
51 afforded an opportunity for a hearing thereupon as well as a stay
52 of the commissioner's order of suspension or revocation and an
53 opportunity for judicial review of such hearing. The request for
54 a hearing shall be made within ten days from the date of receipt
55 of the notice of driver's license suspension or motor vehicle
56 registration revocation. The scope of the hearing is limited to
57 questions of identity or whether or not there was insurance in
58 effect at the time of the event causing the commissioner's action.
59 Upon affirmation of the commissioner's order, the period of
60 suspension, revocation or other penalty commences to run.

61 (f) A suspended driver's license is reinstated following the
62 period of suspension upon compliance with the conditions set
63 forth in this article and a revoked motor vehicle registration is
64 reissued only upon lawful compliance with this article.

65 (g) Revocation of a motor vehicle registration pursuant to
66 this section does not affect the perfection or priority of a lien or
67 security interest attaching to the motor vehicle that is noted on
68 the certificate of title to the motor vehicle.

69 (h) Any owner or driver of a motor vehicle determined by an
70 electronic insurance verification program to be uninsured shall

71 be assessed the same criminal and administrative sanctions
72 prescribed in this chapter subject to the following:

73 (1) Any person who is assessed a penalty prescribed by this
74 section has the same procedural due process provided by this
75 chapter or by rules promulgated by the division to show that
76 there was not a violation and provide for the exoneration of any
77 penalties or records; and

78 (2) The commissioner may accept a binder, an identification
79 card or a declaration page from a policy as evidence of insurance
80 pending electronic verification to stay a pending administrative
81 sanction.

CHAPTER 129

**(Com. Sub. for S. B. 317 - By Senators Unger, Nohe, Kessler
(Mr. President), D. Hall, Stollings, Tucker, Cann, Fitzsimmons,
Kirkendoll, Miller, Laird, Williams, Yost, Beach, Edgell,
Plymale, Prezioso and Snyder)**

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 25, 2014.]

AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-12-5 and §8-12-5a of said code, all relating to municipal firearm laws; removing firearm provisions from the Municipal Home Rule Pilot Program; prohibiting ordinances from being enacted under the Municipal Home Rule Pilot Program that are in conflict with certain other state law; clarifying municipal authority to arrest, convict and punish individuals for certain firearms offenses authorized by code and federal law; removing the grandfather clause excepting certain municipal ordinances limiting the purchase, possession, transfer,

ownership, carrying, transporting, selling or storing of guns or ammunition from the general provision prohibiting such ordinances; defining terms; clarifying municipalities' authority to regulate possession and carrying of firearms; permitting municipalities to enact and enforce certain ordinances relating to limiting possession of firearms in municipal buildings and on municipal property; permitting persons to store firearms in vehicles on public property under certain circumstances; creating absolute defenses to a violation of municipal firearm ordinances; requiring posting of certain signs; specifying that private redress for violations may be brought under chapter fifty-three of this code and may include reasonable attorneys fees and costs; excluding municipalities from the use of section fourteen, article seven, chapter sixty-one of this code; and clarifying that municipalities cannot prohibit the otherwise lawful carrying of firearms on municipal streets and sidewalks except when a street or sidewalk is temporarily closed to traffic for purposes of municipally authorized events of limited duration.

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; and that §8-12-5 and §8-12-5a of said code be amended and reenacted, all 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 four participating municipalities
28 pursuant to the initial Municipal Home Rule Pilot Program are
29 hereby authorized and may remain in effect until the ordinances
30 are repealed, but are null and void if amended and such
31 amendment is not approved by the Municipal Home Rule Board:
32 *Provided*, That any ordinance enacting a municipal occupation
33 tax is hereby null and void.

34 (c) *Authorizing participation.* —

35 (1) Commencing July 1, 2013, twenty Class I, Class II, Class
36 III and/or Class IV municipalities that are current in payment of
37 all state fees may participate in the Municipal Home Rule Pilot
38 Program pursuant to the provisions of this section.

39 (2) The four municipalities participating in the pilot program
40 on July 1, 2012, are hereby authorized to continue in the pilot
41 program and may amend current written plans and/or submit
42 new written plans in accordance with the provisions of this
43 section.

44 (3) If any of the four municipalities participating in the pilot
45 program on July 1, 2012, do not want to participate in the pilot
46 program, then on or before June 1, 2014, the municipality must
47 submit a written letter to the board indicating the municipality's
48 intent not to participate and the board may choose another
49 municipality to fill the vacancy: *Provided*, That if a municipality
50 chooses not to participate further in the pilot program, its
51 ordinances enacted pursuant to the Municipal Home Rule Pilot
52 Program are hereby authorized and may remain in effect until
53 the ordinances are repealed, but are null and void if amended:
54 *Provided, however*, That any ordinance enacting a municipal
55 occupation tax is null and void.

56 (d) *Municipal Home Rule Board.* — The Municipal Home
57 Rule Board is hereby continued. The board members serving on
58 the board on July 1, 2012, may continue to serve, except that the
59 Chair of the Senate Committee on Government Organization and
60 the Chair of the House Committee on Government Organization
61 shall be ex officio nonvoting members. Effective July 1, 2013,
62 the Municipal Home Rule Board shall consist of the following
63 five voting members:

64 (1) The Governor, or a designee, who shall serve as chair;

65 (2) The Executive Director of the West Virginia
66 Development Office or a designee;

67 (3) One member representing the Business and Industry
68 Council, appointed by the Governor with the advice and consent
69 of the Senate;

70 (4) One member representing the largest labor organization
71 in the state, appointed by the Governor with the advice and
72 consent of the Senate; and

73 (5) One member representing the West Virginia Chapter of
74 the American Institute of Certified Planners, appointed by the
75 Governor with the advice and consent of the Senate.

76 (e) *Board's powers and duties.* — The Municipal Home
77 Rule Board has the following powers and duties:

78 (1) Review, evaluate, make recommendations and approve
79 or reject, by a majority vote of the board, each aspect of the
80 written plan submitted by a municipality;

81 (2) By a majority vote of the board, select, based on the
82 municipality's written plan, new Class I, Class II, Class III
83 and/or Class IV municipalities to participate in the Municipal
84 Home Rule Pilot Program;

85 (3) Review, evaluate, make recommendations and approve
86 or reject, by a majority vote of the board, the amendments to the
87 written plans submitted by municipalities;

88 (4) Approve or reject, by a majority vote of the board, each
89 ordinance submitted by a participating municipality pursuant to
90 its written plan or its amendments to the written plan;

91 (5) Consult with any agency affected by the written plans or
92 the amendments to the written plans; and

93 (6) Perform any other powers or duties necessary to
94 effectuate the provisions of this section.

95 (f) *Written plan.* — On or before June 1, 2014, a Class I,
96 Class II, Class III or Class IV municipality desiring to participate
97 in the Municipal Home Rule Pilot Program shall submit a
98 written plan to the board stating in detail the following:

99 (1) The specific laws, acts, resolutions, policies, rules or
100 regulations which prevent the municipality from carrying out its
101 duties in the most cost-efficient, effective and timely manner;

102 (2) The problems created by the laws, acts, resolutions,
103 policies, rules or regulations;

104 (3) The proposed solutions to the problems, including all
105 proposed changes to ordinances, acts, resolutions, rules and
106 regulations: *Provided*, That the specific municipal ordinance
107 instituting the solution does not have to be included in the
108 written plan; and

109 (4) A written opinion, by an attorney licensed to practice in
110 West Virginia, stating that the proposed written plan does not
111 violate the provisions of this section.

112 (g) *Public hearing on written plan.* — Prior to submitting its
113 written plan to the board, the municipality shall:

114 (1) Hold a public hearing on the written plan;

115 (2) Provide notice at least thirty days prior to the public
116 hearing by a Class II legal advertisement;

117 (3) Make a copy of the written plan available for public
118 inspection at least thirty days prior to the public hearing; and

119 (4) After the public hearing, adopt an ordinance authorizing
120 the municipality to submit a written plan to the Municipal Home
121 Rule Board after the proposed ordinance has been read two
122 times.

123 (h) *Selection of municipalities.* — On or after June 1, 2014,
124 by a majority vote, the Municipal Home Rule Board may select
125 from the municipalities that submitted written plans and were
126 approved by the board by majority vote, new Class I, Class II,
127 Class III and/or Class IV municipalities to participate in the
128 Municipal Home Rule Pilot Program.

129 (i) *Ordinance, act, resolution, rule or regulation.* — After
130 being selected to participate in the Municipal Home Rule Pilot
131 Program and prior to enacting an ordinance, act, resolution, rule
132 or regulation based on the written plan, the municipality shall:

133 (1) Hold a public hearing on the proposed ordinance, act,
134 resolution, rule or regulation;

135 (2) Provide notice at least thirty days prior to the public
136 hearing by a Class II legal advertisement;

137 (3) Make a copy of the proposed ordinance, act, resolution,
138 rule or regulation available for public inspection at least thirty
139 days prior to the public hearing;

140 (4) After the public hearing, submit the comments, either in
141 audio or written form, to the Municipal Home Rule Board;

142 (5) Obtain approval, from the Municipal Home Rule Board
143 by a majority vote, for the proposed ordinance, act, resolution,
144 rule or regulation; and

145 (6) After obtaining approval from the Municipal Home Rule
146 Board, read the proposed ordinance, act, resolution, rule or
147 regulation at least two times.

148 (j) *Powers and duties of municipalities.* — The
149 municipalities participating in the Municipal Home Rule Pilot
150 Program have the authority to pass an ordinance, act, resolution,

151 rule or regulation, under the provisions of this section, that is not
152 contrary to:

153 (1) Environmental law;

154 (2) Bidding on government construction and other contracts;

155 (3) The Freedom of Information Act;

156 (4) The Open Governmental Proceedings Act;

157 (5) Wages for construction of public improvements;

158 (6) The provisions of this section;

159 (7) The provisions of section five-a, article twelve of this
160 chapter; and

161 (8) The municipality's written plan.

162 (k) *Prohibited acts.* — The municipalities participating in
163 the Municipal Home Rule Pilot Program do not have the
164 authority to pass an ordinance, act, resolution, rule or regulation,
165 under the provisions of this section, pertaining to:

166 (1) The Constitution of the United States or West Virginia;

167 (2) Federal law or crimes and punishment;

168 (3) Chapters sixty-a, sixty-one and sixty-two of this code or
169 state crimes and punishment;

170 (4) Pensions or retirement plans;

171 (5) Annexation;

172 (6) Taxation: *Provided*, That a participating municipality
173 may enact a municipal sales tax up to one percent if it reduces or

174 eliminates its municipal business and occupation tax: *Provided*,
175 *however*, That if a municipality subsequently reinstates or raises
176 the municipal business and occupation tax it previously reduced
177 or eliminated under the Municipal Home Rule Pilot Program, it
178 shall eliminate the municipal sales tax enacted under the
179 Municipal Home Rule Pilot Program: *Provided further*, That
180 any municipality that imposes a municipal sales tax pursuant to
181 this section shall use the services of the Tax Commissioner to
182 administer, enforce and collect the tax in the same manner as the
183 state consumers sales and service tax and use tax under the
184 provisions of articles fifteen, fifteen-a and fifteen-b, chapter
185 eleven of this code and all applicable provisions of the
186 streamlined sales and use tax agreement: *And provided further*,
187 That such tax will not apply to the sale of motor fuel or motor
188 vehicles;

189 (7) Tax increment financing;

190 (8) Extraction of natural resources;

191 (9) Persons or property outside the boundaries of the
192 municipality: *Provided*, That this prohibition under the
193 Municipal Home Rule Pilot Program does not affect a
194 municipality's powers outside its boundary lines under other
195 sections of this chapter, other chapters of this code or court
196 decisions;

197 (10) Marriage and divorce laws; and

198 (11) An occupation tax, fee or assessment payable by a
199 nonresident of a municipality.

200 (l) *Amendments to written plans.* — A municipality selected
201 to participate in the Municipal Home Rule Pilot Program may
202 amend its written plan at any time.

203 (m) *Reporting requirements.* — Commencing December 1,
204 2015, and each year thereafter, each participating municipality
205 shall give a progress report to the Municipal Home Rule Board
206 and commencing January 1, 2016, and each year thereafter, the
207 Municipal Home Rule Board shall give a summary report of all
208 the participating municipalities to the Joint Committee on
209 Government and Finance.

210 (n) *Performance Evaluation and Review Division review.*
211 —Before January 1, 2019, the Performance Evaluation and
212 Review Division of the Legislative Auditor's office shall
213 conduct a performance review on the pilot program and the
214 participating municipalities. The review shall include the
215 following:

216 (1) An evaluation of the effectiveness of expanded home rule
217 on the participating municipalities;

218 (2) A recommendation as to whether the expanded home rule
219 should be continued, reduced, expanded or terminated;

220 (3) A recommendation as to whether any legislation is
221 necessary; and

222 (4) Any other issues considered relevant.

223 (o) *Termination of the pilot program.* — The Municipal
224 Home Rule Pilot Program terminates on July 1, 2019. No
225 ordinance, act, resolution, rule or regulation may be enacted by
226 a participating municipality after July 1, 2019, pursuant to the
227 provisions of this section. An ordinance, act, resolution, rule or
228 regulation enacted by a participating municipality under the
229 provisions of this section during the period of the Municipal
230 Home Rule Pilot Program shall continue in full force and effect
231 until repealed, but is null and void if it is amended and such
232 amendment is not approved by the Municipal Home Rule Board.

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

**§8-12-5. General powers of every municipality and the governing
body thereof.**

1 In addition to the powers and authority granted by: (i) The
2 Constitution of this state; (ii) other provisions of this chapter;
3 (iii) other general law; and (iv) any charter, and to the extent not
4 inconsistent or in conflict with any of the foregoing except
5 special legislative charters, every municipality and the governing
6 body thereof shall have plenary power and authority therein by
7 ordinance or resolution, as the case may require, and by
8 appropriate action based thereon:

9 (1) To lay off, establish, construct, open, alter, curb, recurb,
10 pave or repave and keep in good repair, or vacate, discontinue
11 and close, streets, avenues, roads, alleys, ways, sidewalks, drains
12 and gutters, for the use of the public, and to improve and light
13 the same, and have them kept free from obstructions on or over
14 them which have not been authorized pursuant to the succeeding
15 provisions of this subdivision; and, subject to such terms and
16 conditions as the governing body shall prescribe, to permit,
17 without in any way limiting the power and authority granted by
18 the provisions of article sixteen of this chapter, any person to
19 construct and maintain a passageway, building or other structure
20 overhanging or crossing the airspace above a public street,
21 avenue, road, alley, way, sidewalk or crosswalk, but before any
22 permission for any person to construct and maintain a
23 passageway, building or other structure overhanging or crossing
24 any airspace is granted, a public hearing thereon shall be held by
25 the governing body after publication of a notice of the date, time,

26 place and purpose of the public hearing has been published as a
27 Class I legal advertisement in compliance with the provisions of
28 article three, chapter fifty-nine of this code and the publication
29 area for the publication shall be the municipality: *Provided*, That
30 any permit so granted shall automatically cease and terminate in
31 the event of abandonment and nonuse thereof for the purposes
32 intended for a period of ninety days, and all rights therein or
33 thereto shall revert to the municipality for its use and benefit;

34 (2) To provide for the opening and excavation of streets,
35 avenues, roads, alleys, ways, sidewalks, crosswalks and public
36 places belonging to the municipality and regulate the conditions
37 under which any such opening may be made;

38 (3) To prevent by proper penalties the throwing, depositing
39 or permitting to remain on any street, avenue, road, alley, way,
40 sidewalk, square or other public place any glass, scrap iron,
41 nails, tacks, wire, other litter or any offensive matter or anything
42 likely to injure the feet of individuals or animals or the tires of
43 vehicles;

44 (4) To regulate the use of streets, avenues, roads, alleys,
45 ways, sidewalks, crosswalks and public places belonging to the
46 municipality, including the naming or renaming thereof, and to
47 consult with local postal authorities, the Division of Highways
48 and the directors of county emergency communications centers
49 to assure uniform, nonduplicative addressing on a permanent
50 basis;

51 (5) To regulate the width of streets, avenues and roads, and,
52 subject to the provisions of article eighteen of this chapter, to
53 order the sidewalks, footways and crosswalks to be paved,
54 repaved, curbed or recurbed and kept in good order, free and
55 clean, by the owners or occupants thereof or of the real property
56 next adjacent thereto;

57 (6) To establish, construct, alter, operate and maintain, or
58 discontinue, bridges, tunnels and ferries and approaches thereto;

59 (7) To provide for the construction and maintenance of water
60 drains, the drainage of swamps or marshlands and drainage
61 systems;

62 (8) To provide for the construction, maintenance and
63 covering over of watercourses;

64 (9) To control and administer the waterfront and waterways
65 of the municipality and to acquire, establish, construct, operate
66 and maintain and regulate flood control works, wharves and
67 public landings, warehouses and all adjuncts and facilities for
68 navigation and commerce and the utilization of the waterfront
69 and waterways and adjacent property;

70 (10) To prohibit the accumulation and require the disposal
71 of garbage, refuse, debris, wastes, ashes, trash and other similar
72 accumulations whether on private or public property: *Provided,*
73 That, in the event the municipality annexes an area which has
74 been receiving solid waste collection services from a certificated
75 solid waste motor carrier, the municipality and the solid waste
76 motor carrier may negotiate an agreement for continuation of the
77 private solid waste motor carrier services for a period of time,
78 not to exceed three years, during which time the certificated
79 solid waste motor carrier may continue to provide exclusive
80 solid waste collection services in the annexed territory;

81 (11) To construct, establish, acquire, equip, maintain and
82 operate incinerator plants and equipment and all other facilities
83 for the efficient removal and destruction of garbage, refuse,
84 wastes, ashes, trash and other similar matters;

85 (12) To regulate or prohibit the purchase or sale of articles
86 intended for human use or consumption which are unfit for use

87 or consumption, or which may be contaminated or otherwise
88 unsanitary;

89 (13) To prevent injury or annoyance to the public or
90 individuals from anything dangerous, offensive or unwholesome;

91 (14) To regulate the keeping of gunpowder and other
92 combustibles;

93 (15) To make regulations guarding against danger or damage
94 by fire;

95 (16) To arrest, convict and punish any individual for
96 carrying about his or her person any revolver or other pistol,
97 dirk, bowie knife, razor, slingshot, billy, metallic or other false
98 knuckles or any other dangerous or other deadly weapon of like
99 kind or character: *Provided*, That with respect to any firearm a
100 municipality may only arrest, convict and punish someone if
101 they are in violation of an ordinance authorized by subsection
102 five-a of this article, a state law proscribing certain conduct with
103 a firearm or applicable federal law;

104 (17) To arrest, convict and punish any person for importing,
105 printing, publishing, selling or distributing any pornographic
106 publications;

107 (18) To arrest, convict and punish any person for keeping a
108 house of ill fame, or for letting to another person any house or
109 other building for the purpose of being used or kept as a house
110 of ill fame, or for knowingly permitting any house owned by him
111 or her or under his or her control to be kept or used as a house of
112 ill fame, or for loafing, boarding or loitering in a house of ill
113 fame, or frequenting same;

114 (19) To prevent and suppress conduct and practices which
115 are immoral, disorderly, lewd, obscene and indecent;

116 (20) To prevent the illegal sale of intoxicating liquors,
117 drinks, mixtures and preparations;

118 (21) To arrest, convict and punish any individual for driving
119 or operating a motor vehicle while intoxicated or under the
120 influence of liquor, drugs or narcotics;

121 (22) To arrest, convict and punish any person for gambling
122 or keeping any gaming tables, commonly called "A, B, C," or
123 "E, O," table or faro bank or keno table, or table of like kind,
124 under any denomination, whether the gaming table be played
125 with cards, dice or otherwise, or any person who shall be a
126 partner or concerned in interest, in keeping or exhibiting the
127 table or bank, or keeping or maintaining any gaming house or
128 place, or betting or gambling for money or anything of value;

129 (23) To provide for the elimination of hazards to public
130 health and safety and to abate or cause to be abated anything
131 which in the opinion of a majority of the governing body is a
132 public nuisance;

133 (24) To license, or for good cause to refuse to license in a
134 particular case, or in its discretion to prohibit in all cases, the
135 operation of pool and billiard rooms and the maintaining for hire
136 of pool and billiard tables notwithstanding the general law as to
137 state licenses for any such business and the provisions of section
138 four, article thirteen of this chapter; and when the municipality,
139 in the exercise of its discretion, refuses to grant a license to
140 operate a pool or billiard room, mandamus may not lie to compel
141 the municipality to grant the license unless it shall clearly appear
142 that the refusal of the municipality to grant a license is
143 discriminatory or arbitrary; and in the event that the municipality
144 determines to license any business, the municipality has plenary
145 power and authority and it shall be the duty of its governing
146 body to make and enforce reasonable ordinances regulating the
147 licensing and operation of the businesses;

148 (25) To protect places of divine worship and to preserve
149 peace and order in and about the premises where held;

150 (26) To regulate or prohibit the keeping of animals or fowls
151 and to provide for the impounding, sale or destruction of animals
152 or fowls kept contrary to law or found running at large;

153 (27) To arrest, convict and punish any person for cruelly,
154 unnecessarily or needlessly beating, torturing, mutilating, killing,
155 or overloading or overdriving or willfully depriving of necessary
156 sustenance any domestic animal;

157 (28) To provide for the regular building of houses or other
158 structures, for the making of division fences by the owners of
159 adjacent premises and for the drainage of lots by proper drains
160 and ditches;

161 (29) To provide for the protection and conservation of shade
162 or ornamental trees, whether on public or private property, and
163 for the removal of trees or limbs of trees in a dangerous
164 condition;

165 (30) To prohibit with or without zoning the location of
166 occupied house trailers or mobile homes in certain residential
167 areas;

168 (31) To regulate the location and placing of signs, billboards,
169 posters and similar advertising;

170 (32) To erect, establish, construct, acquire, improve,
171 maintain and operate a gas system, a waterworks system, an
172 electric system or sewer system and sewage treatment and
173 disposal system, or any combination of the foregoing (subject to
174 all of the pertinent provisions of articles nineteen and twenty of
175 this chapter and particularly to the limitations or qualifications
176 on the right of eminent domain set forth in articles nineteen and
177 twenty), within or without the corporate limits of the

178 municipality, except that the municipality may not erect any
179 system partly without the corporate limits of the municipality to
180 serve persons already obtaining service from an existing system
181 of the character proposed and where the system is by the
182 municipality erected, or has heretofore been so erected, partly
183 within and partly without the corporate limits of the
184 municipality, the municipality has the right to lay and collect
185 charges for service rendered to those served within and those
186 served without the corporate limits of the municipality and to
187 prevent injury to the system or the pollution of the water thereof
188 and its maintenance in a healthful condition for public use within
189 the corporate limits of the municipality;

190 (33) To acquire watersheds, water and riparian rights, plant
191 sites, rights-of-way and any and all other property and
192 appurtenances necessary, appropriate, useful, convenient or
193 incidental to any system, waterworks or sewage treatment and
194 disposal works, as aforesaid, subject to all of the pertinent
195 provisions of articles nineteen and twenty of this chapter;

196 (34) To establish, construct, acquire, maintain and operate
197 and regulate markets and prescribe the time of holding the same;

198 (35) To regulate and provide for the weighing of articles sold
199 or for sale;

200 (36) To establish, construct, acquire, maintain and operate
201 public buildings, municipal buildings or city halls, auditoriums,
202 arenas, jails, juvenile detention centers or homes, motor vehicle
203 parking lots or any other public works;

204 (37) To establish, construct, acquire, provide, equip,
205 maintain and operate recreational parks, playgrounds and other
206 recreational facilities for public use and in this connection also
207 to proceed in accordance with the provisions of article two,
208 chapter ten of this code;

209 (38) To establish, construct, acquire, maintain and operate a
210 public library or museum or both for public use;

211 (39) To provide for the appointment and financial support of
212 a library board in accordance with the provisions of article one,
213 chapter ten of this code;

214 (40) To establish and maintain a public health unit in
215 accordance with the provisions of section two, article two,
216 chapter sixteen of this code, which unit shall exercise its powers
217 and perform its duties subject to the supervision and control of
218 the West Virginia Board of Health and State Bureau for Public
219 Health;

220 (41) To establish, construct, acquire, maintain and operate
221 hospitals, sanitarians and dispensaries;

222 (42) To acquire, by purchase, condemnation or otherwise,
223 land within or near the corporate limits of the municipality for
224 providing and maintaining proper places for the burial of the
225 dead and to maintain and operate the same and regulate
226 interments therein upon terms and conditions as to price and
227 otherwise as may be determined by the governing body and, in
228 order to carry into effect the authority, the governing body may
229 acquire any cemetery or cemeteries already established;

230 (43) To exercise general police jurisdiction over any territory
231 without the corporate limits owned by the municipality or over
232 which it has a right-of-way;

233 (44) To protect and promote the public morals, safety,
234 health, welfare and good order;

235 (45) To adopt rules for the transaction of business and the
236 government and regulation of its governing body;

237 (46) Except as otherwise provided, to require and take bonds
238 from any officers, when considered necessary, payable to the

239 municipality, in its corporate name, with such sureties and in a
240 penalty as the governing body may see fit, conditioned upon the
241 faithful discharge of their duties;

242 (47) To require and take from the employees and contractors
243 such bonds in a penalty, with such sureties and with such
244 conditions, as the governing body may see fit;

245 (48) To investigate and inquire into all matters of concern to
246 the municipality or its inhabitants;

247 (49) To establish, construct, require, maintain and operate
248 such instrumentalities, other than free public schools, for the
249 instruction, enlightenment, improvement, entertainment,
250 recreation and welfare of the municipality's inhabitants as the
251 governing body may consider necessary or appropriate for the
252 public interest;

253 (50) To create, maintain and operate a system for the
254 enumeration, identification and registration, or either, of the
255 inhabitants of the municipality and visitors thereto, or the classes
256 thereof as may be considered advisable;

257 (51) To require owners, residents or occupants of
258 factory-built homes situated in a factory-built rental home
259 community with at least ten factory-built homes, to visibly post
260 the specific numeric portion of the address of each factory-built
261 home on the immediate premises of the factory-built home of
262 sufficient size to be visible from the adjoining street: *Provided,*
263 That in the event no numeric or other specific designation of an
264 address exists for a factory-built home subject to the
265 authorization granted by this subdivision, the municipality has
266 the authority to provide a numeric or other specific designation
267 of an address for the factory-built home and require that it be
268 posted in accordance with the authority otherwise granted by this
269 section.

270 (52) To appropriate and expend not exceeding twenty-five
271 cents per capita per annum for advertising the municipality and
272 the entertainment of visitors;

273 (53) To conduct programs to improve community relations
274 and public relations generally and to expend municipal revenue
275 for such purposes;

276 (54) To reimburse applicants for employment by the
277 municipality for travel and other reasonable and necessary
278 expenses actually incurred by the applicants in traveling to and
279 from the municipality to be interviewed;

280 (55) To provide revenue for the municipality and appropriate
281 the same to its expenses;

282 (56) To create and maintain an employee benefits fund
283 which may not exceed one tenth of one percent of the annual
284 payroll budget for general employee benefits and which is set up
285 for the purpose of stimulating and encouraging employees to
286 develop and implement cost-saving ideas and programs and to
287 expend moneys from the fund for these purposes;

288 (57) To enter into reciprocal agreements with governmental
289 subdivisions or agencies of any state sharing a common border
290 for the protection of people and property from fire and for
291 emergency medical services and for the reciprocal use of
292 equipment and personnel for these purposes;

293 (58) To provide penalties for the offenses and violations of
294 law mentioned in this section, subject to the provisions of section
295 one, article eleven of this chapter, and such penalties may not
296 exceed any penalties provided in this chapter and chapter
297 sixty-one of this code for like offenses and violations; and

298 (59) To participate in a purchasing card program for local
299 governments authorized and administered by the State Auditor
300 as an alternative payment method.

§8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale and storage of certain weapons and ammunition.

1 (a) Except as provided by the provisions of this section and
2 the provisions of section five of this article, neither a
3 municipality nor the governing body of any municipality may,
4 by ordinance or otherwise, limit the right of any person to
5 purchase, possess, transfer, own, carry, transport, sell or store
6 any revolver, pistol, rifle or shotgun or any ammunition or
7 ammunition components to be used therewith nor to so regulate
8 the keeping of gunpowder so as to directly or indirectly prohibit
9 the ownership of the ammunition in any manner inconsistent
10 with or in conflict with state law.

11 (b) For the purposes of this section:

12 (1) "Municipally owned or operated building" means any
13 building that is used for the business of the municipality, such as
14 a courthouse, city hall, convention center, administrative
15 building or other similar municipal building used for a municipal
16 purpose permitted by state law: *Provided*, That "municipally
17 owned or operated building" does not include a building owned
18 by a municipality that is leased to a private entity where the
19 municipality primarily serves as a property owner receiving
20 rental payments.

21 (2) "Municipally owned recreation facility" means any
22 municipal swimming pool, recreation center, sports facility,
23 facility housing an after-school program or other similar facility
24 where children are regularly present.

25 (c)(1) A municipality may enact and enforce an ordinance or
26 ordinances that prohibit or regulate the carrying or possessing of
27 a firearm in municipally owned or operated buildings.

28 (2) A municipality may enact and enforce an ordinance or
29 ordinances that prohibit a person from carrying or possessing a
30 firearm openly or that is not lawfully concealed in a municipally
31 owned recreation facility: *Provided*, That a municipality may not
32 prohibit a person with a valid concealed handgun permit from
33 carrying an otherwise lawfully possessed firearm into a
34 municipally owned recreation facility and securely storing the
35 firearm out of view and access to others during their time at the
36 municipally owned recreation facility.

37 (3) A person may keep an otherwise lawfully possessed
38 firearm in a motor vehicle in municipal public parking facilities
39 if the vehicle is locked and the firearm is out of view.

40 (4) A municipality may not prohibit or regulate the carrying
41 or possessing of a firearm on municipally owned or operated
42 property other than municipally owned or operated buildings and
43 municipally owned recreation facilities pursuant to subdivisions
44 (1) and (2) of this section: *Provided*, That a municipality may
45 prohibit persons who do not have a valid concealed handgun
46 license from carrying or possessing a firearm on municipally
47 owned or operated property.

48 (d) It shall be an absolute defense to an action for an alleged
49 violation of an ordinance authorized by this section prohibiting
50 or regulating the possession of a firearm that the person: (1)
51 Upon being requested to do so, left the premises with the firearm
52 or temporarily relinquished the firearm in response to being
53 informed that his or her possession of the firearm was contrary
54 to municipal ordinance; and (2) but for the municipal ordinance
55 the person was lawfully in possession of the firearm.

56 (e) Any municipality that enacts an ordinance regulating or
57 prohibiting the carrying or possessing of a firearm pursuant to
58 subsection (c) of this section shall prominently post a clear
59 statement at each entrance to all applicable municipally owned

60 or operated buildings or municipally owned recreation facilities
61 setting forth the terms of the regulation or prohibition.

62 (f) Redress for an alleged violation of this section may be
63 sought through the provisions of chapter fifty-three of this code,
64 which may include the awarding of reasonable attorneys fees and
65 costs.

66 (g) Upon the effective date of this section, section fourteen,
67 article seven, chapter sixty-one of this code is inapplicable to
68 municipalities. For the purposes of that section, municipalities
69 may not be considered a person charged with the care, custody
70 and control of real property.

71 (h) This section does not:

72 (1) Impair the authority of any municipality, or the
73 governing body thereof, to enact any ordinance or resolution
74 respecting the power to arrest, convict and punish any individual
75 under the provisions of subdivision (16), section five of this
76 article or from enforcing any such ordinance or resolution;

77 (2) Authorize municipalities to restrict the carrying or
78 possessing of firearms, which are otherwise lawfully possessed,
79 on public streets and sidewalks of the municipality: *Provided,*
80 That whenever pedestrian or vehicular traffic is prohibited in an
81 area of a municipality for the purpose of a temporary event of
82 limited duration, not to exceed fourteen days, which is
83 authorized by a municipality, a municipality may prohibit
84 persons who do not have a valid concealed handgun license from
85 possessing a firearm in the area where the event is held; or

86 (3) Limit the authority of a municipality to restrict the
87 commercial use of real estate in designated areas through
88 planning or zoning ordinances.

CHAPTER 130

(S. B. 547 - By Senators Palumbo, Beach and Nohe)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §8-5-7 of the Code of West Virginia, 1931, as amended, relating to increasing or decreasing the number of municipal wards or election districts and council members.

Be it enacted by the Legislature of West Virginia:

That §8-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION
AND COMPENSATION OF OFFICERS;
GENERAL PROVISIONS RELATING TO
OFFICERS AND EMPLOYEES; ELECTIONS
AND PETITIONS GENERALLY; CONFLICT
OF INTEREST.**

**§8-5-7. Certain officers; wards or election districts; residency and
other requirements.**

1 (a) Unless otherwise provided in the charter of a
2 municipality, there shall be elected a mayor, a recorder and
3 council members, who together shall form the governing body
4 of the municipality.

5 (b) When a municipality has not been divided into wards or
6 election districts, there shall be at least five council members,
7 but when the municipality has been divided into wards or

8 election districts, the governing body may, by ordinance,
9 determine the number of council members to be elected from
10 each ward or election district. When it is considered necessary,
11 the governing body may, by ordinance, increase or decrease the
12 number of wards or election districts and change the boundaries
13 thereof, the wards or election districts to be made as nearly equal
14 as may be, in population, and when the municipality is divided
15 into wards or election districts, or there is an increase or decrease
16 in the number of wards or election districts as aforesaid, the
17 governing body may increase or decrease the number of council
18 members and, in the case of an increase in the number of council
19 members, direct an election to be held at the next regular
20 municipal election in the additional ward or wards or election
21 district or districts so that each ward or election district may
22 have its full number of council members residing therein and
23 may have equal representation on the governing body. When a
24 municipality has been divided into wards or election districts, the
25 governing body may, by ordinance, also provide for the election
26 of council members at large in addition to the council members
27 to be elected from each ward or election district. The provisions
28 of this subsection are applicable to any municipality except to
29 the extent otherwise provided in the charter of the municipality.

30 (c) Unless otherwise provided by charter provision or
31 ordinance, the mayor, recorder and council members must be
32 residents of the municipality and must be qualified voters
33 entitled to vote for members of its governing body. A city
34 manager in a manager form of government need only be a
35 resident of the city at the time of his or her appointment.

CHAPTER 131

**(Com. Sub. for S. B. 600 - By Senators Yost, Snyder, Miller,
Laird, Edgell and Fitzsimmons)**

[Passed March 6, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §8-12-16, §8-12-16a and §8-12-16c of the Code of West Virginia, 1931, as amended, all relating to the registration, maintenance and regulation of dwellings unfit for human habitation and vacant buildings and properties by municipal governments; defining terms; clarifying the parties responsible for compliance with municipal ordinances regarding these dwellings, buildings and properties; and authorizing municipalities to enact maintenance of vacant buildings and properties ordinances.

Be it enacted by the Legislature of West Virginia:

That §8-12-16, §8-12-16a and §8-12-16c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

**§8-12-16. Ordinances regulating the repair, closing, demolition,
etc., of dwellings or buildings unfit for human
habitation; procedures.**

- 1 (a) Plenary power and authority are hereby conferred upon
- 2 every municipality to adopt ordinances regulating the repair,

3 alteration or improvement, or the vacating and closing or
4 removal or demolition, or any combination thereof, of any
5 dwellings or other buildings unfit for human habitation due to
6 dilapidation, defects increasing the hazard of fire, accidents or
7 other calamities, lack of ventilation, light or sanitary facilities or
8 any other conditions prevailing in any dwelling or building,
9 whether used for human habitation or not, which would cause
10 such dwellings or other buildings to be unsafe, unsanitary,
11 dangerous or detrimental to the public safety or welfare.

12 (b) The governing body in formally adopting the ordinances
13 shall designate the enforcement agency, which shall consist of
14 the mayor, the municipal engineer or building inspector and one
15 member at large, to be selected by and to serve at the will and
16 pleasure of the mayor. The ranking health officer and fire chief
17 shall serve as ex officio members of the enforcement agency.

18 (c) Any ordinance adopted pursuant to the provisions of this
19 section must provide fair and equitable rules of procedure and
20 any other standards deemed necessary to guide the enforcement
21 agency, or its agents, in the investigation of dwelling or building
22 conditions, and in conducting hearings: *Provided*, That any
23 entrance upon premises for the purpose of making examinations
24 is made in a manner as to cause the least possible inconvenience
25 to the persons in possession.

26 (d) The governing body of every municipality has plenary
27 power and authority to adopt an ordinance requiring the owner
28 or owners of any dwelling or building under determination of the
29 State Fire Marshal, as provided in section twelve, article three,
30 chapter twenty-nine of this code, or under order of the
31 enforcement agency of the municipality, to pay for the costs of
32 repairing, altering or improving, or of vacating and closing,
33 removing or demolishing any dwelling or building.

34 (e) Every municipality:

35 (1) May file a lien against the real property in question for
36 an amount that reflects all costs incurred by the municipality for
37 repairing, altering or improving, or of vacating and closing,
38 removing or demolishing any dwelling or building; and

39 (2) May institute a civil action in a court of competent
40 jurisdiction against the landowner or other responsible party for
41 all costs incurred by the municipality with respect to the property
42 and for reasonable attorney fees and court costs incurred in the
43 prosecution of the action.

44 (f) Not less than ten days prior to instituting a civil action as
45 provided in this section, the governing body of the municipality
46 shall send notice to the landowner by certified mail, return
47 receipt requested, advising the landowner of the governing
48 body's intention to institute such action.

49 (g) The notice shall be sent to the most recent address of the
50 landowner of record in the office of the assessor of the county
51 where the subject property is located. If, for any reason, such
52 certified mail is returned without evidence of proper receipt
53 thereof, then in such event, the governing body shall cause a
54 Class III-0 legal advertisement to be published in a newspaper of
55 general circulation in the county wherein the subject property is
56 located and post notice on the front door or other conspicuous
57 location on the subject property.

58 (h) If any landowner desires to contest any demand brought
59 forth pursuant to this section, the landowner may seek relief in
60 a court of competent jurisdiction.

61 (i) For purposes of this section, "owner" or "landowner"
62 means a person who individually or jointly with others:

63 (1) Has legal title to the property, with or without actual
64 possession of the property;

65 (2) Has charge, care or control of the property as owner or
66 agent of the owner;

67 (3) Is an executor, administrator, trustee or guardian of the
68 estate of the owner;

69 (4) Is the agent of the owner for the purpose of managing,
70 controlling or collecting rents; or

71 (5) Is entitled to control or direct the management or
72 disposition of the property.

73 (j) All orders issued by the enforcement agency shall be
74 served in accordance with the law of this state concerning the
75 service of process in civil actions, and be posted in a
76 conspicuous place on the premises affected by the complaint or
77 order: *Provided*, That no ordinance may be adopted without
78 providing for the right to apply to the circuit court for a
79 temporary injunction restraining the enforcement agency
80 pending final disposition of the cause.

81 (k) In the event such application is made, a hearing thereon
82 shall be had within twenty days, or as soon thereafter as possible,
83 and the court shall enter such final order or decree as the law and
84 justice may require.

§8-12-16a. Registration of uninhabitable property.

1 (a) The governing body of a municipality may, by ordinance,
2 establish a property registration for any real property improved
3 by a structure that is uninhabitable and violates the applicable
4 building code adopted by the municipality. An owner of real
5 property subject to the registration shall be assessed a fee as
6 provided by the ordinance.

7 (b) The mayor of the municipality shall appoint a code
8 enforcement officer to investigate and determine whether real

9 property violates provisions of the applicable building code of
10 the municipality.

11 (c) After inspecting the property, if the officer determines
12 the property is uninhabitable and violates the applicable building
13 code, then:

14 (1) The officer shall post a written notice on the property
15 which shall include:

16 (A) An explanation of the violation(s);

17 (B) A description of the registration;

18 (C) The date the fee will be assessed;

19 (D) An explanation of how to be removed from the
20 registration;

21 (E) An explanation of the appeals process; and

22 (F) A statement that if the fee is not paid, then the property
23 is subject to forfeiture; and

24 (2) Within five business days of the inspection and the
25 posting of the property, the officer shall, by certified mail, send
26 a copy of the notice that was posted to the owner(s) of the
27 property at the last known address according to the county
28 property tax records.

29 (d) Within forty-five days of receipt of the notification by
30 the owner(s), the property owner may:

31 (1) Make and complete any repairs to the property that
32 violate the applicable building code; or

33 (2) Provide written information to the officer showing that
34 repairs are forthcoming in a reasonable period of time.

35 (e) For purposes of this section, "owner" or "property
36 owner" means a person who individually or jointly with others:

37 (1) Has legal title to the property, with or without actual
38 possession of the property;

39 (2) Has charge, care or control of the property as owner or
40 agent of the owner;

41 (3) Is an executor, administrator, trustee or guardian of the
42 estate of the owner;

43 (4) Is the agent of the owner for the purpose of managing,
44 controlling or collecting rents; or

45 (5) Is entitled to control or direct the management or
46 disposition of the property.

47 (f) After the repairs are made, the owner may request a
48 reinspection of the property to ensure compliance with the
49 applicable building code. If the officer finds the violations are
50 fixed, the owner is not subject to the registration and no fee will
51 be incurred.

52 (g) The officer may reinspect the property at any time to
53 determine where in the process the repairs fall.

54 (h) Within ninety days of receipt of the notification by the
55 owner(s), the property owner has the right to appeal the decision
56 of the officer to the enforcement agency, created in section
57 sixteen, article twelve of this chapter.

58 (i) If an appeal is not filed within ninety days, the property
59 is registered and the fee is assessed to the owner(s) on the date
60 specified in the notice. The notice of the fee shall be recorded in
61 the office of the clerk of the county commission of the county
62 where the property is located and if different, in the office of the
63 clerk of the county commission of the county where the property
64 is assessed for real property taxes.

65 (j) If the enforcement agency affirms the registration and
66 assessment of the registration fee, the property owner has the
67 right to appeal the decision of the enforcement agency to the
68 circuit court within thirty days of the decision. If the decision is
69 not appealed in a timely manner to the circuit court, then the
70 property is registered and the fee is assessed on the date
71 specified in the notice. The notice of the fee shall be recorded in
72 the office of the clerk of the county commission of the county
73 where the property is located and if different, in the office of the
74 clerk of the county commission of the county where the property
75 is assessed for real property taxes.

76 (k) A fee assessed under this section shall be recorded in the
77 same manner as a lien is recorded in the office of the clerk of the
78 county commission of the county.

79 (l) If the fee is paid, then the municipality shall record a
80 release of the fee in the office of the clerk of the county
81 commission of the county where the property is located and if
82 different, in the office of the clerk of the county commission of
83 the county where the property is assessed for real property taxes.

84 (m) If an owner fails to pay the fee, then the officer shall
85 annually post the written notice on the property and send the
86 written notice to the owner(s) by certified mail.

87 (n) If a registration fee remains delinquent for two years
88 from the date it was placed on record in the clerk of the county
89 commission in which the property is located and assessed, the
90 municipality may take action to receive the subject property by
91 means of forfeiture. Should the municipality take the steps
92 necessary to receive the subject property, the municipality then
93 becomes the owner of record and takes the property subject to all
94 liens and real and personal property taxes.

§8-12-16c. Registration of vacant buildings; registration fees; procedures for administration and enforcement.

1 (a) The governing body of a municipality shall have plenary
2 power and authority to establish by ordinance a vacant building
3 and property registration and maintenance program.

4 (b) For purposes of this section:

5 (1) "Owner" or "property owner" means a person who
6 individually or jointly with others:

7 (A) Has legal title to the property, with or without actual
8 possession of the property;

9 (B) Has charge, care or control of the property as owner or
10 agent of the owner;

11 (C) Is an executor, administrator, trustee or guardian of the
12 estate of the owner;

13 (D) Is the agent of the owner for the purpose of managing,
14 controlling or collecting rents; or

15 (E) Is entitled to control or direct the management or
16 disposition of the property.

17 (2) "Vacant building" means a building or other structure
18 that is unoccupied, or unsecured and occupied by one or more
19 unauthorized persons for an amount of time as determined by the
20 ordinance. A new building under construction or a building that
21 by definition is exempted by ordinance of the municipality, is
22 not deemed a vacant building. The governing body of a
23 municipality, on a case-by-case basis, upon request by the
24 property owner, shall exempt a vacant building from registration
25 upon a finding for good cause shown that the person will be
26 unable to occupy the building for a determinant period of time.

27 (3) "Vacant property" means a property on which no
28 building is erected and no routine activity occurs.

29 (c) An owner of real property subject to registration and
30 maintenance requirements may be charged a fee or fees as
31 provided by ordinance. The ordinance shall provide
32 administrative procedures for the administration and
33 enforcement of registration and payment and collection of
34 registration fees.

35 (d) The ordinance may require that when the owner of the
36 vacant building or property resides outside of the state that the
37 owner provide the name and address of a person who resides
38 within the state who is authorized to accept service of process
39 and notices of fees due under this section on behalf of the owner
40 and who is designated as a responsible, local party or agent for
41 the purposes of notification in the event of an emergency
42 affecting the public health, safety or welfare.

43 (e) The ordinance may authorize the municipality to institute
44 a civil action against the property owner and/or file a lien on real
45 property for unpaid and delinquent vacant building registration
46 fees. Before any lien is filed, the municipality shall give notice
47 to the property owner or owner's agent, by certified mail, return
48 receipt requested, that the municipality will file the lien unless
49 the delinquent fees are paid by a date stated in the notice, which
50 must be no less than thirty days from the date the notice is
51 received by the owner or the owner's agent, which shall be the
52 date of delivery shown on the signed certified mail return receipt
53 card. The ordinance may provide for alternative means of service
54 when service cannot be obtained by certified mail.

55 (f) The ordinance may require that the owner maintain the
56 vacant building or property to a standard deemed reasonable by
57 the governing body. The ordinance may include authority for the

58 municipality, following notice to the owner, to act to bring the
59 vacant building or property into compliance with the standard,
60 or otherwise eliminate the public nuisance caused by any
61 noncomplaint conditions: *Provided*, That nothing in this section
62 is to be interpreted to impose a duty, obligation or requirement
63 that a municipality must undertake such repairs, demolition or
64 maintenance measures which remain as obligations and
65 responsibilities of the owner. Cost of the repairs, demolition and
66 maintenance and related legal and administrative costs incurred
67 by the municipality are to be paid by the owner. Collection of
68 these costs may be enforced in civil proceedings against the
69 owner.

70 (g) The ordinance shall permit a property owner to challenge
71 any determination made pursuant to the ordinance. The
72 administrative procedures adopted pursuant to the ordinance
73 shall include the right to appeal to the circuit court of the county
74 in which the property is located.

75 (h) The governing body of a municipality shall deposit the
76 fee into a separate account, which shall be used to:

77 (1) Improve public safety efforts, especially for police and
78 fire personnel, who most often contend with the dangerous
79 situations manifested in vacant properties;

80 (2) Monitor and administer this section; and

81 (3) Repair, close or demolish a vacant structure as authorized
82 by section sixteen of this article.

CHAPTER 132

**(S. B. 485 - By Senators Kirkendoll, Beach, D. Hall, Miller,
Snyder, Barnes, Stollings and Plymale)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §22-13-7 of the Code of West Virginia, 1931, as amended, relating to permitting requirements under the Natural Streams Preservation Act; and exempting the Division of Highways under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §22-13-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. NATURAL STREAMS PRESERVATION ACT.

§22-13-7. When permits required; when permits not to be issued.

1 (a) It is unlawful for any person, until the department's
2 permit has been granted, to modify any protected stream or any
3 part of the stream. A permit may not be issued unless the work
4 proposed to be done under the permit:

5 (1) Will not materially alter or affect the free-flowing
6 characteristics of a substantial part of a protected stream or
7 streams;

8 (2) Is necessary to prevent an undue hardship; and

9 (3) Meets with the approval of the secretary.

10 (b) The Department of Transportation's Division of
11 Highways is not required to obtain a permit under this section
12 when it is repairing or replacing damaged bridges and that repair
13 or replacement requires the construction of temporary flow
14 diversions in the stream that will not permanently materially
15 alter or affect the free-flowing characteristics of a substantial
16 part of the stream, so long as boat passage remains available
17 during the entire period of bridge repair or replacement.

CHAPTER 133

**(Com. Sub. for H. B. 4012 - By Delegates P. Smith, R. Phillips,
Ellington, Ferro, Reynolds, Skinner and Storch)**

[Passed March 6, 2014; in effect July 1, 2014.]

[Approved by the Governor on March 28, 2014.]

AN ACT to repeal §29-4-3, §29-4-4, §29-4-5, §29-4-6, §29-4-7, §29-4-8, §29-4-12, §29-4-13, §29-4-14, §29-4-15 and §29-4-16 of the Code of West Virginia, 1931, as amended; to repeal §29C-1-101, §29C-1-102, §29C-1-103, §29C-1-104, §29C-1-105, §29C-1-106, §29C-1-107, §29C-2-201, §29C-2-202, §29C-2-203, §29C-2-204, §29C-2-205, §29C-2-206, §29C-2-207, §29C-2-208, §29C-2-301, §29C-3-101, §29C-3-102, §29C-4-101, §29C-4-102, §29C-4-103, §29C-4-104, §29C-4-201, §29C-4-202, §29C-4-203, §29C-4-301, §29C-4-401, §29C-4-402, §29C-4-403, §29C-4-404, §29C-4-405, §29C-5-101, §29C-5-102, §29C-5-103, §29C-5-104, §29C-6-101, §29C-6-102, §29C-6-103, §29C-6-201, §29C-6-202, §29C-6-203, §29C-6-204, §29C-7-101, §29C-7-201, §29C-7-202, §29C-8-101 and §29C-9-101 of said code; to repeal §39-1A-1, §39-1A-2, §39-1A-3, §39-1A-4, §39-1A-5, §39-1A-6, §39-1A-7, §39-1A-8 and §39-1A-9 of said code; to amend and reenact §39-1-4 and §39-1-5 of said code; to amend said code by adding

thereto a new article, designated §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6, §39-4-7, §39-4-8, §39-4-9, §39-4-10, §39-4-11, §39-4-12, §39-4-13, §39-4-14, §39-4-15, §39-4-16, §39-4-17, §39-4-18, §39-4-19, §39-4-20, §39-4-21, §39-4-22, §39-4-23, §39-4-24, §39-4-25, §39-4-26, §39-4-27, §39-4-28, §39-4-29, §39-4-30, §39-4-31, §39-4-32, §39-4-33, §39-4-34, §39-4-35 and §39-4-36; to amend and reenact §57-4-2 of said code; to amend and reenact §57-5-9 of said code; and to amend and reenact §59-1-2 of said code, all relating to the Revised Uniform Law on Notarial Acts; establishing the effective date of the article; establishing an operative date of enactment and the effect on existing law; establishing the authority to perform notarial acts; establishing requirements for certain notarial acts; requiring a personal appearance and the identification of an individual; authorizing the right to refuse to perform a notarial act; establishing instructions for obtaining a signature if an individual is unable to sign; setting forth who may perform a notarial act in this state; establishing notarial reciprocity with other states, any federally recognized Indian tribe, the federal government, and foreign states; requiring a certificate for a notarial act; authorizing short form certificates; requiring an official stamp and the maintenance and disposition of a stamping device; authorizing notaries public the option of selecting a technology for use in notarial acts on electronic records; establishing minimum qualifications and authorizing the commissioning of notaries public; providing grounds to deny, refuse to renew, revoke, suspend, or condition commissions of notaries public; requiring Secretary of State to maintain a database of notaries public; prohibiting certain acts; authorizing the validity of notarial acts; authorizing the Secretary of State to promulgate rules; authorizing the continuation of a commission in effect on the effective date of the act; providing that any notarial act performed before the effective date of the act is not invalidated by the act; providing for the uniformity of the application and construction of the act; clarifying the relationship to the Electronic Signatures in Global

and National Commerce Act; establishing maximum fees that may be charged by a notary public; commissioning notaries public for state and local government; establishing civil liability and criminal penalties; authorizing injunctive relief; authorizing the Secretary of State to investigate complaints; requiring the Secretary of State to maintain certain records; establishing an application fee; providing for the disposition of fees; repealing statutes regulating notaries public and commissioners including the Uniform Notary Act; repealing the Uniform Recognition of Acknowledgments Act; and removing obsolete references.

Be it enacted by the Legislature of West Virginia:

That §29-4-3, §29-4-4, §29-4-5, §29-4-6, §29-4-7, §29-4-8, §29-4-12, §29-4-13, §29-4-14, §29-4-15 and §29-4-16 of the Code of West Virginia, 1931, as amended, be repealed; that §29C-1-101, §29C-1-102, §29C-1-103, §29C-1-104, §29C-1-105, §29C-1-106, §29C-1-107, §29C-2-201, §29C-2-202, §29C-2-203, §29C-2-204, §29C-2-205, §29C-2-206, §29C-2-207, §29C-2-208, §29C-2-301, §29C-3-101, §29C-3-102, §29C-4-101, §29C-4-102, §29C-4-103, §29C-4-104, §29C-4-201, §29C-4-202, §29C-4-203, §29C-4-301, §29C-4-401, §29C-4-402, §29C-4-403, §29C-4-404, §29C-4-405, §29C-5-101, §29C-5-102, §29C-5-103, §29C-5-104, §29C-6-101, §29C-6-102, §29C-6-103, §29C-6-201, §29C-6-202, §29C-6-203, §29C-6-204, §29C-7-101, §29C-7-201, §29C-7-202, §29C-8-101 and §29C-9-101 of said code be repealed; that §39-1A-1, §39-1A-2, §39-1A-3, §39-1A-4, §39-1A-5, §39-1A-6, §39-1A-7, §39-1A-8 and §39-1A-9 of said code be repealed; that §39-1-4 and §39-1-5 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6, §39-4-7, §39-4-8, §39-4-9, §39-4-10, §39-4-11, §39-4-12, §39-4-13, §39-4-14, §39-4-15, §39-4-16, §39-4-17, §39-4-18, §39-4-19, §39-4-20, §39-4-21, §39-4-22, §39-4-23, §39-4-24, §39-4-25, §39-4-26, §39-4-27, §39-4-28, §39-4-29, §39-4-30, §39-4-31, §39-4-32, §39-4-33, §39-4-34, §39-4-35 and §39-4-36; that §57-4-2 of said code be amended and reenacted; that

§57-5-9 of said code be amended and reenacted and that §59-1-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.

§39-1-4. Form of certificate of acknowledgment.

1 The certificate of acknowledgment mentioned in the
2 preceding section may be in form or effect as follows:

3 State (territory or district) of, county of
4, to wit:

5 I,, recorder of said municipality; or I,, a
6 notary public of said county; or I,, a clerk of the
7 court of said county; (or other officer or person
8 authorized to take acknowledgments by section three of this
9 article, as the case may be), do certify that,
10 whose name (or names) is (or are) signed to the writing above
11 (or hereto annexed) bearing date on the day of,
12 20, has (or have) this day acknowledged the same before
13 me, in my said

14 Given under my hand this day of, 20

§39-1-5. Acknowledgment by husband and wife.

1 When a husband and wife have signed a writing purporting
2 to sell or convey real estate, the wife may acknowledge the same
3 together with, or separately from her husband. Either the
4 husband or the wife may sign and acknowledge the writing
5 before the other has signed or acknowledged it. If both
6 acknowledge the writing at the same time, the certificate of the
7 acknowledgments may be in form or effect as follows:

8 State (territory or district) of county of, to wit:

9 I,, a notary public of the said county of; or I,
10, clerk of the court or county of; (or other
11 officer or person authorized to take acknowledgments by section
12 three of this article, as the case may be),* do certify and
13, his or her wife whose names are signed to the writing
14 above (or hereto annexed) bearing date the day of,
15 20....., have this day acknowledged the same before me in my
16 said

17 Given under my hand this day of, 20.....

18 If the husband or wife acknowledge a deed or other writing
19 separately from the other, the certificate of acknowledgment
20 after the star in the foregoing form shall be in form or effect as
21 follows: do certify that, the wife of, (or the
22 husband of, as the case may be), whose name is signed to
23 the writing above (or hereto annexed) bearing date the day
24 of, 20, has this day acknowledged the same before me
25 in my said

26 Given under my hand this day of, 20

ARTICLE 4. REVISED UNIFORM LAW ON NOTARIAL ACTS.

§39-4-1. Short title.

1 This article may be cited as the Revised Uniform Law on
2 Notarial Acts.

§39-4-2. Definitions.

1 In this article:

2 (1) "Acknowledgment" means a declaration by an individual
3 before a notarial officer that the individual has signed a record

4 for the purpose stated in the record and, if the record is signed in
5 a representative capacity, that the individual signed the record
6 with proper authority and signed it as the act of the individual or
7 entity identified in the record.

8 (2) “Electronic” means relating to technology having
9 electrical, digital, magnetic, wireless, optical, electromagnetic or
10 similar capabilities.

11 (3) “Electronic signature” means an electronic symbol,
12 sound or process attached to or logically associated with a record
13 and executed or adopted by an individual with the intent to sign
14 the record.

15 (4) “In a representative capacity” means acting as:

16 (A) An authorized officer, agent, partner, trustee or other
17 representative for a person other than an individual;

18 (B) A public officer, personal representative, guardian or
19 other representative, in the capacity stated in a record;

20 (C) An agent or attorney-in-fact for a principal; or

21 (D) An authorized representative of another in any other
22 capacity.

23 (5) “Notarial act” means an act, whether performed with
24 respect to a tangible or electronic record, that a notarial officer
25 may perform under the law of this state. The term includes
26 taking an acknowledgment, administering an oath or affirmation,
27 taking a verification on oath or affirmation, witnessing or
28 attesting a signature, certifying or attesting a copy, and noting a
29 protest of a negotiable instrument.

30 (6) “Notarial officer” means a notary public or other
31 individual authorized to perform a notarial act.

32 (7) "Notary public" means an individual commissioned to
33 perform a notarial act by the West Virginia Secretary of State.

34 (8) "Official stamp" means a physical image affixed to or
35 embossed on a tangible record or an electronic image attached to
36 or logically associated with an electronic record.

37 (9) "Person" means an individual, corporation, business
38 trust, statutory trust, estate, trust, partnership, limited liability
39 company, association, joint venture, public corporation,
40 government or governmental subdivision, agency or
41 instrumentality, or any other legal or commercial entity.

42 (10) "Record" means information that is inscribed on a
43 tangible medium or that is stored in an electronic or other
44 medium and is retrievable in perceivable form.

45 (11) "Sign" means, with present intent to authenticate or
46 adopt a record:

47 (A) To execute or adopt a tangible symbol; or

48 (B) To attach to or logically associate with the record an
49 electronic symbol, sound or process.

50 (12) "Signature" means a tangible symbol or an electronic
51 signature that evidences the signing of a record.

52 (13) "Stamping device" means:

53 (A) A physical device capable of affixing to or embossing on
54 a tangible record an official stamp; or

55 (B) An electronic device or process capable of attaching to
56 or logically associating with an electronic record an official
57 stamp.

58 (14) “State” means a state of the United States, the District
59 of Columbia, Puerto Rico, the United States Virgin Islands or
60 any territory or insular possession subject to the jurisdiction of
61 the United States.

62 (15) “Verification on oath or affirmation” means a
63 declaration, made by an individual on oath or affirmation before
64 a notarial officer, that a statement in a record is true.

§39-4-3. Applicability; operative date of enactment; effect on existing law.

1 (a) This article applies to a notarial act performed on or after
2 July 1, 2014.

3 (b) The repeal of chapter twenty-nine-c of this code and the
4 repeal of articles four, chapter twenty-nine and one-a, chapter
5 thirty-nine of this code and the amendment and reenactment of
6 section two, article one, chapter fifty-nine of this code, pursuant
7 to the provisions of Enrolled House Bill No. 4012, as enacted by
8 the Legislature during the regular session, 2014, are operative on
9 June 30, 2014. The prior enactments of chapter twenty-nine-c;
10 articles four, chapter twenty-nine and one-a, chapter thirty-nine;
11 and section two, article one, chapter fifty-nine of this code,
12 whether amended and reenacted or repealed by the passage of
13 Enrolled House Bill No. 4012, have full force and effect until the
14 provisions of Enrolled House Bill No. 4012, are operative on
15 June 30, 2014, unless after the effective date of Enrolled House
16 Bill No. 4012, and prior to the operative date of June 30, 2014,
17 the provisions of Enrolled House Bill No. 4012, are otherwise
18 repealed or amended and reenacted.

§39-4-4. Authority to perform notarial act.

1 (a) A notarial officer may perform a notarial act authorized
2 by this article or by law of this state other than this article.

3 (b) A notarial officer may not perform a notarial act with
4 respect to a record to which the officer or the officer's spouse is
5 a party, or in which either of them has a direct beneficial interest,
6 financial or otherwise. A notarial act performed in violation of
7 this subsection is voidable.

§39-4-5. Requirements for certain notarial acts.

1 (a) A notarial officer who takes an acknowledgment of a
2 record shall determine, from personal knowledge or satisfactory
3 evidence of the identity of the individual, that the individual
4 appearing before the officer and making the acknowledgment
5 has the identity claimed and that the signature on the record is
6 the signature of the individual.

7 (b) A notarial officer who takes a verification of a statement
8 on oath or affirmation shall determine, from personal knowledge
9 or satisfactory evidence of the identity of the individual, that the
10 individual appearing before the officer and making the
11 verification has the identity claimed and that the signature on the
12 statement verified is the signature of the individual.

13 (c) A notarial officer who witnesses or attests to a signature
14 shall determine, from personal knowledge or satisfactory
15 evidence of the identity of the individual, that the individual
16 appearing before the officer and signing the record has the
17 identity claimed.

18 (d) A notarial officer who certifies or attests a copy of a
19 record or an item that was copied shall determine that the copy
20 is a full, true and accurate transcription or reproduction of the
21 record or item.

22 (e) A notarial officer who makes or notes a protest of a
23 negotiable instrument shall determine the matters set forth in
24 subsection (b), section five hundred five, article three, chapter
25 forty-six of this code.

§39-4-6. Personal appearance required.

1 If a notarial act relates to a statement made in or a signature
2 executed on a record, the individual making the statement or
3 executing the signature shall appear personally before the
4 notarial officer. An individual making the statement or executing
5 the signature does not appear personally if the appearance is by
6 video or audio technology, even if the video is synchronous.

§39-4-7. Identification of individual.

1 (a) A notarial officer has personal knowledge of the identity
2 of an individual appearing before the officer if the individual is
3 personally known to the officer through dealings sufficient to
4 provide reasonable certainty that the individual has the identity
5 claimed.

6 (b) A notarial officer has satisfactory evidence of the identity
7 of an individual appearing before the officer if the officer can
8 identify the individual:

9 (1) By means of:

10 (A) A passport, driver's license or government issued
11 nondriver identification card, which is current or expired not
12 more than three years before performance of the notarial act; or

13 (B) Another form of government identification issued to an
14 individual, which is current or expired not more than three years
15 before performance of the notarial act, contains the signature or
16 a photograph of the individual and is satisfactory to the officer;
17 or

18 (2) By a verification on oath or affirmation of a credible
19 witness personally appearing before the officer and known to the
20 officer or whom the officer can identify on the basis of a
21 passport, driver's license or government issued nondriver

22 identification card, which is current or expired not more than
23 three years before performance of the notarial act.

24 (c) A notarial officer may require an individual to provide
25 additional information or identification credentials necessary to
26 assure the officer of the identity of the individual.

§39-4-8. Authority to refuse to perform notarial act.

1 (a) A notarial officer may refuse to perform a notarial act if
2 the officer is not satisfied that:

3 (1) The individual executing the record is competent or has
4 the capacity to execute the record; or

5 (2) The individual's signature is knowingly and voluntarily
6 made.

7 (b) A notarial officer may refuse to perform a notarial act
8 unless refusal is prohibited by law other than this article.

§39-4-9. Signature if individual is unable to sign.

1 If an individual is physically unable to sign a record, the
2 individual may direct an individual other than the notarial officer
3 to sign the individual's name on the record. The notarial officer
4 shall insert "Signature affixed by (name of other individual) at
5 the direction of (name of individual)" or words of similar import.

§39-4-10. Notarial act in this state.

1 (a) A notarial act may be performed in this state by:

2 (1) A notary public of this state;

3 (2) A judge, clerk or deputy clerk of a court of this state; or

4 (3) Any other individual authorized to perform the specific
5 act by the law of this state.

6 (b) The signature and title of an individual performing a
7 notarial act in this state are prima facie evidence that the
8 signature is genuine and that the individual holds the designated
9 title.

10 (c) The signature and title of a notarial officer described in
11 subdivision (1) or (2), subsection (a) of this section, conclusively
12 establish the authority of the officer to perform the notarial act.

§39-4-11. Notarial act in another state.

1 (a) A notarial act performed in another state has the same
2 effect under the law of this state as if performed by a notarial
3 officer of this state, if the act performed in that state is
4 performed by:

5 (1) A notary public of that state;

6 (2) A judge, clerk or deputy clerk of a court of that state; or

7 (3) Any other individual authorized by the law of that state
8 to perform the notarial act.

9 (b) The signature and title of an individual performing a
10 notarial act in another state are prima facie evidence that the
11 signature is genuine and that the individual holds the designated
12 title.

13 (c) The signature and title of a notarial officer described in
14 subdivision (1) or (2), subsection (a) of this section, conclusively
15 establish the authority of the officer to perform the notarial act.

**§39-4-12. Notarial act under authority of federally recognized
Indian tribe.**

1 (a) A notarial act performed under the authority and in the
2 jurisdiction of a federally recognized Indian tribe has the same

3 effect as if performed by a notarial officer of this state, if the act
4 performed in the jurisdiction of the tribe is performed by:

5 (1) A notary public of the tribe;

6 (2) A judge, clerk or deputy clerk of a court of the tribe; or

7 (3) Any other individual authorized by the law of the tribe to
8 perform the notarial act.

9 (b) The signature and title of an individual performing a
10 notarial act under the authority of and in the jurisdiction of a
11 federally recognized Indian tribe are prima facie evidence that
12 the signature is genuine and that the individual holds the
13 designated title.

14 (c) The signature and title of a notarial officer described in
15 subdivision (1) or (2), subsection (a) of this section, conclusively
16 establish the authority of the officer to perform the notarial act.

§39-4-13. Notarial act under federal authority.

1 (a) A notarial act performed under federal law has the same
2 effect under the law of this state as if performed by a notarial
3 officer of this state, if the act performed under federal law is
4 performed by:

5 (1) A judge, clerk or deputy clerk of a court;

6 (2) An individual in military service or performing duties
7 under the authority of military service who is authorized to
8 perform notarial acts under federal law;

9 (3) An individual designated a notarizing officer by the
10 United States Department of State for performing notarial acts
11 overseas; or

12 (4) Any other individual authorized by federal law to
13 perform the notarial act.

14 (b) The signature and title of an individual acting under
15 federal authority and performing a notarial act are prima facie
16 evidence that the signature is genuine and that the individual
17 holds the designated title.

18 (c) The signature and title of an officer described in
19 subdivision (1), (2) or (3), subsection (a) of this section,
20 conclusively establish the authority of the officer to perform the
21 notarial act.

§39-4-14. Foreign notarial act.

1 (a) In this section, “foreign state” means a government other
2 than the United States, a state or a federally recognized Indian
3 tribe.

4 (b) If a notarial act is performed under authority and in the
5 jurisdiction of a foreign state or constituent unit of the foreign
6 state or is performed under the authority of a multinational or
7 international governmental organization, the act has the same
8 effect under the law of this state as if performed by a notarial
9 officer of this state.

10 (c) If the title of office and indication of authority to perform
11 notarial acts in a foreign state appears in a digest of foreign law
12 or in a list customarily used as a source for that information, the
13 authority of an officer with that title to perform notarial acts is
14 conclusively established.

15 (d) The signature and official stamp of an individual holding
16 an office described in subsection (c) of this section are prima
17 facie evidence that the signature is genuine and the individual
18 holds the designated title.

19 (e) An apostille in the form prescribed by the Hague
20 Convention of October 5, 1961, and issued by a foreign state
21 party to the Convention conclusively establishes that the

22 signature of the notarial officer is genuine and that the officer
23 holds the indicated office.

24 (f) A consular authentication issued by an individual
25 designated by the United States Department of State as a
26 notarizing officer for performing notarial acts overseas and
27 attached to the record with respect to which the notarial act is
28 performed conclusively establishes that the signature of the
29 notarial officer is genuine and that the officer holds the indicated
30 office.

§39-4-15. Certificate of notarial act.

1 (a) A notarial act must be evidenced by a certificate. The
2 certificate must:

3 (1) Be executed contemporaneously with the performance of
4 the notarial act;

5 (2) Be signed and dated by the notarial officer and, if the
6 notarial officer is a notary public, be signed in the same manner
7 as on file with the Secretary of State;

8 (3) Identify the jurisdiction in which the notarial act is
9 performed;

10 (4) Contain the title of office of the notarial officer; and

11 (5) If the notarial officer is a notary public, indicate the date
12 of expiration, if any, of the officer's commission.

13 (b) If a notarial act regarding a tangible record is performed
14 by a notary public, an official stamp must be affixed to the
15 certificate. If a notarial act is performed regarding a tangible
16 record by a notarial officer other than a notary public and the
17 certificate contains the information specified in subdivisions (2),
18 (3) and (4), subsection (a) of this section, an official stamp may

19 be affixed to the certificate. If a notarial act regarding an
20 electronic record is performed by a notarial officer and the
21 certificate contains the information specified in said
22 subdivisions, an official stamp may be attached to or logically
23 associated with the certificate.

24 (c) A certificate of a notarial act is sufficient if it meets the
25 requirements of subsections (a) and (b) and:

26 (1) Is in a short form set forth in section sixteen of this
27 article;

28 (2) Is in a form otherwise permitted by the law of this state;

29 (3) Is in a form permitted by the law applicable in the
30 jurisdiction in which the notarial act was performed; or

31 (4) Sets forth the actions of the notarial officer and the
32 actions are sufficient to meet the requirements of the notarial act
33 as provided in sections five, six and seven of this article or law
34 of this state other than this article.

35 (d) By executing a certificate of a notarial act, a notarial
36 officer certifies that the officer has complied with the
37 requirements and made the determinations specified in sections
38 four, five and six of this article.

39 (e) A notarial officer may not affix the officer's signature to,
40 or logically associate it with, a certificate until the notarial act
41 has been performed.

42 (f) If a notarial act is performed regarding a tangible record,
43 a certificate must be part of, or securely attached to, the record.
44 If a notarial act is performed regarding an electronic record, the
45 certificate must be affixed to or logically associated with, the
46 electronic record. If the Secretary of State has established
47 standards pursuant to section twenty-five of this article, for

48 attaching, affixing, or logically associating the certificate, the
49 process must conform to the standards.

§39-4-16. Short form certificates.

1 The following short form certificates of notarial acts are
2 sufficient for the purposes indicated, if completed with the
3 information required by subsections (a) and (b), section fifteen
4 of this article:

5 (1) For an acknowledgment in an individual capacity:

6 State of

7 County of

8 This record was acknowledged before me on [Date] by

9 [Name(s) of individual(s)]

10

11 Signature of notarial officer

12 Stamp

13

14 Title of office

15 My commission expires:

16 (2) For an acknowledgment in a representative capacity:

17 State of

18 County of

19 This record was acknowledged before me on [Date] by

20 [Name(s) of individual(s)] as

21 [Type of authority, such as officer or trustee]
22 of [Name of party on behalf of whom record
23 was executed].

24

25 Signature of notarial officer

26 Stamp

27

28 Title of office

29 My commission expires:

30 (3) For a verification on oath or affirmation:

31 State of

32 County of

33 Signed and sworn to (or affirmed) before me on (Date)
34 by [Name(s) of individual(s)
35 making statement]

36

37 Signature of notarial officer

38 Stamp

39

40 Title of office

41 My commission expires:

42 (4) For witnessing or attesting a signature:

43 State of

44 County of

45 Signed or attested before me on [Date] by
46 [Name(s) of individual(s) making
47 statement]

48

49 Signature of notarial officer

50 Stamp

51

52 Title of office

53 My commission expires:

54 (5) For certifying a copy of a record:

55 State of

56 County of

57 I certify that this is a true and correct copy of a record in the
58 possession of

59 Dated

60

61 Signature of notarial officer

62 Stamp

63

64 Title of office

65 My commission expires:

§39-4-17. Official stamp.

1 The official stamp of a notary public must:

2 (1) Include the notary public's name, address, jurisdiction,
3 commission expiration date and other information required by
4 the Secretary of State; and

5 (2) Be capable of being copied together with the record to
6 which it is affixed or attached or with which it is logically
7 associated.

§39-4-18. Stamping device.

1 (a) A notary public is responsible for the security of the
2 notary public's stamping device and may not allow another
3 individual to use the device to perform a notarial act. On
4 resignation from, or the revocation or expiration of, the notary
5 public's commission, or on the expiration of the date set forth in
6 the stamping device, the notary public shall disable the stamping
7 device by destroying, defacing, damaging, erasing or securing it
8 against use in a manner that renders it unusable. On the death or
9 adjudication of incompetency of a notary public, the notary
10 public's personal representative or guardian or any other person
11 knowingly in possession of the stamping device shall render it
12 unusable by destroying, defacing, damaging, erasing or securing
13 it against use in a manner that renders it unusable.

14 (b) If a notary public's stamping device is lost or stolen, the
15 notary public or the notary public's personal representative or
16 guardian shall notify promptly the Secretary of State on
17 discovering that the device is lost or stolen.

§39-4-19. Notification regarding performance of notarial act on electronic record, selection of technology.

1 (a) A notary public may select one or more tamper-evident
2 technologies to perform notarial acts with respect to electronic

3 records. A person may not require a notary public to perform a
4 notarial act with respect to an electronic record with a
5 technology that the notary public has not selected.

6 (b) Before a notary public performs the notary public's
7 initial notarial act with respect to an electronic record, a notary
8 public shall notify the Secretary of State that the notary public
9 will be performing notarial acts with respect to electronic
10 records and identify the technology the notary public intends to
11 use. If the Secretary of State has established standards for
12 approval of technology pursuant to section twenty-five of this
13 article, the technology must conform to the standards. If the
14 technology conforms to the standards, the Secretary of State
15 shall approve the use of the technology.

**§39-4-20. Commission as notary public; qualifications; no
immunity or benefit; disposition of fees.**

1 (a) An individual qualified under subsection (b) of this
2 section may apply to the Secretary of State for a commission as
3 a notary public. The applicant shall comply with and provide the
4 information required by rules promulgated by the Secretary of
5 State and pay any application fee.

6 (b) An applicant for a commission as a notary public must:

7 (1) Be at least eighteen years of age;

8 (2) Be a citizen or permanent legal resident of the United
9 States;

10 (3) Be a resident of or have a place of employment or
11 practice in this state;

12 (4) Be able to read and write English;

13 (5) Have a high school diploma or its equivalent; and

14 (6) Not be disqualified to receive a commission under
15 section twenty-three of this article.

16 (c) Before issuance of a commission as a notary public, an
17 applicant for the commission shall execute an oath of office and
18 submit it to the Secretary of State.

19 (d) Before issuance of a commission as a notary public, the
20 applicant for a commission shall submit to the Secretary of State
21 an assurance in the form of: (1) A surety bond or its functional
22 equivalent in the amount of \$1,000; or (2) certification that the
23 applicant is covered under a: (A) Professional liability insurance
24 policy; (B) an errors and omission insurance policy; (C) a
25 commercial general liability insurance policy; or (D) their
26 equivalent, in the amount of \$1,000. The assurance must be
27 issued by a surety or other entity licensed or authorized to do
28 business in this state. The assurance must cover acts performed
29 during the term of the notary public's commission and must be
30 in the form prescribed by the Secretary of State. If a notary
31 public violates law with respect to notaries public in this state,
32 the surety or issuing entity is liable under the assurance. The
33 notary public shall give thirty days' notice to the Secretary of
34 State before canceling any assurance or loss of insurance
35 coverage. The surety or issuing entity shall notify the Secretary
36 of State not later than thirty days after making a payment to a
37 claimant under the assurance. A notary public may perform
38 notarial acts in this state only during the period that a valid
39 assurance is on file with the Secretary of State.

40 (e) On compliance with this section, the Secretary of State
41 shall issue a commission as a notary public to an applicant for a
42 term of five years.

43 (f) A commission to act as a notary public authorizes the
44 notary public to perform notarial acts. The commission does not
45 provide the notary public any immunity or benefit conferred by
46 law of this state on public officials or employees.

§39-4-21. Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public.

1 (a) The Secretary of State may deny, refuse to renew,
2 revoke, suspend or impose a condition on a commission as
3 notary public for any act or omission that demonstrates the
4 individual lacks the honesty, integrity, competence, or reliability
5 to act as a notary public, including:

6 (1) Failure to comply with this article;

7 (2) A fraudulent, dishonest or deceitful misstatement or
8 omission in the application for a commission as a notary public
9 submitted to the Secretary of State;

10 (3) A conviction of the applicant or notary public of any
11 felony or a crime involving fraud, dishonesty or deceit;

12 (4) A finding against, or admission of liability by, the
13 applicant or notary public in any legal proceeding or disciplinary
14 action based on the applicant's or notary public's fraud,
15 dishonesty or deceit;

16 (5) Failure by the notary public to discharge any duty
17 required of a notary public, whether by this article, rules
18 promulgated by the Secretary of State, or any federal or state
19 law;

20 (6) Use of false or misleading advertising or representation
21 by the notary public representing that the notary has a duty, right
22 or privilege that the notary does not have;

23 (7) Violation by the notary public of a rule of the Secretary
24 of State regarding a notary public;

25 (8) Denial, refusal to renew, revocation, suspension or
26 conditioning of a notary public commission in another state;

27 (9) Failure of the notary public to maintain an assurance as
28 provided in subsection (d), section twenty of this article;

29 (10) Charging more than the maximum fees specified in
30 section thirty of this article; and

31 (11) Failure to notify the Secretary of State of an address or
32 name change pursuant to subsection (b), section twenty-two of
33 this article.

34 (b) If the Secretary of State denies, refuses to renew,
35 revokes, suspends or imposes conditions on a commission as a
36 notary public, the applicant or notary public is entitled to timely
37 notice and hearing in accordance with article five, chapter
38 twenty-nine-a of this code.

39 (c) The authority of the Secretary of State to deny, refuse to
40 renew, suspend, revoke or impose conditions on a commission
41 as a notary public does not prevent a person from seeking and
42 obtaining other criminal or civil remedies provided by law.

§39-4-22. Database of notaries public.

1 (a) The Secretary of State shall maintain an electronic
2 database of notaries public:

3 (1) Through which a person may verify the authority of a
4 notary public to perform notarial acts; and

5 (2) Which indicates whether a notary public has notified the
6 Secretary of State that the notary public will be performing
7 notarial acts on electronic records.

8 (b) Not later than thirty days after a notary public either:

9 (1) Changes the address of his or her business or residence;
10 or

11 (2) Changes his or her name, the notary public shall notify
12 the Secretary of State of the address or name change.

§39-4-23. Prohibited acts.

1 (a) A commission as a notary public does not authorize an
2 individual to:

3 (1) Assist persons in drafting legal records, give legal advice
4 or otherwise practice law;

5 (2) Act as an immigration consultant or an expert on
6 immigration matters;

7 (3) Represent a person in a judicial or administrative
8 proceeding relating to immigration to the United States, United
9 States citizenship or related matters; or

10 (4) Receive compensation for performing any of the
11 activities listed in this subsection.

12 (b) A notary public may not engage in false or deceptive
13 advertising.

14 (c) A notary public, other than an attorney licensed to
15 practice law in this state, may not use the term “notario” or
16 “notario publico”.

17 (d) A notary public, other than an attorney licensed to
18 practice law in this state, may not advertise or represent that the
19 notary public may assist persons in drafting legal records, give
20 legal advice, or otherwise practice law. If a notary public who
21 is not an attorney licensed to practice law in this state in any
22 manner advertises or represents that the notary public offers
23 notarial services, whether orally or in a record, including
24 broadcast media, print media and the internet, the notary public
25 shall include the following statement, or an alternate statement

26 authorized or required by the Secretary of State, in the
27 advertisement or representation, prominently and in each
28 language used in the advertisement or representation: "I am not
29 an attorney licensed to practice law in this state. I am not
30 allowed to draft legal records, give advice on legal matters,
31 including immigration, or charge a fee for those activities". If
32 the form of advertisement or representation is not broadcast
33 media, print media or the internet and does not permit inclusion
34 of the statement required by this subsection because of size, it
35 must be displayed prominently or provided at the place of
36 performance of the notarial act before the notarial act is
37 performed.

38 (e) Except as otherwise allowed by law, a notary public may
39 not withhold access to or possession of an original record
40 provided by a person that seeks performance of a notarial act by
41 the notary public.

§39-4-24. Validity of notarial acts.

1 Except as otherwise provided in subsection (b), section four
2 of this article, the failure of a notarial officer to perform a duty
3 or meet a requirement specified in this article does not invalidate
4 a notarial act performed by the notarial officer. The validity of
5 a notarial act under this article does not prevent an aggrieved
6 person from seeking to invalidate the record or transaction that
7 is the subject of the notarial act or from seeking other remedies
8 based on law of this state other than this article or law of the
9 United States. This section does not validate a purported notarial
10 act performed by an individual who does not have the authority
11 to perform notarial acts.

§39-4-25. Rules.

1 (a) The Secretary of State may promulgate rules, in
2 accordance with the provisions of chapter twenty-nine-a of this

3 code, to implement this article. Rules promulgated regarding the
4 performance of notarial acts with respect to electronic records
5 may not require, or accord greater legal status or effect to, the
6 implementation or application of a specific technology or
7 technical specification. The rules may:

8 (1) Prescribe the manner of performing notarial acts
9 regarding tangible and electronic records;

10 (2) Include provisions to ensure that any change to or
11 tampering with a record bearing a certificate of a notarial act is
12 self-evident;

13 (3) Include provisions to ensure integrity in the creation,
14 transmittal, storage or authentication of electronic records or
15 signatures;

16 (4) Prescribe the process of granting, renewing,
17 conditioning, denying, suspending or revoking a notary public
18 commission and assuring the trustworthiness of an individual
19 holding a commission as notary public;

20 (5) Include provisions to prevent fraud or mistake in the
21 performance of notarial acts;

22 (6) Establish the process for approving and accepting surety
23 bonds and other forms of assurance under subsection (d), section
24 twenty of this article; and

25 (7) Establish fees, with legislative approval in accordance
26 with the provisions of article three, chapter twenty-nine-a of this
27 code. Fees collected by the Secretary of State pursuant to section
28 two, article one, chapter fifty-nine of this code shall be deposited
29 by the Secretary of State as follows: One-half shall be deposited
30 in the state general revenue fund and one-half shall be deposited
31 in the service fees and collections account established by section
32 two, article one, chapter fifty-nine of this code for the operation

33 of the office of the Secretary of State. The Secretary of State
34 shall dedicate sufficient resources from that fund or other funds
35 to provide the services required by the provisions of article four,
36 chapter thirty-nine of this code.

37 (b) In promulgating, amending or repealing rules about
38 notarial acts with respect to electronic records, the Secretary of
39 State shall consider, so far as is consistent with this article:

40 (1) The most recent standards regarding electronic records
41 promulgated by national bodies, such as the National
42 Association of Secretaries of State;

43 (2) Standards, practices and customs of other jurisdictions
44 that substantially enact this article; and

45 (3) The views of governmental officials and entities and
46 other interested persons.

§39-4-26. Notary public commission and commissioner appointment in effect.

1 (a) A commission as a notary public in effect on June 30,
2 2014, continues until its date of expiration. A notary public who
3 applies for a commission as a notary public on or after July 1,
4 2014, is subject to and shall comply with this article. A notary
5 public, in performing notarial acts on or after July 1, 2014, shall
6 comply with this article.

7 (b) An appointment as commissioner under the repealed
8 provisions of article four, chapter twenty-nine of this code, in
9 effect on June 30, 2014, continues until its date of expiration. A
10 commissioner, in performing notarial acts on or after July 1,
11 2014, shall comply with this article: *Provided*, That a person
12 holding a commission pursuant to the provisions of article four,
13 chapter twenty-nine of this code, on June 30, 2014, is not

14 required to obtain or use a stamp required by section seventeen
15 of this article, prior to the expiration of that commission.

§39-4-27. Savings clause.

1 This article does not affect the validity or effect of a notarial
2 act performed before July 1, 2014.

§39-4-28. Uniformity of application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

**§39-4-29. Relation to Electronic Signatures in Global and
National Commerce Act.**

1 This article modifies, limits, and supersedes the Electronic
2 Signatures in Global and National Commerce Act, 15 U. S. C.
3 Section 7001 *et seq.*, but does not modify, limit, or supersede
4 Section 101(c) of that act, 15 U. S. C. Section 7001(c), or
5 authorize electronic delivery of any of the notices described in
6 Section 103(b) of that act, 15 U. S. C. Section 7003(b).

§39-4-30. Maximum fees.

1 (a) The maximum fee in this state for notarization of each
2 signature and the proper recordation thereof in the journal of
3 notarial acts is \$5.00 for each signature notarized.

4 (b) The maximum fee in this state for certification of a
5 facsimile of a document, retaining a facsimile in the notary's
6 file, and the proper recordation thereof in the journal of notarial
7 acts is \$5.00 for each eight and one-half by eleven inch page
8 retained in the notary's file.

9 (c) The maximum fee in this state is \$5.00 for any other
10 notarial act performed.

§39-4-31. Government notaries public.

1 (a) State and local government employees may be
2 commissioned as government notaries public to act for and in
3 behalf of their respective state and local government offices.

4 (b) A state or local government employee commissioned
5 under this section shall meet the requirements for qualification
6 and appointment prescribed in this article except that the head of
7 the state or local government office where the applicant is
8 employed, or his or her designee, shall execute a certificate that
9 the application is made for the purposes of the office and in the
10 public interest and submit it to the Secretary of State together
11 with the application for appointment as a notary public.

12 (c) The costs of application and all notary supplies for a
13 commissioned state or local government employee shall be paid
14 from funds available to the office in which he or she is
15 employed.

16 (d) All fees received for notarial services by a government
17 notary public appointed for and in behalf of a state or local
18 government office shall be remitted by him or her to the state or
19 local government office in which he or she is employed.

20 (e) A government notary public must comply with all
21 provisions of this article in the performance of notarial acts.

22 (f) A government notary public may acknowledge any
23 document required to be acknowledged by a notary public:
24 *Provided*, That a government notary public may not operate
25 privately.

§39-4-32. Liability of notary and of an employer of notary.

1 (a) A notary public is liable to the persons involved for all
2 damages proximately caused by the notary's official misconduct.

3 (b) The employer of a notary public is also liable to the
4 persons involved for all damages proximately caused by the
5 notary's official misconduct, if:

6 (1) The notary public was acting within the scope of his or
7 her employment at the time he or she engaged in the official
8 misconduct; and

9 (2) The employer consented to the notary public's official
10 misconduct.

11 (c) It is not essential to a recovery of damages that a notary's
12 official misconduct be the only proximate cause of the damages.

13 (d) For the purposes of this section, the term "official
14 misconduct" means any act or conduct that:

15 (1) May result in the denial, refusal to renew, revocation,
16 suspension or condition commission of a notary public pursuant
17 to section twenty-one of this article; or

18 (2) Is prohibited by section twenty-three of this article.

§39-4-33. Criminal penalties.

1 (a) A notary public who knowingly and willfully commits
2 any official misconduct is guilty of a misdemeanor and, upon
3 conviction, shall be fined not more than \$5,000 or confined in
4 jail not more than one year, or both fined and confined.

5 (b) A notary public who recklessly or negligently commits
6 any official misconduct is guilty of a misdemeanor and, upon
7 conviction, shall be fined not more than \$1,000.

8 (c) Any person who acts as, or otherwise willfully
9 impersonates, a notary public while not lawfully appointed and
10 commissioned to perform notarial acts is guilty of a

11 misdemeanor and, upon conviction, shall be fined not more than
12 \$5,000 or confined in jail not more than one year, or both fined
13 and confined.

14 (d) Any person who unlawfully possesses a notary's official
15 seal or any papers or copies relating to notarial acts, is guilty of
16 a misdemeanor and, upon conviction, shall be fined not more
17 than \$1,000.

18 (e) For the purposes of this section, the term "official
19 misconduct" means any act or conduct that:

20 (1) May result in the denial, refusal to renew, revocation,
21 suspension or condition commission of a notary public pursuant
22 to section twenty-one of this article; or

23 (2) Is prohibited by section twenty-three of this article.

§39-4-34. Action for injunction; unauthorized practice of law.

1 Upon his or her own information or upon complaint of any
2 person, the Attorney General, or his or her designee, may
3 maintain an action for injunctive relief in circuit court against
4 any notary public who renders, offers to render or holds himself
5 or herself out as rendering any service constituting the
6 unauthorized practice of the law. Any organized bar association
7 in this state may intervene in the action, at any stage of the
8 proceeding, for good cause shown. The action may also be
9 maintained by an organized bar association in this state or by the
10 Secretary of State.

§39-4-35. Administrative complaints and investigations.

1 (a) In addition to the powers and duties contained in this
2 article, the Secretary of State may:

3 (1) Investigate, upon complaint or on his or her own
4 initiative, any alleged violations or irregularities of this article.

5 (2) Administer oaths and affirmations, issue subpoenas for
6 the attendance of witnesses, issue subpoenas duces tecum to
7 compel the production of books, papers, records and all other
8 evidence necessary to any investigation.

9 (3) Involve the aid of any circuit court in the execution of its
10 subpoena power.

11 (4) Report any alleged violations of this article to the
12 appropriate prosecuting attorney having jurisdiction, which
13 prosecuting attorney shall present to the grand jury the alleged
14 violations, together with all evidence relating thereto, no later
15 than the next term of court after receiving the report.

16 (b) The Attorney General shall, when requested, provide
17 legal and investigative assistance to the Secretary of State.

§39-4-36. Secretary of State record retention.

1 (a) The provisions of subsection (c), section three, article
2 two, chapter five of this code notwithstanding, the Secretary of
3 State may destroy original records of appointment under this
4 article after expiration of the term of a notary public: *Provided*,
5 That the Secretary of State maintains an electronic copy of the
6 appointment for a minimum of ten years after the expiration of
7 the term of the notary public.

8 (b) The Secretary of State may destroy any original journals
9 of notarial acts in his or her possession: *Provided*, That an
10 electronic copy is maintained in accordance with the retention
11 rules of the Department of Administration.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 4. DEPOSITIONS AND PERPETUATION OF TESTIMONY.

§57-4-2. Taking and certification of depositions — Out-of state and in foreign countries.

1 On affidavit that a witness resides out of this state, or is out
2 of it in the service thereof, or of the United States, or is out of
3 this state and for justifiable reasons will probably be out of this
4 state until after the trial of the case in which his or her testimony
5 is needed, his or her deposition may be taken by or before any
6 justice, notary public or other officer authorized to take
7 depositions in the state wherein the witness may be, or, if the
8 deposition is to be taken in a foreign country, by or before such
9 commissioner or commissioners as may be agreed upon by the
10 parties or appointed by the court, or, if there be none such, by or
11 before any American minister, plenipotentiary, charge d' affaires,
12 consul general, consul, vice consul, consular agent, vice deputy
13 consular agent, commercial agent or vice commercial agent,
14 appointed by the government of the United States, or by or
15 before the mayor or other chief magistrate of any city, town or
16 corporation in the country or any notary public therein. Any
17 person or persons taking the deposition may administer an oath
18 to the witness and take and certify the deposition with his or her
19 official seal annexed, and if he or she have none, the genuineness
20 of his or her signature shall be authenticated by some officer of
21 the same state or country, under his or her official seal.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-9. Administration of oaths or taking of affidavits; authentication of affidavit made in another state or country; oaths and affidavits of persons in military service.

1 Any judge of this state may administer any oath that is or
2 may be lawful for any person to take, including oaths of office,
3 and also may swear any person to an affidavit, and administer an
4 oath to any person in any proceeding.

5 Any oath or affidavit required by law, which is not of such
6 a nature that it must be made otherwise or elsewhere may, unless

7 otherwise provided, be administered by, or made before, a
8 county commissioner, notary public, or by the clerk of any court,
9 or, in case of a survey directed by a court in a case therein
10 pending, by or before the surveyor directed to execute said order
11 of survey.

12 An affidavit may also be made before any officer of another
13 state or country authorized by its laws to administer an oath, and
14 shall be deemed duly authenticated if it be subscribed by the
15 officer, with his or her official seal annexed, and if he or she
16 have none, the genuineness of his or her signature, and his or her
17 authority to administer an oath, shall be authenticated by some
18 officer of the same state or country under his or her official seal.

19 Any oath or affidavit required of a person in the military
20 service of the United States (including the Women's Army
21 Corps, Women's Appointed Volunteers for Emergency Service,
22 Army Nurse Corps, Spars, Women's Reserve or similar
23 women's auxiliary unit officially connected with the military
24 service of the United States), may be administered by or made
25 before any commissioned officer of any branch of the military
26 service of the United States, or any auxiliary unit officially
27 connected with the military service. Such oath may be taken or
28 affidavit made at any place either within or outside the United
29 States of America, or any territory, possession or dependency
30 thereof. The jurat to the oath and certificate to the affidavit need
31 not state the place where the same is taken and shall require no
32 seal to be affixed thereto. The certificate of the officer before
33 whom the oath is taken or affidavit is made must state his or her
34 rank, branch of military service, and identification number, and
35 the certificate may be substantially in form and effect as follows:

36 IN THE MILITARY SERVICE OF THE UNITED STATES:

37 I,, being duly sworn on oath (affirmation), do
38 swear (affirm) that I am a member of the military service of the

39 United States (or of, an auxiliary to the military forces
40 of the United States); that ***, etc.

41

42 Taken, subscribed and sworn to before me,, a
43 commissioned officer in the service of the United
44 States, by, a member of the military service of the
45 United States (or of, an auxiliary to the military forces
46 of the United States), this the day of, 20.....

47

48 (Signature of officer)

49

50 (Rank) (Identification Number)

51 Any oath or affidavit heretofore taken or made by any
52 person in the military service in substantial compliance with this
53 section shall be valid.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

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 corporation
12 \$50.00

13 (B) Articles of incorporation of nonprofit corporation
14 25.00

15 (C) Articles of organization of limited liability company
16 100.00

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 corporation
64 \$100.00

65 (B) Certificate of authority of nonprofit corporation
66 50.00

67 (C) Certificate of authority of foreign limited liability
68 companies..... 150.00

69 (D) Certificate of exemption from certificate of
70 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 partnership for
74 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 trust
 91 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
 97 of 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 trust
 105 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 registration
 141 10.00

142 (H) Any other certificate not specified in this subdivision
 143 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 subdivision
 152 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 than
 173 \$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 data
180 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 transmission
196 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 2.00
201 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 legislative rules for
207 promulgation for charges for on-line electronic access to
208 database information or other information maintained by the
209 Secretary of State.

210 (c) For any other work or service not enumerated in this
211 subsection, the fee prescribed elsewhere in this code or a rule
212 promulgated under the authority of this code.

213 (d) The records maintained by the Secretary of State are
214 prepared and indexed at the expense of the state and those
215 records shall not be obtained for commercial resale without the
216 written agreement of the state to a contract including
217 reimbursement to the state for each instance of resale.

218 (e) The Secretary of State may provide printed or electronic
219 information free of charge as he or she considers necessary and
220 efficient for the purpose of informing the general public or the
221 news media.

222 (f) There is hereby continued in the State Treasury a special
223 revenue account to be known as the "service fees and
224 collections" account. Expenditures from the account shall be
225 used for the operation of the office of the Secretary of State and
226 are not authorized from collections, but are to be made only in
227 accordance with appropriation by the Legislature and in
228 accordance with the provisions of article three, chapter twelve of
229 this code and upon the fulfillment of the provisions set forth in
230 article two, chapter five-a of this code. Notwithstanding any
231 other provision of this code to the contrary, except as provided
232 in subsection (h) of this section and section two-a of this article,
233 one half of all the fees and service charges established in the
234 following sections and for the following purposes shall be

235 deposited by the Secretary of State or other collecting agency to
236 that special revenue account and used for the operation of the
237 office of the Secretary of State:

238 (1) The annual attorney-in-fact fee for corporations and
239 limited partnerships established in section five, article twelve-c,
240 chapter eleven of this code;

241 (2) The fees received for the sale of the State Register, code
242 of state rules and other copies established by rule and authorized
243 by section seven, article two, chapter twenty-nine-a of this code;

244 (3) The registration fees, late fees and legal settlements
245 charged for registration and enforcement of the charitable
246 organizations and professional solicitations established in
247 sections five, nine and fifteen-b, article nineteen, chapter
248 twenty-nine of this code;

249 (4) The annual attorney-in-fact fee for limited liability
250 companies as designated in section one hundred eight, article
251 one, chapter thirty-one-b of this code and established in section
252 two hundred eleven, article two of said chapter: *Provided*, That
253 after June 30, 2008, the annual report fees designated in section
254 one hundred eight, article one, chapter thirty-one-b of this code
255 shall upon collection be deposited in the general administrative
256 fees account described in subsection (h) of this section;

257 (5) The filing fees and search and copying fees for uniform
258 commercial code transactions established by section five
259 hundred twenty-five, article nine, chapter forty-six of this code;

260 (6) The annual attorney-in-fact fee for licensed insurers
261 established in section twelve, article four, chapter thirty-three of
262 this code;

263 (7) The fees for the application and record maintenance of
264 all notaries public established by section twenty, article four,
265 chapter thirty-nine of this code.

266 (8) The fees for registering credit service organizations as
267 established by section five, article six-c, chapter forty-six-a of
268 this code;

269 (9) The fees for registering and renewing a West Virginia
270 limited liability partnership as established by section one, article
271 ten, chapter forty-seven-b of this code;

272 (10) The filing fees for the registration and renewal of
273 trademarks and service marks established in section seventeen,
274 article two, chapter forty-seven of this code;

275 (11) All fees for services, the sale of photocopies and data
276 maintained at the expense of the Secretary of State as provided
277 in this section; and

278 (12) All registration, license and other fees collected by the
279 Secretary of State not specified in this section.

280 (g) Any balance in the service fees and collections account
281 established by this section which exceeds five hundred thousand
282 dollars as of June 30, 2003, and each year thereafter, shall be
283 expired to the state fund, General Revenue Fund.

284 (h)(1) Effective July 1, 2008, there is hereby created in the
285 State Treasury a special revenue account to be known as the
286 general administrative fees account. Expenditures from the
287 account shall be used for the operation of the office of the
288 Secretary of State and are not authorized from collections, but
289 are to be made only in accordance with appropriation by the
290 Legislature and in accordance with the provisions of article
291 three, chapter twelve of this code and upon the fulfillment of the
292 provisions set forth in article two, chapter eleven-b of this code:
293 *Provided*, That for the fiscal year ending June 30, 2009,
294 expenditures are authorized from collections rather than pursuant
295 to an appropriation by the Legislature. Any balance in the
296 account at the end of each fiscal year shall not revert to the

297 General Revenue Fund but shall remain in the fund and be
298 expended as provided by this subsection.

299 (2) After June 30, 2008, all the fees and service charges
300 established in section two-a of this article for the following
301 purposes shall be collected and deposited by the Secretary of
302 State or other collecting agency in the general administrative
303 fees account and used for the operation of the office of the
304 Secretary of State:

305 (A) The annual report fees paid to the Secretary of State by
306 corporations, limited partnerships, domestic limited liability
307 companies and foreign limited liability companies;

308 (B) The fees for the issuance of a certificate relating to the
309 initial registration of a corporation, limited partnership, domestic
310 limited liability company or foreign limited liability company
311 described in subdivision (2), subsection (a) of this section; and

312 (C) The fees for the purchase of date and updates related to
313 the State's Business Organizations Database described in section
314 two-a of this article.

315 (i) There is continued in the office of the Secretary of State
316 a noninterest-bearing, escrow account to be known as the
317 "prepaid fees and services account". This account shall be for the
318 purpose of allowing customers of the Secretary of State to
319 prepay for services, with payment to be held in escrow until
320 services are rendered. Payments deposited in the account shall
321 remain in the account until services are rendered by the
322 Secretary of State and at that time the fees will be reallocated to
323 the appropriate general or special revenue accounts. There shall
324 be no fee charged by the Secretary of State to the customer for
325 the use of this account and the customer may request the return
326 of any moneys maintained in the account at any time without
327 penalty. The assets of the prepaid fees and services account do

328 not constitute public funds of the state and are available solely
329 for carrying out the purposes of this section.

CHAPTER 134

(Com. Sub. for H. B. 4220 - By Delegates Staggers and Manchin)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5C-22, relating to requirements for agreements with nursing homes wherein a person waives their rights to trials by jury on claims arising from the nursing care of a nursing home resident; ensuring the court is not bound to find all or part of the contract enforceable, unenforceable, conscionable or unconscionable; and applying this section to all agreements entered into on or after 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 §16-5C-22, to read as follows:

ARTICLE 5C. NURSING HOMES.

§16-5C-22. Jury trial waiver to be a separate document.

- 1 (a) Every written agreement containing a waiver of a right
- 2 to a trial by jury that is entered into between a nursing home and
- 3 a person for the nursing care of a resident, must have as a
- 4 separate and stand alone document any waiver of a right to a trial
- 5 by jury.

6 (b) Nothing in this section may be construed to require a
7 court of competent jurisdiction to determine that the entire
8 agreement or any portion thereof is enforceable, unenforceable,
9 conscionable or unconscionable.

10 (c) This section applies to all agreements entered into on or
11 after January 1, 2015.

CHAPTER 135

**(Com. Sub. for H. B. 4284 - By Delegates Perdue,
Fleischauer, Barrett, Caputo, Guthrie, Kinsey,
Lawrence, Manchin, Skinner, Sponaugle and Young)**

[Passed March 6, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5, §5-11B-6 and §5-11B-7, all relating to creating the Pregnant Workers' Fairness Act; defining unlawful employment practices; establishing remedies and enforcement for discriminatory conduct; authorizing rule making by the West Virginia Human Rights Commission; establishing the relationship of the article to other laws; and requiring a report 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 article, designated §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5, §5-11B-6 and §5-11B-7, all to read as follows:

ARTICLE 11B. PREGNANT WORKERS' FAIRNESS ACT.**§5-11B-1. Short title.**

1 This article may be cited as the Pregnant Workers' Fairness
2 Act.

§5-11B-2. Nondiscrimination with regard to reasonable accommodations related to pregnancy.

1 It shall be an unlawful employment practice for a covered
2 entity to:

3 (1) Not make reasonable accommodations to the known
4 limitations related to the pregnancy, childbirth, or related
5 medical conditions of a job applicant or employee, following
6 delivery by the applicant or employee of written documentation
7 from the applicant's or employee's health care provider that
8 specifies the applicant's or employee's limitations and
9 suggesting what accommodations would address those
10 limitations, unless such covered entity can demonstrate that the
11 accommodation would impose an undue hardship on the
12 operation of the business of such covered entity;

13 (2) Deny employment opportunities to a job applicant or
14 employee, if such denial is based on the refusal of the covered
15 entity to make reasonable accommodations to the known
16 limitations related to the pregnancy, childbirth, or related
17 medical conditions of an employee or applicant;

18 (3) Require a job applicant or employee affected by
19 pregnancy, childbirth, or related medical conditions to accept an
20 accommodation that such applicant or employee chooses not to
21 accept; or

22 (4) Require an employee to take leave under any leave law
23 or policy of the covered entity if another reasonable

24 accommodation can be provided to the known limitations related
25 to the pregnancy, childbirth, or related medical conditions of an
26 employee.

§5-11B-3. Remedies and enforcement.

1 (a) The powers, procedures, and remedies provided in article
2 eleven of this chapter to the Commission, the Attorney General,
3 or any person, alleging a violation of the West Virginia Human
4 Rights Act shall be the powers, procedures, and remedies this
5 article provides to the Commission, the Attorney General, or any
6 person, respectively, alleging an unlawful employment practice
7 in violation of this article against an employee or job applicant.

8 (b) No person shall discriminate against any individual
9 because such individual has opposed any act or practice made
10 unlawful by this article or because such individual made a
11 charge, testified, assisted, or participated in any manner in an
12 investigation, proceeding, or hearing under this article. The
13 remedies and procedures otherwise provided for under this
14 section shall be available to aggrieved individuals with respect
15 to violations of this subsection.

§5-11B-4. Rule making.

1 Not later than two years after the date of enactment of this
2 article, the Commission shall propose legislative rules in
3 accordance with article three, chapter twenty-nine-a of this code,
4 to carry out this article. Such rules shall identify some
5 reasonable accommodations addressing known limitations
6 related to pregnancy, childbirth, or related medical conditions
7 that shall be provided to a job applicant or employee affected by
8 such known limitations unless the covered entity can
9 demonstrate that doing so would impose an undue hardship.

§5-11B-5. Definitions.

1 As used in this article:

2 (1) "Attorney General" means the West Virginia Attorney
3 General;

4 (2) "Commission" means the West Virginia Human Rights
5 Commission;

6 (3) "Covered entity" has the meaning given the word
7 employer in section three, article eleven of this chapter;

8 (4) "Person" has the meaning given the word in section
9 three, article eleven of this chapter; and

10 (5) "Reasonable accommodation" and "undue hardship"
11 have the meanings given those terms in section 101 of the
12 Americans with Disabilities Act of 1990 (42 U.S.C. 12111) and
13 shall be construed as such terms have been construed under such
14 Act and as set forth in the rules required by this article.

§5-11B-6. Relationship to other laws.

1 Nothing in this article shall be construed to invalidate or
2 limit the remedies, rights, and procedures that provides greater
3 or equal protection for workers affected by pregnancy,
4 childbirth, or related medical conditions.

§5-11B-7. Reports.

1 The Commission shall annually on October 1 of each year
2 report to the Joint Committee on Government and Finance on the
3 number of complaints filed under this article during the previous
4 year and their resolution.

CHAPTER 136

(Com. Sub. for S. B. 408 - By Senator Plymale)

[Passed March 5, 2014; in effect from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to powers and duties of the Parole Board; eligibility for parole; clarifying the procedures for granting parole; and clarifying that a parole-eligible inmate is entitled to a timely parole hearing regardless of where he or she is housed.

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,
82 three-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*, That in cases in
104 which there is a mandatory thirty-day notification period

105 required prior to the release of the inmate, pursuant to section
106 twenty-three of this article, the board may conduct an initial
107 interview and deny parole without requiring the development of
108 a plan. In the event the board believes parole should be granted,
109 it may defer a final decision pending completion of an
110 investigation and receipt of recommendations. Upon receipt of
111 the plan together with the investigation and recommendation, the
112 board, through a panel, shall make a final decision regarding the
113 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
245 on-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
263 Board shall arrange for the inmate to appear in person before a
264 Parole Board panel and the panel may examine and interrogate
265 him or her on any matters pertaining to his or her parole,
266 including reports before the Parole Board made pursuant to the
267 provisions of this section: *Provided,* That an inmate may appear
268 by video teleconference if the members of the Parole Board

269 panel conducting the examination are able to contemporaneously
270 see the inmate and hear all of his or her remarks and if the
271 inmate is able to contemporaneously see each of the members of
272 the panel conducting the examination and hear all of the
273 members' remarks. The panel shall reach its own written
274 conclusions as to the desirability of releasing the inmate on
275 parole and the majority of the panel considering the release must
276 concur in the decision. The warden or superintendent shall
277 furnish all necessary assistance and cooperate to the fullest
278 extent with the Parole Board. All information, records and
279 reports received by the Parole Board shall be kept on permanent
280 file.

281 (n) The Parole Board and its designated agents are at all
282 times to have access to inmates imprisoned in any state
283 correctional institution or in any jail in this state and may obtain
284 any information or aid necessary to the performance of its duties
285 from other departments and agencies of the state or from any
286 political subdivision of the state.

287 (o) The Parole Board shall, if requested by the Governor,
288 investigate and consider all applications for pardon, reprieve or
289 commutation and shall make recommendation on the
290 applications to the Governor.

291 (p) (1) Prior to making a recommendation for pardon,
292 reprieve or commutation, the board shall notify the sentencing
293 judge and prosecuting attorney at least ten days before the
294 recommendation.

295 (2) Notwithstanding any other provision of law to the
296 contrary, if the board grants a person parole, the board shall
297 provide written notice to the prosecuting attorney and circuit
298 judge of the county in which the inmate was prosecuted, that
299 parole has been granted. The notice shall be sent by certified
300 mail, return receipt requested, and include the anticipated date of

301 release and the person's anticipated future residence. A written
302 statement of reasons for releasing the person, prepared pursuant
303 to subsection (b) of this section, shall be provided upon request.

304 (q) A parolee shall participate as a condition of parole in the
305 litter control program of the county to which he or she is
306 released to the extent directed by the Parole Board, unless the
307 board specifically finds that this alternative service would be
308 inappropriate.

CHAPTER 137

**(Com. Sub. for H. B. 4188 -By Delegates Perdue,
Fleischauer, Diserio, Eldridge, Kinsey, Lawrence,
Marshall, Moore and Poore)**

[Passed March 5, 2014; in effect from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to repeal §30-7B-8 and §30-7B-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18C-3-4; and to amend and reenact §30-7B-1, §30-7B-2, §30-7B-3, §30-7B-4, §30-7B-5, §30-7B-6 and §30-7B-7 of said code, all relating to recruitment and retention of nurses in the state; codifying Nursing Scholarship Program; modifying program administration; specifying program criteria, eligibility and awards; specifying recipient service or repayment requirement; continuing the Center for Nursing Fund special revenue account; modifying account administration, revenues and expenditures; continuing the West Virginia Center for Nursing; modifying center powers, duties and purpose; reorganizing the center's board of directors; modifying board membership, powers and duties; authorizing board member expense reimbursement;

requiring cooperation among Higher Education Policy Commission, Center for Nursing and Board of Directors; defining terms; requiring legislative rule; authorizing emergency rule; requiring reports to the Legislative Oversight Commission on Health and Human Resources Accountability and the Legislative Oversight Commission on Education Accountability; deleting obsolete provisions; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §30-7B-8 and §30-7B-9 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §18C-3-4; and that §30-7B-1, §30-7B-2, §30-7B-3, §30-7B-4, §30-7B-5, §30-7B-6 and §30-7B-7 of said code be amended and reenacted, all to read as follows:

**CHAPTER 18C. STUDENT LOANS;
SCHOLARSHIPS AND STATE AID.**

**ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN
AND SCHOLARSHIP 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 education master's degree program or a doctoral nursing
53 program. A recipient is required to teach in West Virginia for
54 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 Legislature
68 finds that an emergency exists, and, therefore, the commission
69 shall propose an emergency rule pursuant to article three-a,

70 chapter twenty-nine-a of this code by August 1, 2014. The rules
71 shall provide for the following:

72 (1) Eligibility and selection criteria for program
73 participation;

74 (2) Terms of a service agreement which a recipient shall
75 execute as a condition of receiving an award;

76 (3) Repayment provisions for a recipient who fails to fulfill
77 the service requirement;

78 (4) Forgiveness options for death or disability of a recipient;

79 (5) An appeal process for students denied participation or
80 ordered to repay awards; and

81 (6) Additional provisions as necessary to implement this
82 section.

83 (f) The commission shall report by December 1, 2014, and
84 annually thereafter, to the Legislative Oversight Commission on
85 Health and Human Resources Accountability and the Legislative
86 Oversight Commission on Education Accountability on the
87 number of award recipients and all other matters relevant to the
88 provisions of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 7B. CENTER FOR NURSING.

§30-7B-1. Definitions.

1 As used in this article, the following words and phrases have
2 the meanings ascribed to them:

3 (a) "Board" means the Board of Directors for the West
4 Virginia Center for Nursing;

5 (b) “Center” means the West Virginia Center for Nursing;

6 (c) “Commission” means the West Virginia Higher
7 Education Policy Commission; and

8 (d) “Center for Nursing Fund” means the special revenue
9 account established in section four, article three, chapter
10 eighteen-c of this code.

§30-7B-2. West Virginia Center for Nursing.

1 (a) The West Virginia Center for Nursing is continued for
2 the purpose of addressing the issues of recruitment and retention
3 of nurses in West Virginia.

4 (b) The commission shall satisfy the following requirements:

5 (1) Provide suitable office space for the center;

6 (2) Provide staff support for the center as necessary;

7 (3) Share statistics and other pertinent information with the
8 center;

9 (4) Work cooperatively with the center to assist it in
10 achieving its objectives; and

11 (5) Utilize moneys from the Center for Nursing Fund to
12 perform its duties required by this article.

§30-7B-3. Center’s powers and duties.

1 The center shall satisfy the following requirements:

2 (a) Establish a statewide strategic plan to address the nursing
3 shortage in West Virginia;

4 (b) Collect, evaluate and disseminate data regarding nurse
5 availability and shortage areas;

6 (c) Establish and maintain a website to disseminate
7 information about the center and its mission, and educational
8 opportunities and financial aid available in West Virginia;

9 (d) Evaluate capacity for expansion of nursing programs,
10 including the availability of faculty, clinical laboratories,
11 computers and software, library holdings and supplies;

12 (e) Consult with and advise the commission regarding the
13 commission's administration of the nursing scholarship program
14 designed to benefit nurses who practice in hospitals and other
15 health care institutions or teach in state nursing programs as
16 provided in section four, article three, chapter eighteen-c of this
17 code; and

18 (f) Perform other activities necessary or expedient to
19 accomplish the purposes and implement the provisions of this
20 article.

§30-7B-4. Board of directors.

1 (a) The center is governed by a board of directors consisting
2 of the following members appointed by the Governor:

3 (1) Two representatives from the West Virginia Board of
4 Examiners for Registered Professional Nurses, as follows:

5 (A) One representing a bachelor or higher degree program;
6 and

7 (B) One representing an associate degree program;

8 (2) One representative from the West Virginia Board of
9 Examiners for Licensed Practical Nurses;

10 (3) One representative from the West Virginia Nurses
11 Association;

- 12 (4) One nurse representing a rural health care facility;
- 13 (5) One director of nursing;
- 14 (6) One health care administrator;
- 15 (7) One registered professional staff nurse engaged in direct
16 patient care;
- 17 (8) One licensed practical nurse engaged in direct patient
18 care;
- 19 (9) Two citizen members as required by section four-a,
20 article one, chapter thirty of this code;
- 21 (10) Two ex officio, nonvoting members, as follows:
- 22 (A) The Secretary of the Department of Health and Human
23 Resources or his or her designee; and
- 24 (B) A representative from WorkForce West Virginia.
- 25 (b) Members are appointed for four-year terms. A member
26 may not serve more than two consecutive terms.
- 27 (c) The board shall elect annually from its voting members
28 a president and a secretary as required by section three, article
29 one, chapter thirty of this code. A majority of the appointed
30 members constitutes a quorum.
- 31 (d) The Governor shall fill any vacancy within thirty days of
32 occurrence.
- 33 (e) The members of the board who are in office on the
34 effective date of this section, unless sooner removed, shall
35 continue to serve until their successors have been appointed and
36 qualified.

§30-7B-5. Powers and duties of the board of directors.

1 (a) The board has the following powers and duties:

2 (1) Determine policy for the operation of the center to
3 accomplish the purposes of this article; and

4 (2) Advise the commission on matters pertaining to the
5 administration of the Nursing Scholarship Program pursuant to
6 section four, article three, chapter eighteen-c of this code.

7 (b) The commission shall provide to the board administrative
8 and professional staff support as needed from the Center for
9 Nursing Fund.

§30-7B-6. Expense reimbursement.

1 (a) Members of the board serve without compensation, but
2 may be reimbursed for actual and necessary expenses incurred
3 for each day, or portion thereof, in which they are engaged in the
4 discharge of official duties. Reimbursements are made in a
5 manner consistent with guidelines of the travel management
6 office of the commission.

7 (b) The commission shall provide reimbursement for
8 members' expenses from the Center for Nursing Fund.

§30-7B-7. Reports.

1 The center shall report by December 1, 2014, and biennially
2 thereafter, to the Legislative Oversight Commission on Health
3 and Human Resources Accountability and the Legislative
4 Oversight Commission on Education Accountability on its
5 progress in developing a statewide strategic plan to address the
6 nursing shortage in West Virginia and on any other issues the
7 board considers relevant to the practice of nursing in this state.
8 Additionally, the board shall provide drafts of any legislation
9 needed to implement recommendations of the center's strategic
10 plan.

CHAPTER 138

**(Com. Sub. for H. B. 4318 - By Delegates Fleischauer,
Longstreth, Campbell, Pethtel, Barrett, Barill, Jones,
Stephens, Iaquina, Rowan and Ireland)**

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §30-1-7a of the Code of West Virginia, 1931, as amended, relating to continuing education relevant to mental health issues of veterans and their families; providing certain boards adopt continuing education courses relevant to mental health issues of veterans and their families as part their continuing education requirements for licensure or renewal; and requiring a minimum of two hours of continuing education relevant to mental health issues of veterans and their families for licensure renewal for certain professions.

Be it enacted by the Legislature of West Virginia:

That §30-1-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**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 and best
25 practice prescribing of controlled substances training, as the
26 trainings are established by his or her respective licensing board,
27 if that person prescribes, administers, or dispenses a controlled
28 substance, as that term is defined in section one hundred one,
29 article one, chapter sixty-a of this code.

30 (1) Notwithstanding any other provision of this code or the
31 provision of any rule to the contrary, the West Virginia Board of
32 Medicine, the West Virginia Board of Dental Examiners, the
33 West Virginia Board of Optometry, the West Virginia Board of
34 Pharmacy, the West Virginia Board of Examiners for Registered
35 Professional Nurses, the West Virginia State Board of Examiners
36 for Licensed Practical Nurses and the West Virginia Board of

37 Osteopathy shall establish continuing education requirements
38 and criteria appropriate to their respective discipline on the
39 subject of drug diversion training and best practice prescribing
40 of controlled substances training for each person issued a license
41 or certificate by their respective board who prescribes,
42 administers or dispenses a controlled substance, as that term is
43 defined in section one hundred one, article one, chapter sixty-a
44 of this code, and shall develop a certification form pursuant to
45 subdivision (b)(2) of this section.

46 (2) Each person who receives his or her initial license or
47 certificate from any of the boards set forth in subsection (b) shall
48 complete the continuing education requirements set forth in
49 subsection (b) within one year of receiving his or her initial
50 license from that board and each person licensed or certified by
51 any of the boards set forth in subsection (b) who has held his or
52 her license or certificate for longer than one year shall complete
53 the continuing education requirements set forth in subsection (b)
54 as a prerequisite to each license renewal: *Provided*, That a
55 person subject to subsection (b) may waive the continuing
56 education requirements for license renewal set forth in
57 subsection (b) if he or she completes and submits to his or her
58 licensing board a certification form developed by his or her
59 licensing board attesting that he or she has not prescribed,
60 administered, or dispensed a controlled substance, as that term
61 is defined in section one hundred one, article one, chapter sixty-a
62 of this code, during the entire applicable reporting period.

63 (c) Notwithstanding any other provision of this code or the
64 provision of any rule to the contrary, each person licensed to
65 practice registered professional nursing or licensed as an
66 advanced nurse practitioner by the West Virginia Board of
67 Examiners for Registered Professional Nurses, each person
68 licensed as a licensed practical nurse by the West Virginia State
69 Board of Examiners for Licensed Practical Nurses, each person

70 issued a license to practice midwifery as a nurse-midwife by the
71 West Virginia Board of Examiners for Registered Professional
72 Nurses, each person issued a license to practice chiropractic by
73 the West Virginia Board of Chiropractic, each person licensed to
74 practice psychology by the Board of Examiners of Psychologists,
75 each person licensed to practice social work by the West
76 Virginia Board of Social Work, and each person licensed to
77 practice professional counseling by the West Virginia Board of
78 Examiners in Counseling, shall complete two hours of
79 continuing education for each reporting period on mental health
80 conditions common to veterans and family members of veterans,
81 as the continuing education is established or approved by his or
82 her respective licensing board. The two hours shall be part of the
83 total hours of continuing education required by each board and
84 not two additional hours.

85 (1) Notwithstanding any other provision of this code or the
86 provision of any rule to the contrary, on or before July 1, 2015,
87 the boards referred to in this subsection shall establish
88 continuing education requirements and criteria and approve
89 continuing education coursework appropriate to their respective
90 discipline on the subject of mental health conditions common to
91 veterans and family members of veterans, in cooperation with
92 the Secretary of the Department of Veterans Assistance. The
93 continuing education shall include training on inquiring about
94 whether the patients are veterans or family members of veterans,
95 and screening for conditions such as post-traumatic stress
96 disorder, risk of suicide, depression and grief, and prevention of
97 suicide.

98 (2) On or after July 1, 2017, each person licensed by any of
99 the boards set forth in this subsection shall complete the
100 continuing education described herein as a prerequisite to his or
101 her next license renewal.

CHAPTER 139

**(Com. Sub. for H. B. 4245 - By Delegates Fleischauer,
Young, Iaquina, Barrett, Barker, Barill, Diserio,
Perdue, Guthrie, Ellington and Miller)**

[Passed March 7, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-20, relating to anticipated retirement dates of certain health care professionals; requiring certain health care related professional licensing boards to request that licensees provide their anticipated retirement dates; and requiring data on anticipated retirement dates to be included in the boards' annual reports.

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 §30-1-20, to read as follows:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO
ALL STATE BOARDS OF
EXAMINATION OR REGISTRATION
REFERRED TO IN CHAPTER.**

§30-1-20. Certain boards to regulating health care professions to gather retirement information and include in annual reports.

- 1 (a) The health related professional licensing boards referred
- 2 to in subsection (c) of this section shall request that their

3 licensees provide the boards with their anticipated retirement
4 dates, age, gender, percentage of time working direct services,
5 percentage of time working administration and county of
6 practice, in order to facilitate planning for future workforce
7 needs for health care professionals.

8 (b) The boards shall redact personal identifiers and include
9 only aggregate data in the annual reports required by the
10 provisions of section twelve of this article, beginning with the
11 annual report due on or before January 1, 2016.

12 (c) The provisions of this section apply to:

13 (1) The West Virginia Board of Medicine, established
14 pursuant to the provisions of article three of this chapter;

15 (2) The West Virginia Board of Examiners for Registered
16 Professional Nurses, established pursuant to the provisions of
17 article seven of this chapter;

18 (3) The West Virginia Board of Examiners for Licensed
19 Practical Nurses, established pursuant to the provisions of article
20 seven-a of this chapter;

21 (4) The West Virginia Board of Pharmacy, established
22 pursuant to the provisions of article five of this chapter;

23 (5) The West Virginia Board of Dentistry, established
24 pursuant to the provisions of article four of this chapter; and

25 (6) The West Virginia Board of Osteopathy, established
26 pursuant to the provisions of article fourteen of this chapter.

CHAPTER 140

**(Com. Sub. for H. B. 4151 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 4, 2014; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2014.]

AN ACT to repeal §30-1-6a and §30-1-6b of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new article, designated §30-1B-1, §30-1B-2, §30-1B-3, §30-1B-4, §30-1B-5, §30-1B-6, §30-1B-7, §30-1B-8 and §30-1B-9, all relating to professional licensing requirements for certain military members and their spouses; making legislative findings; requiring certain boards to consider military education, training and experience upon application for licensure, certification or registration; providing for licensure renewal during active duty and for six months thereafter for service members and their spouses without meeting requirements of continuing education in certain circumstances and without payment of fees; requiring licensees, certificate holders and registrants to submit waiver requests to the boards; providing for expedited temporary licenses for spouses of active duty service members in certain circumstances; providing for waiver of temporary license application fees in certain circumstances; providing boards with rule-making authority; requiring boards to collect certain data on applications for licensure; requiring boards to report data on waivers and temporary licenses in their annual reports; applicability; and providing for liberal construction of article.

Be it enacted by the Legislature of West Virginia:

That §30-1-6a and §30-1-6b of the Code of West Virginia, 1931, as amended, be repealed; and that said code be further amended by

adding thereto a new article, designated §30-1B-1, §30-1B-2, §30-1B-3, §30-1B-4, §30-1B-5, §30-1B-6, §30-1B-7, §30-1B-8 and §30-1B-9, all to read as follows:

ARTICLE 1B. PROVISIONS APPLICABLE TO MILITARY MEMBERS AND THEIR SPOUSES.

§30-1B-1. Legislative findings and declarations.

1 The Legislature finds that:

2 (1) In recognition of the enormous sacrifices made by
3 members of the Armed Forces of the United States of America
4 and their families in voluntary service to this state and our
5 nation, the citizens of West Virginia must endeavor to find new
6 and innovative ways to improve the lives of military families and
7 support their personal and professional growth;

8 (2) Many current and former members of the United States
9 Armed Forces have acquired extensive academic, professional
10 and occupational training and experience in various professions
11 and occupations while serving in the Armed Forces, comparable
12 to or exceeding that required in this state to register for
13 examination or qualify for licensure, certification or registration
14 for similar or related occupations and professions;

15 (3) Military families are ten times more likely to move from
16 one state to another than their civilian counterparts, and 35% of
17 military spouses work in professions that require state licenses,
18 certifications or registrations;

19 (4) Armed forces members who return to this state after
20 being called to active duty service, and spouses accompanying
21 armed forces members outside of this state or to this state for
22 active duty, are frequently delayed in beginning employment as
23 professionals because of issues with obtaining licenses,
24 certifications or registrations upon arrival or return to West
25 Virginia;

26 (5) The boards in this chapter have the particular expertise
27 necessary to evaluate and determine the adequacy of military
28 education, training and experience for licensure, certification or
29 registration and to adopt procedures that ease the burden of
30 transition for military families through waivers, temporary
31 licensing, or otherwise, while ensuring competency of
32 professionals and protecting the citizens of the state from harm.

**§30-1B-2. Consideration of military education, training and
experience for licensure or registration, generally.**

1 Except as provided in section eight of this article, and
2 notwithstanding any law to the contrary, all boards referred to in
3 this chapter shall, upon presentation of satisfactory evidence by
4 an applicant for licensure, certification or registration, consider
5 the individual's education, training or experience as a member
6 of the Armed Forces or Reserves of the United States, the
7 National Guard of any state, or the military reserves of any state,
8 as part of the evaluation process toward the qualifications to
9 receive, or take examination for, that respective professional
10 license, certification or registration.

**§30-1B-3. Licensure, certification or registration of persons on
military active duty outside this state; extension of
licenses or registration; waiver of certain license,
certification or registration requirements.**

1 (a) During periods when the licensee, certificate holder or
2 registrant is on active duty as a member of the Armed Forces of
3 the United States and deployed outside of this state, and for six
4 months after discharge from active duty, his or her license,
5 certification or registration shall continue in good standing and
6 shall be renewed, upon receipt of a waiver request pursuant to
7 subsection (b) of this section:

8 (1) Without meeting continuing education requirements for
9 the license, certification or registration when:

10 (A) Circumstances associated with the military duty prevent
11 the obtaining of continuing education, or

12 (B) The licensee, certificate holder or registrant performs the
13 profession or occupation as part of his or her military duties, as
14 may be evidenced by annotation on Defense Department Form
15 214 (DD214), National Guard Bureau Form 22 (NGB22) or
16 other official record; and

17 (2) Without payment of fees for the renewal of the license,
18 certification or registration.

19 (b) The licensee, certificate holder or registrant shall submit
20 a waiver request to the appropriate board, informing the board of
21 circumstances which include, but are not limited to, being
22 deployed outside of this state.

**§30-1B-4. Licensure, certification or registration of spouses of
persons on military active duty outside this state;
extension of licenses or registration; waiver of
certain license, certification or registration
requirements.**

1 (a) During periods when the licensee, certificate holder or
2 registrant is accompanying his or her spouse who is on active
3 duty as a member of the Armed Forces of the United States and
4 deployed outside of this state, and for six months after his or her
5 spouse is discharged from active duty, his or her license,
6 certification or registration shall continue in good standing and
7 shall be renewed, upon receipt of a waiver request pursuant to
8 subsection (b) of this section:

9 (1) Without meeting continuing education requirements for
10 the license, certification or registration when:

11 (A) Circumstances associated with accompanying his or her
12 spouse who is on active duty prevent the obtaining of continuing
13 education, or

14 (B) The licensee, certificate holder or registrant presents
15 evidence that he or she performs or performed the profession or
16 occupation while accompanying his or her spouse on active duty;
17 and

18 (2) Without payment of fees for the maintenance or renewal
19 of the license, certification or registration.

20 (b) The licensee, certificate holder or registrant shall submit
21 a waiver request to the appropriate board informing the board of
22 circumstances which include, but are not limited to,
23 accompanying a spouse who is deployed outside of this state.

**§30-1B-5. Temporary licensure, certification or registration of
spouses of persons on military active duty; waiver of
certain license, certification or registration fees.**

1 (a) Notwithstanding any law to the contrary, the spouse of a
2 person who is on active duty as a member of the Armed Forces
3 of the United States shall be issued a temporary license,
4 certification or registration by a board referred to in this chapter
5 within thirty days of submitting the following to the board:

6 (1) A completed application for temporary license,
7 certification or registration, as developed by the board;

8 (2) The required application fee;

9 (3) Proof that the applicant is married to a member of the
10 Armed Forces of the United States who is on active duty; and

11 (4) Proof that the applicant holds a valid license, certification
12 or registration for the profession issued by another state, the
13 District of Columbia, or a possession or territory of the United
14 States, and whose license, certification or registration is not and
15 has not been the subject of disciplinary action in that
16 jurisdiction.

17 (b) Notwithstanding subsection (a), a board may require the
18 applicant to submit to a criminal history records check, to be
19 paid for by the applicant, and the board may deny a request for
20 a temporary license, certification or registration if the criminal
21 history records check provides reason to believe that the
22 applicant does not meet the requirements of the board or presents
23 a safety risk to the public.

24 (c) A temporary license expires six months after the date of
25 issuance and is not renewable.

26 (d) An applicant under this section may submit an
27 application for waiver of the temporary license application fee,
28 and the board shall grant the waiver if the applicant has paid a
29 fee for his or her previous license, certification, or registration in
30 another state, the District of Columbia, or a possession or
31 territory of the United States, within six months immediately
32 prior to submitting an application for temporary license,
33 certification or registration. The applicant shall provide proof of
34 the date and amount of the previous payment.

§30-1B-6. Rule-making authority.

1 The Boards referred to in this chapter may propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code to implement the
4 provisions of this article. Proposed rules may:

5 (1) Establish criteria or requirements for military education,
6 training and experience that qualify the applicant to take an
7 examination for licensure, certification or registration or for a
8 waiver of any examination requirement to be licensed, certified
9 or registered; and

10 (2) Implement the provisions of this article while ensuring
11 competency, protecting the citizens of this state from harm, and
12 addressing issues specific to each profession.

§30-1B-7. Data collection.

1 (a) The boards referred to in this chapter shall require an
2 applicant to state on the application form that he or she is an
3 active duty member of the armed forces of the United States or
4 is a spouse of an active duty member of the armed forces of the
5 United States.

6 (b) The boards referred to in this chapter shall include the
7 following information in their annual reports, as required in
8 section seventeen, article one of this chapter:

9 (1) The number of licenses, certificates and/or registrations
10 issued pursuant to this article;

11 (2) The amount of fees waived pursuant to this article;

12 (3) The number of persons who had continuing education
13 requirements waived pursuant to this article; and

14 (4) The number of temporary licenses issued pursuant to this
15 article.

§30-1B-8. Applicability.

1 The provisions of this article do not apply to the boards
2 referred to in this chapter whose license, certification, or
3 registration requirements are subject to the provisions of article
4 twenty-four of this chapter.

§30-1B-9. Liberality of construction.

1 This article shall be liberally construed and applied to
2 promote the public interest.

CHAPTER 141

**(Com. Sub. for H. B. 4278 - By Delegates Perdue, Fleischauer,
Morgan, Guthrie, Ellington, Stagers and Swartzmiller)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §30-3-15 of the Code of West Virginia, 1931, as amended, relating to medical and podiatry corporations; declaring certain unlawful acts; clarifying the certificate of authorization requirements for in-state and out-of-state medical and podiatry corporations; setting forth the shareholder requirements; setting notice certain requirements to the Secretary of State; clarifying renewal requirements for certificate of authorization; clarifying conditions under which the medical and podiatry corporations can practice; stating requirements for ceasing operation; ensuring the physician-patient and podiatrist-patient relationships are not changed; declaring certain evidence as admissible and prima facie evidence of the facts contained; creating a misdemeanor offense; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §30-3-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-15. Certificate of authorization requirements for medical and podiatry corporations.

- 1 (a) *Unlawful acts.* — It is unlawful for any corporation to
- 2 practice or offer to practice medicine and surgery or podiatry in
- 3 this state without a certificate of authorization issued by the

4 board designating the corporation as an authorized medical or
5 podiatry corporation.

6 (b) *Certificate of authorization for in-state medical or*
7 *podiatry corporation.* — One or more physicians licensed to
8 practice medicine and surgery in this state under this article, or
9 one or more physicians licensed under this article and one or
10 more physicians licensed under article fourteen of this chapter,
11 or one or more podiatrists licensed to practice podiatry in this
12 state may receive a certificate of authorization from the board to
13 be designated a medical or podiatry corporation by:

14 (1) Filing a written application with the board on a form
15 prescribed by the board;

16 (2) Furnishing satisfactory proof to the board that each
17 shareholder of the proposed medical or podiatry corporation is
18 a licensed physician or podiatrist pursuant to this article or
19 article fourteen of this chapter; and

20 (3) Submitting applicable fees which are not refundable.

21 (c) *Certificate of authorization for out-of-state medical or*
22 *podiatry corporation.* — A medical or podiatry corporation
23 formed outside of this state for the purpose of engaging in the
24 practice of medicine and surgery or the practice of podiatry may
25 receive a certificate of authorization from the board to be
26 designated a foreign medical or podiatry corporation by:

27 (1) Filing a written application with the board on a form
28 prescribed by the board;

29 (2) Furnishing satisfactory proof to the board that the
30 medical or podiatry corporation has received a certificate of
31 authorization or similar authorization from the appropriate
32 authorities as a medical or podiatry corporation, or professional
33 corporation in its state of incorporation and is currently in good
34 standing with that authority;

35 (3) Furnishing satisfactory proof to the board that at least
36 one shareholder of the proposed medical or podiatry corporation
37 is a licensed physician or podiatrist pursuant to this article and
38 is designated as the corporate representative for all
39 communications with the board regarding the designation and
40 continuing authorization of the corporation as a foreign medical
41 or podiatry corporation;

42 (4) Furnishing satisfactory proof to the board that all of the
43 medical or podiatry corporation's shareholders are licensed
44 physicians or podiatrists in one or more states and submitting a
45 complete list of the shareholders, including each shareholder's
46 name, their state or states of licensure and their license
47 number(s); and

48 (5) Submitting applicable fees which are not refundable.

49 (d) *Notice of certificate of authorization to Secretary of*
50 *State.* — When the board issues a certificate of authorization to
51 a medical or podiatry corporation, then the board shall notify the
52 Secretary of State that a certificate of authorization has been
53 issued. When the Secretary of State receives a notification from
54 the board, he or she shall attach that certificate of authorization
55 to the corporation application and, upon compliance by the
56 corporation with the pertinent provisions of this code, shall
57 notify the incorporators that the medical or podiatry corporation,
58 through licensed physicians or licensed podiatrists, may engage
59 in the practice of medicine and surgery or the practice of
60 podiatry in West Virginia.

61 (e) *Authorized practice of medical or podiatry*
62 *corporation.* — An authorized medical corporation may only
63 practice medicine and surgery through individual physicians
64 licensed to practice medicine and surgery in this state. An
65 authorized podiatry corporation may only practice podiatry
66 through individual podiatrists licensed to practice podiatry in this

67 state. Physicians or podiatrists may be employees rather than
68 shareholders of a medical or podiatry corporation, and nothing
69 herein requires a license for or other legal authorization of, any
70 individual employed by a medical or podiatry corporation to
71 perform services for which no license or other legal
72 authorization is otherwise required.

73 (f) *Renewal of certificate of authorization.* — A medical or
74 podiatry corporation holding a certificate of authorization shall
75 register biennially, on or before the expiration date on its
76 certificate of authorization, on a form prescribed by the board,
77 and pay a biennial fee. If a medical or podiatry corporation does
78 not timely renew its certificate of authorization, then its
79 certificate of authorization automatically expires.

80 (g) *Renewal for expired certificate of authorization.* — A
81 medical or podiatry corporation whose certificate of
82 authorization has expired may reapply for a certificate of
83 authorization by submitting a new application and application
84 fee in conformity with subsection (b) or (c) of this section.

85 (h) *Ceasing operation — In-state medical or podiatry*
86 *corporation.* — A medical or podiatry corporation formed in this
87 state and holding a certificate of authorization shall cease to
88 engage in the practice of medicine, surgery or podiatry when
89 notified by the board that:

90 (1) One of its shareholders is no longer a duly licensed
91 physician or podiatrist in this state; or

92 (2) The shares of the medical or podiatry corporation have
93 been sold or transferred to a person who is not a licensed
94 physician or podiatrist in this state. The personal representative
95 of a deceased shareholder shall have a period, not to exceed
96 twelve months from the date of the shareholder's death, to
97 transfer the shares. Nothing herein affects the existence of the

98 medical or podiatry corporation or its right to continue to operate
99 for all lawful purposes other than the practice of medicine and
100 surgery or the practice of podiatry.

101 (i) *Ceasing operation — Out-of-state medical or podiatry*
102 *corporation.* — A medical or podiatry corporation formed
103 outside of this state and holding a certificate of authorization
104 shall immediately cease to engage in the practice of medicine,
105 surgery or podiatry in this state if:

106 (1) The corporate shareholders no longer include at least one
107 shareholder who is licensed to practice as a physician or
108 podiatrist in this state;

109 (2) The corporation is notified that one of its shareholders is
110 no longer a licensed physician or podiatrist; or

111 (3) The shares of the medical or podiatry corporation have
112 been sold or transferred to a person who is not a licensed
113 physician or podiatrist. The personal representative of a deceased
114 shareholder shall have a period, not to exceed twelve months
115 from the date of the shareholder's death, to transfer the shares.
116 In order to maintain its certificate of authorization to practice
117 medicine, surgery or podiatry during the twelve month period,
118 the medical or podiatry corporation shall, at all times, have at
119 least one shareholder who is a licensed physician or podiatrist in
120 this state. Nothing herein affects the existence of the medical or
121 podiatry corporation or its right to continue to operate for all
122 lawful purposes other than the practice of medicine, surgery or
123 podiatry.

124 (j) *Notice to Secretary of State.* — Within thirty days of the
125 expiration, revocation or suspension of a certificate of
126 authorization by the board, the board shall submit written notice
127 to the Secretary of State.

128 (k) *Unlawful acts.* — It is unlawful for any corporation to
129 practice or offer to practice medicine and surgery or podiatry
130 after its certificate of authorization has expired or been revoked,
131 or if suspended, during the term of the suspension.

132 (l) *Application of section.* — Nothing in this section is meant
133 or intended to change in any way the rights, duties, privileges,
134 responsibilities and liabilities incident to the physician-patient or
135 podiatrist-patient relationship, nor is it meant or intended to
136 change in any way the personal character of the
137 physician-patient or podiatrist-patient relationship.

138 (m) *Court evidence.* — A certificate of authorization issued
139 by the board to a corporation to practice medicine and surgery or
140 podiatry in this state that has not expired, been revoked or
141 suspended is admissible in evidence in all courts of this state and
142 is prima facie evidence of the facts stated therein.

143 (n) *Penalties.* — Any officer, shareholder or employee of a
144 medical or podiatry corporation who violates this section is
145 guilty of a misdemeanor and, upon conviction thereof, shall be
146 fined not more than \$1,000 per violation.

CHAPTER 142

(Com. Sub. for S. B. 425 - By Senators Stollings and Edgell)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2014.]

AN ACT to repeal §30-3-16 and §30-3-16a of the Code of West Virginia, 1931, as amended; to repeal §30-14A-1, §30-14A-2, §30-14A-3, §30-14A-4 and §30-14A-5 of said code; and to amend

said code by adding thereto a new article, designated §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-5, §30-3E-6, §30-3E-7, §30-3E-8, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-13, §30-3E-14, §30-3E-15, §30-3E-16, §30-3E-17, §30-3E-18 and §30-3E-19, all relating to physician assistants; defining terms; powers and duties of the Board of Medicine and the Board of Osteopathic Medicine; rule-making authority; licensing requirements; providing for a temporary license; license renewal requirements; expired licenses; termination of licenses; practice requirements; practice agreement requirements; supervision requirements; scope of practice; requiring identification be worn; special volunteer license requirements; summer camp or volunteer endorsement for in-state and out-of-state physician assistants; complaint process; health care facility reporting requirements; unlawful acts; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §30-3-16 and §30-3-16a of the Code of West Virginia, 1931, as amended, be repealed; that §30-14A-1, §30-14A-2, §30-14A-3, §30-14A-4 and §30-14A-5 of said code be repealed; and that said code be amended by adding thereto a new article, designated §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-5, §30-3E-6, §30-3E-7, §30-3E-8, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-13, §30-3E-14, §30-3E-15, §30-3E-16, §30-3E-17, §30-3E-18 and §30-3E-19, all to read as follows:

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-1. Definitions.

1 As used in this article:

2 (1) "Advance duties" means medical acts that require
3 additional training beyond the basic education program training
4 required for licensure as a physician assistant.

5 (2) “Alternate supervising physician” means one or more
6 physicians licensed in this state and designated by the
7 supervising physician to provide supervision of a physician
8 assistant in accordance with an authorized practice agreement.

9 (3) “Approved program” means an educational program for
10 physician assistants approved and accredited by the
11 Accreditation Review Commission on Education for the
12 Physician Assistant or its successor. Prior to 2001, approval and
13 accreditation would have been by either the Committee on Allied
14 Health Education and Accreditation or the Accreditation Review
15 Commission on Education for the Physician Assistant.

16 (4) “Boards” means the West Virginia Board of Medicine
17 and the West Virginia Board of Osteopathic Medicine.

18 (5) “Chronic condition” means a condition which lasts three
19 months or more, generally cannot be prevented by vaccines, can
20 be controlled but not cured by medication and does not generally
21 disappear. These conditions include, but are not limited to,
22 arthritis, asthma, cardiovascular disease, cancer, diabetes,
23 epilepsy and seizures and obesity.

24 (6) “Endorsement” means a summer camp or volunteer
25 endorsement authorized under this article.

26 (7) “Health care facility” means any licensed hospital,
27 nursing home, extended care facility, state health or mental
28 institution, clinic or physician’s office.

29 (8) “Hospital” means a facility licensed pursuant to article
30 five-b, chapter sixteen of this code, and any acute-care facility
31 operated by the state government that primarily provides
32 inpatient diagnostic, treatment or rehabilitative services to
33 injured, disabled or sick persons under the supervision of
34 physicians and includes psychiatric hospitals.

35 (9) "License" means a license issued by either of the boards
36 pursuant to the provisions of this article.

37 (10) "Licensee" means a person licensed pursuant to the
38 provisions of this article.

39 (11) "Physician" means a doctor of allopathic or osteopathic
40 medicine who is fully licensed pursuant to the provisions of
41 either article three or article fourteen of this chapter to practice
42 medicine and surgery in this state.

43 (12) "Physician assistant" means a person who meets the
44 qualifications set forth in this article and is licensed pursuant to
45 this article to practice medicine under supervision.

46 (13) "Practice Agreement" means a document that is
47 executed between a supervising physician and a physician
48 assistant pursuant to the provisions of this article, and is filed
49 with and approved by the appropriate licensing board.

50 (14) "Supervising physician" means a doctor of medicine,
51 osteopathy or podiatry fully licensed, by the appropriate board
52 in this state, without restriction or limitation, who supervises
53 physician assistants.

54 (15) "Supervision" means overseeing the activities of, and
55 accepting responsibility for, the medical services rendered by a
56 physician assistant. Constant physical presence of the
57 supervising physician is not required as long as the supervising
58 physician and physician assistant are, or can be, easily in contact
59 with one another by telecommunication. Supervision does not
60 require the personal presence of the supervising physician at the
61 place or places where services are rendered if the physician
62 assistant's normal place of employment is the same premises as
63 the supervising physician.

§30-3E-2. Powers and duties of the boards.

1 In addition to the powers and duties set forth in this code for
2 the boards, the boards shall:

3 (1) Establish the requirements for licenses and temporary
4 licenses pursuant to this article;

5 (2) Establish the procedures for submitting, approving and
6 rejecting applications for licenses and temporary licenses;

7 (3) Propose rules for legislative approval in accordance with
8 the provisions of article three, chapter twenty-nine-a of this code
9 to implement the provisions of this article;

10 (4) Compile and publish an annual report that includes a list
11 of currently licensed physician assistants, their supervising
12 physicians and their locations in the state; and

13 (5) Take all other actions necessary and proper to effectuate
14 the purposes of this article.

§30-3E-3. Rulemaking.

1 (a) The boards shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to implement the provisions of this
4 article, including:

5 (1) The extent to which physician assistants may practice in
6 this state;

7 (2) The extent to which physician assistants may pronounce
8 death;

9 (3) Requirements for licenses and temporary licenses;

10 (4) Requirements for practice agreements;

11 (5) Requirements for continuing education;

12 (6) Conduct of a licensee for which discipline may be
13 imposed;

14 (7) The eligibility and extent to which a physician assistant
15 may prescribe at the direction of his or her supervising
16 physician, including the following:

17 (A) A list of drugs and pharmacologic categories, or both,
18 the prescription of which may not be delegated to a physician
19 assistant, including all drugs listed in Schedules I and II of the
20 Uniform Controlled Substances Act, antineoplastic and
21 chemotherapeutic agents, or both, used in the active treatment of
22 current cancer, radiopharmaceuticals, general anesthetics,
23 radiographic contrast materials and any other limitation or
24 exclusions of specific drugs or categories of drugs as determined
25 by the boards;

26 (B) Authority to include, in a practice agreement, the
27 delegation of prescribing authority for up to a 72-hour supply of
28 drugs listed under Schedule III of the Uniform Controlled
29 Substances Act so long as the prescription is nonrefillable and an
30 annual supply of any drug, with the exception of controlled
31 substances, which is prescribed for the treatment of a chronic
32 condition, other than chronic pain management, with the chronic
33 condition being treated identified on the prescription; and

34 (C) A description of the education and training requirements
35 for a physician assistant to be eligible to receive delegated
36 prescriptive writing authority as part of a practice agreement;

37 (8) The authority a supervising physician may delegate for
38 prescribing, dispensing and administering of controlled
39 substances, prescription drugs or medical devices if the practice
40 agreement includes:

41 (A) A notice of intent to delegate prescribing of controlled
42 substances, prescription drugs or medical devices;

43 (B) An attestation that all prescribing activities of the
44 physician assistant shall comply with applicable federal and state
45 law governing the practice of physician assistants;

46 (C) An attestation that all medical charts or records shall
47 contain a notation of any prescriptions written by a physician
48 assistant;

49 (D) An attestation that all prescriptions shall include the
50 physician assistant's name and the supervising physician's name,
51 business address and business telephone number legibly written
52 or printed; and

53 (E) An attestation that the physician assistant has
54 successfully completed each of the requirements established by
55 the appropriate board to be eligible to prescribe pursuant to a
56 practice agreement accompanied by the production of any
57 required documentation establishing eligibility;

58 (9) A fee schedule; and

59 (10) Any other rules necessary to effectuate the provisions
60 of this article.

61 (b) The boards may propose emergency rules pursuant to
62 article three, chapter twenty-nine-a of this code to ensure
63 conformity with this article.

§30-3E-4. License to practice as a physician assistant.

1 (a) A person seeking licensure as a physician assistant shall
2 apply to the Board of Medicine or to the Board of Osteopathic
3 Medicine. The appropriate board shall issue a license to practice
4 as a physician assistant under the supervision of that board's
5 licensed physicians or podiatrists.

- 6 (b) A license may be granted to a person who:
- 7 (1) Files a complete application;
- 8 (2) Pays the applicable fees;
- 9 (3) Demonstrates to the board's satisfaction that he or she:
- 10 (A) Obtained a baccalaureate or master's degree from an
11 accredited program of instruction for physician assistants;
- 12 (B) Prior to July 1, 1994, graduated from an approved
13 program of instruction in primary health care or surgery; or
- 14 (C) Prior to July 1, 1983, was certified by the Board of
15 Medicine as a physician assistant then classified as "Type B";
- 16 (4) Has passed the Physician Assistant National Certifying
17 Examination administered by the National Commission on
18 Certification of Physician Assistants;
- 19 (5) Has a current certification from the National Commission
20 on Certification of Physician Assistants;
- 21 (6) Is mentally and physically able to engage safely in
22 practice as a physician assistant;
- 23 (7) Has not had a physician assistant license, certification or
24 registration in any jurisdiction suspended or revoked;
- 25 (8) Is not currently subject to any limitation, restriction,
26 suspension, revocation or discipline concerning a physician
27 assistant license, certification or registration in any jurisdiction:
28 *Provided*, That if a board is made aware of any problems with a
29 physician assistant license, certification or registration and
30 agrees to issue a license, certification or registration
31 notwithstanding the provisions of this subdivision or subdivision
32 (7) of this subsection;

33 (9) Is of good moral character; and

34 (10) Has fulfilled any other requirement specified by the
35 appropriate board.

36 (c) A board may deny an application for a physician assistant
37 license to any applicant determined to be unqualified by the
38 board.

§30-3E-5. Temporary license.

1 (a) A temporary license may be issued by the boards to a
2 person applying for a license under this article, if the person
3 meets all of the qualifications for a license but is awaiting the
4 next scheduled meeting of the board for action upon his or her
5 application.

6 (b) The temporary license expires six months after issuance
7 or after the board acts, whichever is earlier.

§30-3E-6. License renewal requirements.

1 (a) A licensee shall renew biennially, on a schedule
2 established by the appropriate licensing board, by submitting:

3 (1) A complete renewal application;

4 (2) The renewal fee;

5 (3) Proof that he or she is currently certified and has been
6 continuously certified during the preceding licensure period by
7 the National Commission on Certification of Physician
8 Assistants; and

9 (4) An attestation that all continuing education requirements
10 for the reporting period have been met.

11 (b) If a licensee fails to timely renew his or her license, then
12 the license automatically expires.

§30-3E-7. Expired license requirements.

1 (a) If a license automatically expires and reinstatement is
2 sought within one year of the automatic expiration, then an
3 applicant shall submit:

4 (1) A complete reinstatement application;

5 (2) The applicable fees;

6 (3) Proof that he or she is currently certified and has been
7 continuously certified during the preceding licensure period and
8 expiration period by the National Commission on Certification
9 of Physician Assistants; and

10 (4) An attestation that all continuing education requirements
11 have been met.

12 (b) If a license automatically expires and more than one year
13 has passed since the automatic expiration, then an applicant shall
14 apply for a new license.

§30-3E-8. Termination of license.

1 (a) A licensee who fails the recertification examination of
2 the National Commission on Certification of Physician
3 Assistants, and is no longer certified, shall immediately:

4 (1) Notify his or her supervising physician;

5 (2) Notify his or her licensing board in writing; and

6 (3) Cease practicing.

7 (b) The license automatically terminates and the physician
8 assistant is not eligible for reinstatement until he or she has
9 obtained a passing score on the examination.

§30-3E-9. Practice requirements.

1 (a) A physician assistant may not practice independent of a
2 supervising physician.

3 (b) Before a licensed physician assistant may practice and
4 before a supervising physician may delegate medical acts to a
5 physician assistant, the supervising physician and the physician
6 assistant shall:

7 (1) File a practice agreement with the appropriate licensing
8 board, including any designated alternate supervising physicians;

9 (2) Pay the applicable fees; and

10 (3) Receive written authorization from the appropriate
11 licensing board to commence practicing as a physician assistant
12 pursuant to the practice agreement.

13 (c) A physician applying to supervise a physician assistant
14 shall affirm that:

15 (1) The medical services set forth in the practice agreement
16 are consistent with the skills and training of the supervising
17 physician and the physician assistant; and

18 (2) The activities delegated to a physician assistant are
19 consistent with sound medical practice and will protect the
20 health and safety of the patient.

21 (d) A supervising physician may enter into practice
22 agreements with up to five full-time physician assistants at any
23 one time. A physician is prohibited from being a supervising or
24 alternate supervising physician to more than five physician
25 assistants at any one time. However, a physician practicing
26 medicine in an emergency department of a hospital or a
27 physician who supervises a physician assistant who is employed

28 by or on behalf of a hospital may provide supervision for up to
29 five physician assistants per shift if the physician has an
30 authorized practice agreement in place with the supervised
31 physician assistant or the physician has been properly authorized
32 as an alternate supervising physician for each physician assistant.

§30-3E-10. Practice agreement requirements.

1 (a) A practice agreement shall include:

2 (1) A description of the qualifications of the supervising
3 physician, the alternate supervising physicians, if applicable, and
4 the physician assistant;

5 (2) A description of the settings in which the supervising
6 physician assistant will practice;

7 (3) A description of the continuous physician supervision
8 mechanisms that are reasonable and appropriate for the practice
9 setting, and the experience and training of the physician
10 assistant;

11 (4) A description of the medical acts that are to be delegated;

12 (5) An attestation by the supervising physician that the
13 medical acts to be delegated are:

14 (A) Within the supervising physician's scope of practice;
15 and

16 (B) Appropriate to the physician assistant's education,
17 training and level of competence;

18 (6) A description of the medical care the physician assistant
19 will provide in an emergency, including a definition of an
20 emergency; and

21 (7) Any other information required by the boards.

22 (b) A licensing board may:

23 (1) Decline to authorize a physician assistant to commence
24 practicing pursuant to a practice agreement, if the board
25 determines that:

26 (A) The practice agreement is inadequate; or

27 (B) The physician assistant is unable to perform the
28 proposed delegated duties safely; or

29 (2) Request additional information from the supervising
30 physician and/or the physician assistant to evaluate the
31 delegation of duties and advanced duties.

32 (c) A licensing board may authorize a practice agreement
33 that includes advanced duties which are to be performed in a
34 hospital or ambulatory surgical facility, if the practice agreement
35 has a certification that:

36 (1) A physician, with credentials that have been reviewed by
37 the hospital or ambulatory surgical facility as a condition of
38 employment as an independent contractor or as a member of the
39 medical staff, supervises the physician assistant;

40 (2) The physician assistant has credentials that have been
41 reviewed by the hospital or ambulatory surgical facility as a
42 condition of employment as an independent contractor or as a
43 member of the medical staff; and

44 (3) Each advanced duty to be delegated to the physician
45 assistant is reviewed and approved within a process approved by
46 the governing body of the health care facility or ambulatory
47 surgical facility before the physician assistant performs the
48 advanced duties.

49 (d) If a licensing board declines to authorize a practice
50 agreement or any proposed delegated act incorporated therein,
51 the board shall provide the supervising physician and the
52 physician assistant with written notice. A physician assistant
53 who receives notice that the board has not authorized a practice
54 agreement or a delegated act shall not practice under the
55 agreement or perform the delegated act.

56 (e) If a practice agreement is terminated, then a physician
57 assistant shall notify the appropriate licensing board in writing
58 within ten days of the termination. Failure to provide timely
59 notice of the termination constitutes unprofessional conduct and
60 disciplinary proceedings may be instituted by the appropriate
61 licensing board.

§30-3E-11. Supervision of physician assistants.

1 (a) A licensed physician or podiatrist may supervise a
2 physician assistant:

3 (1) As a supervising physician in accordance with an
4 authorized practice agreement; or

5 (2) As an alternate supervising physician who:

6 (A) Supervises in accordance with an authorized practice
7 agreement;

8 (B) Has been designated an alternate supervising physician
9 in the authorized practice agreement; and

10 (C) Only delegates those medical acts that have been
11 authorized by the practice agreement and are within the scope of
12 practice of both the primary supervising physician and the
13 alternate supervising physician.

14 (b) A supervising physician is responsible at all times for the
15 physician assistant under his or her supervision, including:

- 16 (1) The legal responsibility of the physician assistant;
- 17 (2) Observing, directing and evaluating the physician
18 assistant's work records and practices; and
- 19 (3) Supervising the physician assistant in the care and
20 treatment of a patient in a health care facility.
- 21 (c) A health care facility is only legally responsible for the
22 actions or omissions of a physician assistant when the physician
23 assistant is employed by or on behalf of the facility. Credentialed
24 medical facility staff and attending physicians of a hospital who
25 provide direction to or utilize physician assistants employed by
26 or on behalf of the hospital are considered alternate supervising
27 physicians.

§30-3E-12. Scope of practice.

- 1 (a) A license issued to a physician assistant by the
2 appropriate state licensing board shall authorize the physician
3 assistant to perform medical acts:
- 4 (1) Delegated to the physician assistant as part of an
5 authorized practice agreement;
- 6 (2) Appropriate to the education, training and experience of
7 the physician assistant;
- 8 (3) Customary to the practice of the supervising physician;
9 and
- 10 (4) Consistent with the laws of this state and rules of the
11 boards.
- 12 (b) This article does not authorize a physician assistant to
13 perform any specific function or duty delegated by this code to
14 those persons licensed as chiropractors, dentists, dental

15 hygienists, optometrists or pharmacists, or certified as nurse
16 anesthetists.

§30-3E-13. Identification.

1 (a) While practicing, a physician assistant shall wear a name
2 tag that identifies him or her as a physician assistant.

3 (b) A physician assistant shall keep his or her license and
4 current practice agreement available for inspection at his or her
5 primary place of practice.

§30-3E-14. Special volunteer physician assistant license.

1 (a) A special volunteer physician assistant license may be
2 issued to a physician assistant who:

3 (1) Is retired or is retiring from the active practice of
4 medicine; and

5 (2) Wishes to donate his or her expertise for the medical care
6 and treatment of indigent and needy patients in the clinical
7 setting of clinics organized, in whole or in part, for the delivery
8 of health care services without charge.

9 (b) The special volunteer physician assistant license shall be
10 issued by the appropriate licensing board:

11 (1) To a physician assistant licensed or otherwise eligible for
12 licensure under this article;

13 (2) Without the payment of any fee; and

14 (3) The initial license shall be issued for the remainder of the
15 licensing period.

16 (c) The special volunteer physician assistant license shall be
17 renewed consistent with the appropriate licensing board's other
18 licensing requirements.

19 (d) The appropriate licensing board shall develop application
20 forms for the special volunteer physician assistant license which
21 shall contain the physician assistant's acknowledgment that:

22 (1) The physician assistant's practice under the special
23 volunteer physician assistant license shall be exclusively devoted
24 to providing medical care to needy and indigent persons in West
25 Virginia;

26 (2) The physician assistant will not receive any payment or
27 compensation, either direct or indirect, or have the expectation
28 of any payment or compensation, for any medical services
29 rendered under the special volunteer physician assistant license;

30 (3) The physician assistant shall supply any supporting
31 documentation that the appropriate licensing board may
32 reasonably require; and

33 (4) The physician assistant agrees to continue to participate
34 in continuing education as required by the appropriate licensing
35 board for the special volunteer physician assistant license.

36 (e) A physician assistant who renders medical service to
37 indigent and needy patients of a clinic organized, in whole or in
38 part, for the delivery of health care services without charge,
39 under a special volunteer physician assistant license, without
40 payment or compensation or the expectation or promise of
41 payment or compensation, is immune from liability for any civil
42 action arising out of any act or omission resulting from the
43 rendering of the medical service at the clinic unless the act or
44 omission was the result of the physician assistant's gross
45 negligence or willful misconduct. In order for the immunity
46 under this subsection to apply, there shall be a written agreement
47 between the physician assistant and the clinic pursuant to which
48 the physician assistant shall provide voluntary uncompensated
49 medical services under the control of the clinic to patients of the

50 clinic before the rendering of any services by the physician
51 assistant at the clinic. Any clinic entering into a written
52 agreement is required to maintain liability coverage of not less
53 than \$1 million per occurrence.

54 (f) Notwithstanding the provisions of this section, a clinic
55 organized, in whole or in part, for the delivery of health care
56 services without charge is not relieved from imputed liability for
57 the negligent acts of a physician assistant rendering voluntary
58 medical services at or for the clinic under a special volunteer
59 physician assistant license.

60 (g) For purposes of this section, “otherwise eligible for
61 licensure” means the satisfaction of all the requirements for
62 licensure under this article, except the fee requirements.

63 (h) Nothing in this section may be construed as requiring the
64 appropriate licensing board to issue a special volunteer physician
65 assistant license to any physician assistant whose license is or
66 has been subject to any disciplinary action or to any physician
67 assistant who has surrendered a physician assistant license or
68 caused his or her license to lapse, expire and become invalid in
69 lieu of having a complaint initiated or other action taken against
70 his or her license, or who has elected to place a physician
71 assistant license in inactive status in lieu of having a complaint
72 initiated or other action taken against his or her license, or who
73 has been denied a physician assistant license.

74 (i) Any policy or contract of liability insurance providing
75 coverage for liability sold, issued or delivered in this state to any
76 physician assistant covered under the provisions of this article
77 shall be read so as to contain a provision or endorsement
78 whereby the company issuing the policy waives or agrees not to
79 assert as a defense on behalf of the policyholder or any
80 beneficiary thereof, to any claim covered by the terms of the
81 policy within the policy limits, the immunity from liability of the

82 insured by reason of the care and treatment of needy and
83 indigent patients by a physician assistant who holds a special
84 volunteer physician assistant license.

**§30-3E-15. Summer camp or volunteer endorsement — West
Virginia licensee.**

1 (a) The appropriate licensing board may grant a summer
2 camp or volunteer endorsement to provide services at a
3 children's summer camp or volunteer services for a public or
4 community event to a physician assistant who:

5 (1) Is currently licensed by the appropriate licensing board;

6 (2) Has no current discipline, limitations or restrictions on
7 his or her license;

8 (3) Has submitted a timely application; and

9 (4) Attests that:

10 (A) The organizers of the summer camp and public or
11 community event have arranged for a supervising physician to
12 be available as needed to the physician assistant;

13 (B) The physician assistant shall limit his or her scope of
14 practice to medical acts which are within his or her education,
15 training and experience; and

16 (C) The physician assistant will not prescribe any controlled
17 substances or legend drugs as part of his or her practice at the
18 summer camp or public or community event.

19 (b) A physician assistant may only receive one summer
20 camp or volunteer endorsement annually. The endorsement is
21 active for one specifically designated period annually, which
22 period cannot exceed three weeks.

23 (c) A fee cannot be assessed for the endorsement if the
24 physician assistant is volunteering his or her services without
25 compensation or remuneration.

§30-3E-16. Summer camp or volunteer endorsement — Out-of-state licensee.

1 (a) The appropriate licensing board may grant a summer
2 camp or volunteer endorsement to provide services at a
3 children's summer camp or volunteer services for a public or
4 community event to a physician assistant licensed from another
5 jurisdiction who:

6 (1) Is currently licensed in another jurisdiction and has a
7 current certification from the National Commission on
8 Certification of Physician Assistants;

9 (2) Has no current discipline, limitations or restrictions on
10 his or her license;

11 (3) Has passed the Physician Assistant National Certifying
12 Examination administered by the National Commission on
13 Certification of Physician Assistants;

14 (4) Has submitted a timely application;

15 (5) Has paid the applicable fees; and

16 (6) Attests that:

17 (A) The organizers of the summer camp and public or
18 community event have arranged for a supervising physician to
19 be available as needed to the physician assistant;

20 (B) The physician assistant shall limit his or her scope of
21 practice to medical acts which are within his or her education,
22 training and experience; and

23 (C) The physician assistant will not prescribe any controlled
24 substances or legend drugs as part of his or her practice at the
25 summer camp or public or community event; and

26 (7) Has fulfilled any other requirements specified by the
27 appropriate board.

28 (b) A physician assistant may only receive one summer
29 camp or volunteer endorsement annually. The endorsement is
30 active for one specifically designated period annually, which
31 period cannot exceed three weeks.

§30-3E-17. Complaint process.

1 (a) All hearings and procedures related to denial of a license,
2 and all complaints, investigations, hearings and procedures a
3 physician assistant licenses and the discipline accorded thereto,
4 shall be in accordance with the processes and procedures set
5 forth in articles three and/or fourteen of this chapter, depending
6 on which board licenses the physician assistant.

7 (b) The boards may impose the same discipline, restrictions
8 and/or limitations upon the license of a physician assistant as
9 they are authorized to impose upon physicians and/or podiatrists.

10 (c) The boards shall direct to the appropriate licensing board
11 a complaint against a physician assistant, a supervising physician
12 and/or an alternate supervising physician.

13 (d) In the event that independent complaint processes are
14 warranted by the boards with respect to the professional conduct
15 of a physician assistant or a supervising and/or alternate
16 supervising physician, the boards are authorized to work
17 cooperatively and to disclose to one another information which
18 may assist the recipient appropriate licensing board in its
19 disciplinary process. The determination of what information, if
20 any, to disclose shall be at the discretion of the disclosing board.

§30-3E-18. Health care facility reporting requirements.

1 (a) A health care facility shall report, in writing, to the
2 appropriate licensing board within sixty days after the
3 completion of the facility's formal disciplinary procedure or
4 after the commencement and conclusion of any resulting legal
5 action against a licensee.

6 (b) The report shall include:

7 (1) The name of the physician assistant practicing in the
8 facility whose privileges at the facility have been revoked,
9 restricted, reduced or terminated for any cause including
10 resignation;

11 (2) All pertinent information relating to the action; and

12 (3) The formal disciplinary action taken against the
13 physician assistant by the facility relating to professional ethics,
14 medical incompetence, medical malpractice, moral turpitude or
15 drug or alcohol abuse.

16 (c) A health care facility does not need to report temporary
17 suspensions for failure to maintain records on a timely basis or
18 for failure to attend staff or section meetings.

§30-3E-19. Unlawful act and penalty.

1 It is unlawful for any physician assistant to represent to any
2 person that he or she is a physician, surgeon or podiatrist. A
3 person who violates this section is guilty of a felony and, upon
4 conviction thereof, shall be imprisoned in a state correctional
5 facility for not less than one nor more than two years, or be fined
6 not more than \$2,000, or both fined and imprisoned.

CHAPTER 143

**(Com. Sub. for H. B. 4538 - By Delegates Staggers,
Morgan and Stephens)**

[Passed March 7, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §30-4-6 and §30-4-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-4A-1 of said code, all relating to the Board of Dentistry; providing authority to promulgate legislative rules concerning agreements with organizations to create alcohol or chemical dependency treatments programs and to form dentist recovery networks; authorizing the board to defer disciplinary action with regard to an impaired licensee who voluntarily enters an approved treatment program; and providing for annual renewal of anesthesia permits.

Be it enacted by the Legislature of West Virginia:

That §30-4-6 and §30-4-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §30-4A-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-6. Rule-making authority.

1 (a) The board shall propose rules for legislative approval, in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to implement the provisions of this
4 article and articles four-a and four-b of this chapter including:

5 (1) Standards and requirements for licenses, certifications
6 and permits;

- 7 (2) Requirements for third parties to prepare and/or
8 administer examinations and reexaminations;
- 9 (3) Educational and experience requirements;
- 10 (4) Continuing education requirements and approval of
11 continuing education courses;
- 12 (5) Procedures for the issuance and renewal of licenses,
13 certifications and permits;
- 14 (6) Establish a fee schedule;
- 15 (7) Regulate dental specialities;
- 16 (8) Delegate procedures to be performed by a dental
17 hygienist;
- 18 (9) Delegate procedures to be performed by a dental
19 assistant;
- 20 (10) Designate the services and procedures performed under
21 direct supervision, general supervision in public health practice;
- 22 (11) Designate additional public health settings;
- 23 (12) Regulate the use of firm or trade names;
- 24 (13) Regulate dental corporations;
- 25 (14) Regulate mobile dental facilities;
- 26 (15) Regulate portable dental units;
- 27 (16) Regulate professional limited liability companies;
- 28 (17) Establish professional conduct requirements;
- 29 (18) Establish the procedures for denying, suspending,
30 revoking, reinstating or limiting the practice of licensees,
31 certifications and permittees;

32 (19) Standards and requirements for agreements with
33 organizations to form professional recovery networks;

34 (20) Establish an alcohol and chemical dependency
35 treatment program, including standards and requirements;

36 (21) Establish requirements for inactive or revoked licenses,
37 certifications and permits;

38 (22) Regulate dental anesthesia, including:

39 (A) Fees;

40 (B) Evaluations;

41 (C) Equipment;

42 (D) Emergency drugs;

43 (E) Definitions;

44 (F) Qualified monitor requirements; and

45 (G) Education;

46 (23) Any other rules necessary to implement this article.

47 (b) All of the board's rules in effect and not in conflict with
48 these provisions shall remain in effect until they are amended or
49 rescinded.

**§30-4-19. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

1 (a) The board may initiate a complaint upon receipt of
2 credible information and shall, upon the receipt of a written
3 complaint of any person, cause an investigation to be made to
4 determine whether grounds exist for disciplinary action under

5 this article or the legislative rules promulgated pursuant to this
6 article.

7 (b) After reviewing any information obtained through an
8 investigation, the board shall determine if probable cause exists
9 that the licensee, certificate holder or permittee has violated
10 subsection (g) of this section or rules promulgated pursuant to
11 this article.

12 (c) Upon a finding of probable cause to go forward with a
13 complaint, the board shall provide a copy of the complaint to the
14 licensee, certificate holder or permittee.

15 (d) Upon a finding that probable cause exists that the
16 licensee, certificate holder or permittee has violated subsection
17 (g) of this section or rules promulgated pursuant to this article,
18 the board may enter into a consent decree or hold a hearing for
19 disciplinary action against the licensee, certificate holder or
20 permittee. Any hearing shall be held in accordance with the
21 provisions of this article and shall require a violation to be
22 proven by a preponderance of the evidence.

23 (e) A member of the complaint committee or the executive
24 director of the board may issue subpoenas and subpoenas duces
25 tecum to obtain testimony and documents to aid in the
26 investigation of allegations against any person regulated by the
27 article.

28 (f) Any member of the board or its executive director may
29 sign a consent decree or other legal document on behalf of the
30 board.

31 (g) The board may, after notice and opportunity for hearing,
32 deny or refuse to renew, suspend, restrict or revoke the license,
33 certificate or permit of, or impose probationary conditions upon
34 or take disciplinary action against, any licensee, certificate
35 holder or permittee for any of the following reasons:

- 36 (1) Obtaining a board authorization by fraud,
37 misrepresentation or concealment of material facts;
- 38 (2) Being convicted of a felony or a misdemeanor crime of
39 moral turpitude;
- 40 (3) Being guilty of unprofessional conduct which placed the
41 public at risk, as defined by legislative rule of the board;
- 42 (4) Intentional violation of a lawful order or legislative rule
43 of the board;
- 44 (5) Having had a board authorization revoked or suspended,
45 other disciplinary action taken, or an application for a board
46 authorization denied by the proper authorities of another
47 jurisdiction;
- 48 (6) Aiding or abetting unlicensed practice;
- 49 (7) Engaging in an act while acting in a professional capacity
50 which has endangered or is likely to endanger the health, welfare
51 or safety of the public;
- 52 (8) Having an incapacity that prevents a licensee from
53 engaging in the practice of dentistry or dental hygiene, with
54 reasonable skill, competence and safety to the public;
- 55 (9) Committing fraud in connection with the practice of
56 dentistry or dental hygiene;
- 57 (10) Failing to report to the board one's surrender of a
58 license or authorization to practice dentistry or dental hygiene in
59 another jurisdiction while under disciplinary investigation by any
60 of those authorities or bodies for conduct that would constitute
61 grounds for action as defined in this section;
- 62 (11) Failing to report to the board any adverse judgment,
63 settlement or award arising from a malpractice claim arising

64 related to conduct that would constitute grounds for action as
65 defined in this section;

66 (12) Being guilty of unprofessional conduct as contained in
67 the American Dental Association principles of ethics and code
68 of professional conduct. The following acts are conclusively
69 presumed to be unprofessional conduct:

70 (A) Being guilty of any fraud or deception;

71 (B) Committing a criminal operation or being convicted of
72 a crime involving moral turpitude;

73 (C) Abusing alcohol or drugs;

74 (D) Violating any professional confidence or disclosing any
75 professional secret;

76 (E) Being grossly immoral;

77 (F) Harassing, abusing, intimidating, insulting, degrading or
78 humiliating a patient physically, verbally or through another
79 form of communication;

80 (G) Obtaining any fee by fraud or misrepresentation;

81 (H) Employing directly or indirectly, or directing or
82 permitting any suspended or unlicensed person so employed, to
83 perform operations of any kind or to treat lesions of the human
84 teeth or jaws or correct malimposed formations thereof;

85 (I) Practicing, or offering or undertaking to practice dentistry
86 under any firm name or trade name not approved by the board;

87 (J) Having a professional connection or association with, or
88 lending his or her name to another, for the illegal practice of
89 dentistry, or professional connection or association with any
90 person, firm or corporation holding himself or herself,
91 themselves or itself out in any manner contrary to this article;

92 (K) Making use of any advertising relating to the use of any
93 drug or medicine of unknown formula;

94 (L) Advertising to practice dentistry or perform any
95 operation thereunder without causing pain;

96 (M) Advertising professional superiority or the performance
97 of professional services in a superior manner;

98 (N) Advertising to guarantee any dental service;

99 (O) Advertising in any manner that is false or misleading in
100 any material respect;

101 (P) Soliciting subscriptions from individuals within or
102 without the state for, or advertising or offering to individuals
103 within or without the state, a course or instruction or course
104 materials in any phase, part or branch of dentistry or dental
105 hygiene in any journal, newspaper, magazine or dental
106 publication, or by means of radio, television or United States
107 mail, or in or by any other means of contacting individuals:
108 *Provided*, That the provisions of this paragraph may not be
109 construed so as to prohibit:

110 (i) An individual dentist or dental hygienist from presenting
111 articles pertaining to procedures or technique to state or national
112 journals or accepted dental publications; or

113 (ii) Educational institutions approved by the board from
114 offering courses or instruction or course materials to individual
115 dentists and dental hygienists from within or without the state;
116 or

117 (Q) Engaging in any action or conduct which would have
118 warranted the denial of the license.

119 (13) Knowing or suspecting that a licensee is incapable of
120 engaging in the practice of dentistry or dental hygiene, with

121 reasonable skill, competence and safety to the public, and failing
122 to report any relevant information to the board;

123 (14) Using or disclosing protected health information in an
124 unauthorized or unlawful manner;

125 (15) Engaging in any conduct that subverts or attempts to
126 subvert any licensing examination or the administration of any
127 licensing examination;

128 (16) Failing to furnish to the board or its representatives any
129 information legally requested by the board or failing to cooperate
130 with or engaging in any conduct which obstructs an investigation
131 being conducted by the board;

132 (17) Announcing or otherwise holding himself or herself out
133 to the public as a specialist or as being specially qualified in any
134 particular branch of dentistry or as giving special attention to any
135 branch of dentistry or as limiting his or her practice to any
136 branch of dentistry without first complying with the
137 requirements established by the board for the specialty and
138 having been issued a certificate of qualification in the specialty
139 by the board;

140 (18) Failing to report to the board within seventy-two hours
141 of becoming aware thereof any life threatening occurrence,
142 serious injury or death of a patient resulting from dental
143 treatment or complications following a dental procedure;

144 (19) Failing to report to the board any driving under the
145 influence and/or driving while intoxicated offense; or

146 (20) Violation of any of the terms or conditions of any order
147 entered in any disciplinary action.

148 (h) For the purposes of subsection (g) of this section,
149 effective July 1, 2013, disciplinary action may include:

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(1) Reprimand;

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(2) Probation;

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(3) Restrictions;

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(4) Suspension;

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(5) Revocation;

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(6) Administrative fine, not to exceed \$1,000 per day per violation;

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(7) Mandatory attendance at continuing education seminars or other training;

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(8) Practicing under supervision or other restriction; or

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(9) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

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(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.

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(j) The board may defer disciplinary action with regard to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice dental care and to enter an approved treatment and monitoring program in accordance with the board's legislative rule: *Provided*, That this subsection does not apply to a licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to an offense relating to a controlled substance in any jurisdiction.

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(k) A person authorized to practice under this article who reports or otherwise provides evidence of the negligence, impairment or incompetence of another member of this profession to the board or to any peer review organization is not liable to any person for making the report if the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

**ARTICLE 4A. ADMINISTRATION OF ANESTHESIA BY
DENTISTS.****§30-4A-1. Requirement for anesthesia permit; qualifications and
requirements for qualified monitors.**

1 (a) No dentist may induce central nervous system anesthesia
2 without first having obtained an anesthesia permit for the level
3 of anesthesia being induced.

4 (b) The applicant for an anesthesia permit shall pay the
5 appropriate permit fees and renewal fees, submit a completed
6 board-approved application and consent to an office evaluation.

7 (c) Permits shall be renewed annually by June 30.

8 (d) Permit holders shall report the names and qualifications
9 of each qualified monitor providing services to that permit
10 holder. A qualified monitor may not perform the functions and
11 responsibilities specified in this article for any level of
12 anesthesia, other than relative analgesia/minimal sedation,
13 without certification by the board. Qualified monitors shall apply
14 for certification and pay the appropriate application fees and
15 renewal fees. Qualified monitors are required to renew annually
16 by the June 30. To be certified as a qualified monitor, the
17 applicant must meet the following minimum qualifications:

18 (1) Possess a current health care provider BLS/CPR
19 certification;

20 (2) For monitoring, conscious sedation/moderate sedation or
21 general anesthesia/deep conscious sedation procedures,
22 successful completion of an AAOMS or AAPD anesthesia
23 assistants certification program; and

24 (3) For monitoring a nitrous oxide unit, successful
25 completion of a board-approved course in nitrous oxide
26 monitoring.

27 (e) A dentist shall hold a class permit equivalent to or
28 exceeding the anesthesia level being provided unless the
29 provider of anesthesia is a physician anesthesiologist or another
30 licensed dentist who holds a current anesthesia permit issued by
31 the board.

CHAPTER 144

(Com. Sub. for S. B. 507 - By Senators Snyder and Plymale)

[Passed March 8, 2014; in effect July 1, 2014.]

[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §30-27-4 and §30-27-6 of the Code of West Virginia, 1931, as amended, all relating to the Board of Barbers and Cosmetologists; changing board membership; requiring the board to offer examinations in other languages if available and upon request; and removing outdated language.

Be it enacted by the Legislature of West Virginia:

That §30-27-4 and §30-27-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-4. Board of Barbers and Cosmetologists.

1 (a) The West Virginia Board of Barbers and Cosmetologists
2 is continued. The members of the board in office on July 1,
3 2014, shall, unless sooner removed, continue to serve until their
4 respective terms expire and until their successors have been
5 appointed and qualified.

6 (b) The Governor, by and with the advice and consent of the
7 Senate, shall appoint:

8 (1) One licensed cosmetologist;

9 (2) One licensed barber;

10 (3) One licensed barber crossover or licensed barber
11 permanent waviest;

12 (4) One licensed aesthetician;

13 (5) One licensed nail technician;

14 (6) One representative from a privately owned beauty school
15 licensed by the West Virginia Council for Community and
16 Technical College Education; and

17 (7) One citizen member.

18 (c) After the initial appointment term, the term shall be for
19 five years. All appointments to the board shall be made by the
20 Governor by and with the advice and consent of the Senate.

21 (d) Each licensed member of the board, at the time of his or
22 her appointment, must have held a professional license in this
23 state for a period of not less than three years immediately
24 preceding the appointment.

25 (e) Each member of the board must be a resident of this state
26 during the appointment term.

27 (f) A member may not serve more than two consecutive full
28 terms. A member may continue to serve until a successor has
29 been appointed and has qualified. A member serving on the
30 board on June 30, 2014, may be reappointed in accordance with
31 the provisions of this section.

32 (g) A vacancy on the board shall be filled by appointment by
33 the Governor for the unexpired term of the member whose office
34 is vacant and the appointment shall be made within sixty days of
35 the vacancy.

36 (h) The Governor may remove any member from the board
37 for neglect of duty, incompetency or official misconduct.

38 (i) A member of the board immediately and automatically
39 forfeits membership to the board if his or her license to practice
40 is suspended or revoked, is convicted of a felony under the laws
41 of any jurisdiction or becomes a nonresident of this state.

42 (j) The board shall elect annually one of its members as
43 chairperson who serves at the will of the board.

44 (k) Each member of the board is entitled to compensation
45 and expense reimbursement in accordance with article one of
46 this chapter.

47 (l) A majority of the members of the board constitutes a
48 quorum.

49 (m) The board shall hold at least two annual meetings. Other
50 meetings may be held at the call of the chairperson or upon the
51 written request of two members, at the time and place as
52 designated in the call or request.

53 (n) Prior to commencing his or her duties as a member of the
54 board, each member shall take and subscribe to the oath required
55 by section five, article four of the Constitution of this state.

§30-27-6. Rulemaking.

1 The board shall propose rules for legislative approval, in
2 accordance with article three, chapter twenty-nine-a of this code,
3 to implement the provisions of this article, including:

4 (1) Standards and requirements for licenses, permits,
5 certificates and registrations;

6 (2) Procedures for examinations and reexaminations:
7 *Provided*, That the board shall offer examinations in all
8 languages other than English if available to the board and
9 requested by the applicant;

10 (3) Requirements for third parties to prepare and/or
11 administer examinations and reexaminations;

12 (4) Educational and experience requirements;

13 (5) The passing grade on the examinations;

14 (6) Standards for approval of courses and curriculum;

15 (7) Procedures for the issuance and renewal of licenses,
16 permits, certificates and registrations;

17 (8) A fee schedule;

18 (9) Continuing education requirements for professional
19 licensees and certificate holders;

20 (10) The procedures for denying, suspending, revoking,
21 reinstating or limiting the practice of licensees, permittees,
22 certificate holders and registrants;

23 (11) Designating the regions for investigators/inspectors;

24 (12) Criteria for the training of investigators/inspectors;

25 (13) Requirements for investigations and inspections;

26 (14) Requirements for inactive or revoked licenses, permits,
27 certificates and registrations;

- 28 (15) Establishing the training program and requirements for
29 instructors for schools licensed under this article;
- 30 (16) Establishing operating procedures for salons; and
- 31 (17) Any other rules necessary to effectuate the provisions
32 of this article.

CHAPTER 145

**(Com. Sub. for H. B. 3156 - By Delegates D. Poling, Caputo,
Manypenny and Walker)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §6C-2-8, relating to recognizing certain communications between a public employee and a employee organization as confidential; preventing employee organizations and their agents from being compelled to disclose certain communications or information obtained from an employee while the employee organization or agent is acting in a representative capacity concerning an employee grievance; providing limitations and exceptions; ensuring the confidentiality does not extend outside the grievance process; and providing for resolution of conflicts with existing law.

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 §6C-2-8, to read as follows:

**ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE PROCEDURE.****§6C-2-8. Employee organizations may not be compelled to disclose
certain communications; exceptions.**

1 (a) Except as otherwise provided in this section, an
2 employee organization or an agent of an employee organization
3 may not be compelled to disclose any communication or
4 information the employee organization or agent received or
5 acquired in confidence from a public employee, while the
6 employee organization or agent was acting in a representative
7 capacity concerning a public employee grievance or an
8 investigation of a potential public employee grievance,
9 regardless of whether the public employee is a member of the
10 employee organization: *Provided*, That the confidentiality
11 established under this section does not apply to written
12 communications between the employee and the employee
13 organization.

14 (b) (1) The confidentiality established under this section
15 applies only to the extent that the communication or information
16 is germane to a grievance or potential grievance of the employee.

17 (2) The confidentiality established under this subsection
18 continues after termination of:

19 (A) The employee's employment; or

20 (B) The representative relationship of the employee
21 organization or its agent with the public employee.

22 (3) The confidentiality established under this subsection
23 protects the communication or information received or acquired
24 by the employee organization or its agent, but does not protect
25 the employee from being compelled to disclose, to the extent

26 provided by law, the facts underlying the communication or
27 information.

28 (c) The protection for confidential communications provided
29 by this section only extends to proceedings under the public
30 employees grievance procedure. Nothing in this section may be
31 construed to extend the confidentiality to circuit court
32 proceedings or other proceedings outside of the public
33 employees grievance procedure.

34 (d) An employee organization or its agent shall disclose to
35 the employer as soon as possible a communication or
36 information described in subsection (a) of this section to the
37 extent the employee organization or its agent reasonably
38 believes:

39 (1) It is necessary to prevent certain death or substantial
40 bodily harm.

41 (2) It is necessary to prevent the employee from committing
42 a crime, fraud or any act that is reasonably certain to result in
43 substantial injury to the financial interests or property of another
44 or to rectify or mitigate any such action after it has occurred;

45 (3) The communication or information constitutes an
46 admission that the employee has committed a crime; or

47 (4) It is necessary to comply with a court order or other law.

48 (e) An employee organization or its agent may disclose a
49 communication or information described in subsection (a) of this
50 section in order to:

51 (1) Secure legal advice about the compliance of the
52 employee organization or its agent with a court order or other
53 law;

54 (2) Establish a claim or defense on behalf of the employee
55 organization or its agent in a controversy between the employee
56 and the employee organization or its agent;

57 (3) Establish a defense to a criminal charge or civil claim
58 against the employee organization or its agent based on conduct
59 in which the employee was involved; or

60 (4) Respond to allegations in any proceeding concerning the
61 performance of professional duties by the employee organization
62 or its agent on behalf of the employee.

63 (f) An employee organization or its agent may disclose a
64 communication or information described in subsection (a) of this
65 section, without regard to whether the disclosure is made within
66 the public employees grievance procedure, in the following
67 circumstances:

68 (1) The employee organization has obtained the express
69 written or oral consent of the employee;

70 (2) The employee has, by other act or conduct, waived the
71 confidentiality of the communication or information; or

72 (3) The employee is deceased or has been adjudicated
73 incompetent by a court of competent jurisdiction and the
74 employee organization has obtained the written or oral consent
75 of the personal representative of the employee's estate or of the
76 employee's guardian.

77 (g) If there is a conflict between the application of this
78 section and any federal or state labor law, the provisions of the
79 federal or other state law shall control.

CHAPTER 146

**(Com. Sub. for S. B. 322 - By Senators Kessler (Mr. President)
and M. Hall)**

[By Request of the Executive]

[Passed March 5, 2014; in effect July 1, 2014.]

[Approved by the Governor on March 14, 2014.]

AN ACT to amend and reenact §6-7-1 of the Code of West Virginia, 1931, as amended, relating to authorizing state agencies, state institutions of higher education and the Higher Education Policy Commission to transition all employees, officers and officials, except elected officials, into payment in arrears and to pay employees biweekly as part of the standardization of the state's accounting and payroll functions under the Enterprise Resource Planning Board.

Be it enacted by the Legislature of West Virginia:

That §6-7-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-1. State officials, officers and employees to be paid at least twice per month; new employees paid in arrears; effective date.

1 All full-time and part-time salaried and hourly officials,
2 officers and employees of the state, state institutions of higher
3 education and the Higher Education Policy Commission shall be
4 paid at least twice per month, and under the same procedures and
5 in the same manner as the State Auditor currently pays agencies:
6 *Provided*, That on and after July 1, 2002, all new officials,

7 officers and employees of the state, a state institution of higher
8 education and the Higher Education Policy Commission,
9 statutory officials, contract educators with higher education and
10 any exempt official who does not earn annual and sick leave,
11 except elected officials, shall be paid one pay cycle in arrears.
12 The term “new employee” does not include an employee who
13 transfers from one state agency, a state institution of higher
14 education or the Higher Education Policy Commission to another
15 state agency, another state institution of higher education or the
16 Higher Education Policy Commission without a break in service:
17 *Provided, however,* That, after July 1, 2014, all state employees
18 paid on a current basis will be converted to payment in arrears.
19 For accounting purposes only, any payments received by such
20 employees at the end of the pay cycle of the conversion pay
21 period will be accounted for as a credit due the state.
22 Notwithstanding any other code provision to the contrary, any
23 such credit designation made for accounting of this conversion
24 will be accounted for by the Auditor at the termination of an
25 employee’s employment and such accounting shall be
26 documented in the employee’s final wage payment. Nothing
27 contained in this section is intended to increase or diminish the
28 salary or wages of any official, officer or employee.

CHAPTER 147

**(S. B. 460 - By Senators Miller, Laird, Unger,
Beach, Snyder, Stollings and Jenkins)**

[Passed March 4, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 7, 2014.]

AN ACT to amend and reenact §12-1-12d of the Code of West Virginia, 1931, as amended, relating to adding West Virginia

School of Osteopathic Medicine to the list of state institutions of higher education that are permitted to invest certain moneys with its foundation; and establishing a cap on the amount of moneys that it may invest.

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 that are collected under
17 an act of the Legislature for specific purposes and do not include
18 any funds made available to the university from the State
19 General Revenue Fund or the funds established in section

20 eighteen or eighteen-a, article twenty-two, chapter twenty-nine
21 of this code. Moneys permitted to be invested under this section
22 may be aggregated in an investment fund for investment
23 purposes.

24 (d) Of the moneys authorized for investment by this section,
25 Marshall University, West Virginia School of Osteopathic
26 Medicine and West Virginia University each, respectively, may
27 have invested with its foundation at any time not more than the
28 greater of:

29 (1) Sixty million dollars for Marshall University, \$25 million
30 for West Virginia School of Osteopathic Medicine and \$70
31 million for West Virginia University; or

32 (2) Sixty-five percent of its unrestricted net assets as
33 presented in the statement of net assets for the fiscal year end
34 audited financial reports.

35 (e) Investments by foundations that are authorized under this
36 section shall be made in accordance with and subject to the
37 provisions of the Uniform Prudent Investor Act, codified as
38 article six-c, chapter forty-four of this code. As part of its
39 fiduciary responsibilities, each governing board shall establish
40 investment policies in accordance with the Uniform Prudent
41 Investor Act for those moneys invested with its foundation. The
42 governing board shall review, establish and modify, if necessary,
43 the investment objectives as incorporated in its investment
44 policies so as to provide for the financial security of the moneys
45 invested with its foundation. The governing boards shall give
46 consideration to the following:

47 (1) Preservation of capital;

48 (2) Diversification;

49 (3) Risk tolerance;

50 (4) Rate of return;

51 (5) Stability;

52 (6) Turnover;

53 (7) Liquidity; and

54 (8) Reasonable cost of fees.

55 (f) A governing board shall report annually by December 31
56 to the Governor and to the Joint Committee on Government and
57 Finance on the performance of investments managed by its
58 foundation pursuant to this section.

59 (g) The amendments to this section in the second
60 extraordinary session of the Legislature in 2010 apply
61 retroactively so that the authority granted by this section shall be
62 construed as if that authority did not expire on July 1, 2010.

CHAPTER 148

**(Com. Sub. for S. B. 499 - By Senators Kirkendoll,
McCabe, Edgell, Cann, M. Hall, Carmichael, Plymale,
Palumbo and Nohe)**

[Passed March 3, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 13, 2014.]

AN ACT to repeal §12-6-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §12-6-2 and §12-6-11 of said code, all relating to investment of moneys by the West Virginia Investment Management Board; modifying the definition of the term “securities”; continuing the prudent investor standard of care

set forth in the West Virginia Uniform Prudent Investor Act as the primary standard of care for the trustees of the West Virginia Investment Management Board; removing certain restrictions on investments by the Investment Management Board; limiting disclosure of information; and restating and adding certain restrictions on investments by the West Virginia Investment Management Board.

Be it enacted by the Legislature of West Virginia:

That §12-6-12 of the Code of West Virginia, 1931, as amended, be repealed; and that §12-6-2 and §12-6-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly
2 appears from the context:

3 (1) "Beneficiaries" means those individuals entitled to
4 benefits from the participant plans;

5 (2) "Board" means the governing body for the West Virginia
6 Investment Management Board and any reference elsewhere in
7 this code to Board of Investments or West Virginia Trust Fund
8 means the board as defined in this subdivision;

9 (3) "401(a) plan" means a plan which is described in Section
10 401(a) of the Internal Revenue Code of 1986, as amended, and
11 with respect to which the board has been designated to hold
12 assets of the plan in trust pursuant to the provisions of section
13 nine-a of this article;

14 (4) "Local government funds" means the moneys of a
15 political subdivision, including policemen's pension and relief

16 funds, firemen's pension and relief funds and volunteer fire
17 departments, transferred to the board for deposit;

18 (5) "Participant plan" means any plan or fund subject now or
19 hereafter to subsection (a), section nine-a of this article;

20 (6) "Political subdivision" means and includes a county,
21 municipality or any agency, authority, board, county board of
22 education, commission or instrumentality of a county or
23 municipality and regional councils created pursuant to the
24 provisions of section five, article twenty-five, chapter eight of
25 this code;

26 (7) "Trustee" means any member serving on the West
27 Virginia Investment Management Board: *Provided*, That in
28 section nine-a of this article in which the terms of the trusts are
29 set forth, "trustee" means the West Virginia Investment
30 Management Board;

31 (8) "Securities" means all forms and types of investments,
32 financial instruments or financial transactions which may be
33 considered prudent for investment by the board under section
34 eleven of this article; and

35 (9) "State funds" means all moneys of the state which may
36 be lawfully invested except the "school fund" established by
37 section four, article XII of the State Constitution.

**§12-6-11. Standard of care and investment requirements;
disclosure of information.**

1 (a) Any investments made under this article shall be made in
2 accordance with the provisions of the Uniform Prudent Investor
3 Act codified as article six-c, chapter forty-four of this code and
4 is further subject to the following requirements:

5 (1) Trustees shall discharge their duties with respect to the
6 401(a) plans for the exclusive purpose of providing benefits to
7 participants and their beneficiaries;

8 (2) Trustees shall diversify fund investment so as to
9 minimize the risk of large losses unless, under the
10 circumstances, it is clearly prudent not to do so;

11 (3) Trustees shall defray reasonable expenses of investing
12 and operating the funds under management;

13 (4) Trustees shall discharge their duties in accordance with
14 the documents and instruments governing the trusts or other
15 funds under management insofar as the documents and
16 instruments are consistent with the provisions of this article;

17 (5) Trustees, at the annual meeting required in subsection
18 (h), section three of this article, shall review, establish and
19 modify, if necessary, the investment objectives of the individual
20 participant plans as incorporated in the investment policy
21 statements of the respective trusts so as to provide for the
22 financial security of the trust funds giving consideration to the
23 following:

24 (A) Preservation of capital;

25 (B) Diversification;

26 (C) Risk tolerance;

27 (D) Rate of return;

28 (E) Stability;

29 (F) Turnover;

30 (G) Liquidity; and

31 (H) Reasonable cost of fees;

32 (6) The board may invest in a private real estate fund, a
33 private equity fund or a hedge fund only if the investment
34 satisfies the following conditions:

35 (A) A professional, third-party fiduciary investment adviser
36 registered with the Securities and Exchange Commission under
37 the Investment Advisors Act of 1940, as amended, recommends
38 the investment;

39 (B) The board or a committee designated by the board
40 approves the investment;

41 (C) The board's ownership interest in the fund will be less
42 than forty percent of the fund's assets at the time of acquisition;

43 (D) The combined investment of institutional investors,
44 other public sector entities and educational institutions and their
45 endowments and foundations in the fund is equal to or greater
46 than fifty percent of the board's total investment in the fund at
47 the time of acquisition; and

48 (E) The largest investment of such fund is not greater than
49 forty percent of the fund's assets at the time of acquisition; and

50 (7) The total assets of the private real estate fund, private
51 equity fund or hedge fund shall be used in calculating the
52 percentage requirements and limitations set forth in subdivision
53 (6) of this subsection without regard to any particular investment
54 vehicle in which assets may be held pending investment.

55 (b) If the standard confidentiality agreements, policies or
56 procedures of any firm, company or organization through which
57 the board invests in securities prohibit, restrict or limit the
58 disclosure of information pertaining to the securities, the
59 information is exempt from disclosure, under the provisions of

60 chapter twenty-nine-b of this code or otherwise, to the extent of
61 the prohibitions, restrictions or limitations.

62 (c) The duties of the board apply only with respect to those
63 assets deposited with or otherwise held by it.

CHAPTER 149

(Com. Sub. for S. B. 387 - By Senators Cole, Blair,
Carmichael, D. Hall, M. Hall, Jenkins, McCabe, Walters,
Williams and Nohe)

[Passed March 6, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 14, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-10-6, relating to clarifying that duly authorized officers of the United States, the District of Columbia or other states have legal custody of their prisoners while they are in West Virginia.

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 §15-10-6, to read as follows:

ARTICLE 10. COOPERATION BETWEEN LAW- ENFORCEMENT AGENCIES.

§15-10-6. Transportation of out-of-state prisoners; authority of foreign law-enforcement officers.

1 (a) Duly authorized law-enforcement officers of the United
2 States, the District of Columbia and other states or political

3 subdivisions thereof who are transporting prisoners through this
4 state, delivering prisoners to this state or taking custody of a
5 person in this state for transport to another jurisdiction are
6 deemed to have lawful custody of said prisoner while in this
7 state.

8 (b) Given that duly authorized officers of other jurisdictions
9 often have a need to travel through or to this state with prisoners
10 for short durations of time, such as for medical treatment, the
11 purpose of this section is to clarify the authority and jurisdiction
12 of those officers of the United States, the District of Columbia
13 and other states while having custody of a prisoner during the
14 time they are in West Virginia.



CHAPTER 150

**(Com. Sub. for H. B. 2803 - By Delegates Manchin,
M. Poling, Iaquina, Guthrie and Manypenny)**

[Passed March 7, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-19, relating to requiring electric utilities to develop integrated resource plans; requiring the Public Service Commission to order development of integrated resource plans; specifying certain deadlines for the plans; requiring commission review; authorizing commission to request additional information from the utilities; and providing considerations for commission when developing requirements for integrated resource plans.

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 §24-2-19, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-19. Integrated Resource Planning Required.

1 (a) Not later than March 31, 2015, the Public Service
2 Commission shall issue an order directing any electric utility that
3 does not have an existing requirement approved by the Public
4 Service Commission that provides for the future review of both
5 supply side and demand side resources to develop an initial
6 integrated resource plan to be filed not later than January 1,
7 2016, in conjunction with other similar deadlines required by
8 other states or entities of the electric utilities. This order may
9 include guidelines for developing an integrated resource plan.

10 (b)(1) Any electric utility that has an existing requirement
11 approved by the Public Service Commission that provides for the
12 future review of both supply side and demand side resources is
13 exempt from this initial integrated resource plan filing until such
14 time as that existing requirement has been satisfied. Thereafter,
15 such electric utility is required to file an integrated resource plan
16 pursuant to subsection (a) of this section.

17 (2) Each electric utility that has filed the initial integrated
18 resource plan shall file an updated plan at least every five years
19 after the initial integrated resource plan has been filed. Any
20 electric utility that was exempt from filing an initial integrated
21 resource plan shall file an integrated resource plan within five
22 years of satisfying any existing requirement and at least every
23 five years thereafter. All integrated resource plans shall comply
24 with the provisions of any relevant order of the Public Service

25 Commission establishing guidelines for the format and contents
26 of updated and revised integrated resource plans.

27 (c) The Public Service Commission shall analyze and review
28 an integrated resource plan. The Public Service Commission
29 may request further information from the utility, as necessary.
30 Nothing in this section affects the obligations of utilities to
31 obtain otherwise applicable commission approvals.

32 (d) The commission may consider both supply-side and
33 demand-side resources when developing the requirements for the
34 integrated resource plans. The plan shall compare projected peak
35 demands with current and planned capacity resources in order to
36 develop a portfolio of resources that represents a reasonable
37 balance of cost and risk for the utility and its customers in
38 meeting future demand for the provision of adequate and reliable
39 service to its electric customers as specified by the Public
40 Service Commission.

CHAPTER 151

**(Com. Sub. for S. B. 356 - By Senators Kessler (Mr. President)
and M. Hall)**

[By Request of the Executive]

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2014.]

AN ACT to amend and reenact §5A-1-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5A-1-10; to amend and reenact §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-31 of said code; to amend said code by

adding thereto three new sections, designated §5A-3-10d, §5A-3-10e and §5A-3-60; and to amend and reenact §12-3-10d of said code, all relating generally to purchasing; revising definitions; eliminating definitions; defining terms; requiring state spending units purchase commodities and services on a competitive basis where possible; authorizing the Secretary of the Department of Administration to issue a notice to cease and desist when purchases are not made on a competitive basis; clarifying the purposes and policies of the Purchasing Division; clarifying applicability of article; clarifying that procurements must include adequate specifications and descriptions; clarifying the powers and duties of the Director of Purchasing; authorizing the Director of Purchasing to issue a notice to cease and desist when purchases are not made on a competitive basis; ensuring the purchasing requirements apply to services and commodities; authorizing reverse auctions for purchasing commodities; permitting third-party vendors to administer reverse auctions; affording the Director of the Purchasing Division rule-making authority to implement reverse auctions; authorizing master contracts and direct order process for the direct procurement of certain commodities; defining additional terms; requiring approval of the Director of the Purchasing Division for master contracts; setting forth direct order requirements and procedures; authorizing direct order of commodities in certain amounts; permitting direct order of certain commodities in excess of statutory amount with the written approval of the Director of Purchasing; affording the Director of the Purchasing Division rule-making authority to establish procedures regarding master contracts, preapproval, direct ordering process and related matters; clarifying circumstances in which grants are exempt from competitive bidding requirements; imposing personal liability upon spending officers and other responsible individuals who have knowingly and willfully violated competitive bidding requirements; creating felony offense for acting alone to undermine competition; requiring certain executive department officials to attend annual training on purchasing

procedures; adjusting the percentage rebate moneys transferred to the Purchasing Improvement Fund; adjusting the percentage of rebate moneys transferred to the Hatfield-McCoy Regional Recreation Authority; transferring ten percent of rebate moneys to the State Park Operating Fund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5A-1-1 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 §5A-1-10; that §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-31 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §5A-3-10d, §5A-3-10e and §5A-3-60; and that §12-3-10d of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-1. Definitions.

1 For the purpose of this chapter:

2 (1) "Commodities" means supplies, material, equipment and
3 any other articles or things used by or furnished to a department,
4 agency or institution of state government.

5 (2) "Contract" means an agreement between a state spending
6 unit and a vendor relating to the procurement of commodities or
7 services, or both.

8 (3) "Debarment" means the exclusion of a vendor from the
9 right to bid on contracts to sell goods or supply services to the
10 state or its subdivisions for a specified period of time.

11 (4) "Director" means the director of the division referred to
12 in the heading of the article in which the word appears.

13 (5) "Electronic" means electrical, digital, magnetic, optical,
14 electromagnetic or any other similar technology.

15 (6) "Electronic transmission" or "electronically transmitted"
16 means any process of communication not directly involving the
17 physical transfer of paper that is suitable for the retention,
18 retrieval and reproduction of information by the recipient.

19 (7) "Expendable commodities" means those commodities
20 which, when used in the ordinary course of business, will
21 become consumed or of no market value within the period of one
22 year or less.

23 (8) "Grant" means the furnishing of assistance, financial or
24 otherwise, to any person or entity to support a program
25 authorized by law.

26 (9) "Nonprofit workshops" means an establishment: (A)
27 Where any manufacture or handiwork is carried on; (B) which
28 is operated either by a public agency or by a cooperative or by a
29 nonprofit private corporation or nonprofit association in which
30 no part of the net earnings thereof inures, or may lawfully inure,
31 to the benefit of any private shareholder or individual; (C) which
32 is operated for the primary purpose of providing remunerative
33 employment to blind or severely disabled persons who cannot be
34 absorbed into the competitive labor market; and (D) which shall
35 be approved, as evidenced by a certificate of approval, by the
36 State Board of Vocational Education, Division of Vocational
37 Rehabilitation.

38 (10) "Printing" means printing, binding, ruling,
39 lithographing, engraving and other similar services.

40 (11) "Procurement" means the buying, purchasing, renting,
41 leasing or otherwise obtaining of commodities or services.

42 (12) "Public funds" means funds of any character, including
43 federal moneys, belonging to or in the custody of any state
44 spending unit.

45 (13) "Record" means information that is inscribed on a
46 read-only tangible medium or that is stored in an electronic or
47 other medium and is retrievable in perceivable form.

48 (14) "Removable property" means any personal property not
49 permanently affixed to or forming a part of real estate.

50 (15) "Request for quotations" means a solicitation for a bid
51 where cost is the primary factor in determining the award.

52 (16) "Responsible bidder" means a vendor who has the
53 capability to fully perform the contract requirements, and the
54 integrity and reliability which will assure good-faith
55 performance.

56 (17) "Responsive bidder" means a vendor who has submitted
57 a bid which conforms in all material respects to the bid
58 solicitation.

59 (18) "Secretary" means the Secretary of Administration.

60 (19) "Services" means the furnishing of labor, time,
61 expertise or effort, not involving the delivery of a specific end
62 commodity or product other than one that may be incidental to
63 the required performance.

64 (20) "Spending officer" means the executive head of a
65 spending unit, or a person designated by him or her.

66 (21) "Spending unit" means a department, bureau,
67 department, division, office, board commission, authority,
68 agency or institution of the state government for which an
69 appropriation is requested of the Governor, or to which an

70 appropriation is made by the Legislature, unless a specific
71 exemption from this chapter is provided in this code.

72 (22) "The state and its subdivisions" means the State of West
73 Virginia, every political subdivision thereof, every
74 administrative entity that includes such a subdivision, all
75 municipalities and all county boards of education.

76 (23) "Vendor" means any person or entity that may, through
77 contract or other means, supply the state or its subdivisions with
78 commodities or services, and lessors of real property.

§5A-1-10. General procurement provisions for state spending units.

1 (a) Unless this code specifically provides to the contrary, all
2 spending units, whenever possible, shall base purchases for
3 commodities and services on a competitive process and utilize
4 available statewide contracts.

5 (b) The secretary shall issue a notice to cease and desist to
6 any spending unit when the secretary has credible evidence that
7 a spending unit has failed, whenever possible, to purchase
8 commodities and services on a competitive basis or to use
9 available statewide contracts. Failure to abide by such notice
10 may result in penalties set forth in section seventeen, article
11 three of this chapter.

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 legislative branch, to purchases of stock made by the
39 Alcohol Beverage Control Commissioner and to purchases of
40 textbooks for the State Board of Education.

41 (e) The provisions of this article apply to every expenditure
42 of public funds by a spending unit for commodities and services
43 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;

45 (10) Assure that the specifications and descriptions in all
46 solicitations are prepared so as to provide all potential

47 suppliers-vendors who can meet the requirements of the state an
48 opportunity to bid and to assure that the specifications and
49 descriptions do not favor a particular brand or vendor. If the
50 director determines that any such specifications or descriptions
51 as written favor a particular brand or vendor or if it is decided,
52 either before or after the bids are opened, that a commodity or
53 service having different specifications or quality or in different
54 quantity can be bought, the director may rewrite the solicitation
55 and the matter shall be rebid; and

56 (11) Issue a notice to cease and desist to a spending unit
57 when the director has credible evidence that a spending unit has
58 violated competitive bidding or other requirements established
59 by this article and the rules promulgated hereunder. Failure to
60 abide by such notice may result in penalties set forth in section
61 seventeen of this article.

§5A-3-4. Rules of director.

1 (a) The director shall propose rules for legislative approval
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to:

4 (1) Authorize a spending unit to purchase specified
5 commodities and services directly and prescribe the manner in
6 which such purchases shall be made;

7 (2) Authorize, in writing, a spending unit to purchase
8 commodities and services in the open market for immediate
9 delivery in emergencies, define emergencies and prescribe the
10 manner in which such purchases shall be made and reported to
11 the director;

12 (3) Prescribe the manner in which commodities and services
13 shall be purchased, delivered, stored and distributed;

14 (4) Prescribe the time for making requisitions and estimates
15 of commodities and services, the future period which they are to

16 cover, the form in which they shall be submitted and the manner
17 of their authentication;

18 (5) Prescribe the manner of inspecting all deliveries of
19 commodities, and making chemical and physical tests of samples
20 submitted with bids and samples of deliveries to determine
21 compliance with specifications;

22 (6) Prescribe the amount and type of deposit or bond to be
23 submitted with a bid or contract and the amount of deposit or
24 bond to be given for the faithful performance of a contract;

25 (7) Prescribe a system whereby the director shall be
26 required, upon the payment by a vendor of an annual fee
27 established by the director, to give notice to such vendor of all
28 bid solicitations for commodities and services of the type with
29 respect to which such vendor specified notice was to be given,
30 but no such fee shall exceed the cost of giving the notice to such
31 vendor, nor shall such fee exceed the sum of \$125 per fiscal year
32 nor shall such fee be charged to persons seeking only
33 reimbursement from a spending unit;

34 (8) Prescribe that each state contract entered into by the
35 Purchasing Division shall contain provisions for liquidated
36 damages, remedies or provisions for the determination of the
37 amount or amounts which the vendor shall owe as damages, in
38 the event of default under such contract by such vendor, as
39 determined by the director;

40 (9) Prescribe contract management procedures for all state
41 contracts except government construction contracts including,
42 but not limited to, those set forth in article twenty-two, chapter
43 five of this code;

44 (10) Prescribe procedures by which oversight is provided to
45 actively monitor spending unit purchases, including, but not

46 limited to, all technology and software commodities and services
47 exceeding \$1 million, approval of change orders and final
48 acceptance by the spending units;

49 (11) Prescribe that each state contract entered into by the
50 Purchasing Division contain provisions for the cancellation of
51 the contract upon thirty days' notice to the vendor;

52 (12) Prescribe procedures for selling surplus commodities to
53 the highest bidder by means of an Internet auction site;

54 (13) Provide such other matters as may be necessary to give
55 effect to the foregoing rules and the provisions of this article;
56 and

57 (14) Prescribe procedures for encumbering purchase orders
58 to ensure that the proper account may be encumbered before
59 sending purchase orders to vendors.

60 (b) The director shall propose rules for legislative approval
61 in accordance with the provisions of article three, chapter
62 twenty-nine-a of this code to prescribe qualifications to be met
63 by any person who is to be employed in the Purchasing Division
64 as a state buyer. The rules must provide that a person may not be
65 employed as a state buyer unless he or she at the time of
66 employment either is:

67 (1) A graduate of an accredited college or university; or

68 (2) Has at least four years' experience in purchasing for any
69 unit of government or for any business, commercial or industrial
70 enterprise.

71 Persons serving as state buyers are subject to the provisions
72 of article six, chapter twenty-nine of this code.

**§5A-3-5. Purchasing section standard specifications —
Promulgation and adoption by director; applicable
to all purchases.**

1 (a) The director shall promulgate and adopt standard
2 specifications based on scientific and technical data for
3 appropriate commodities and services, which shall establish the
4 quality to which commodities to be purchased and services to be
5 contracted for by the state must conform.

6 (b) Standard specifications shall apply to every future
7 purchase of or contract for the commodities or services described
8 in the specifications and shall include information relating to the
9 cost of maintenance and expected life of the commodity if the
10 director determines there are nationally accepted industry
11 standards for the commodity.

12 (c) No purchases by any spending unit may be exempt from
13 compliance with the standard specifications so established, but
14 the director may exempt the purchase of particular items from
15 the standard specifications if it is considered necessary and
16 advisable.

17 (d) The director shall update the standard specifications, as
18 necessary.

§5A-3-10d. Reverse auctions.

1 (a) Notwithstanding any other provision of this code, the
2 director is hereby authorized to initiate reverse auctions to
3 procure commodities. The director may not use reverse auctions
4 for the procurement of services under any circumstances.

5 (b) Reverse auctions may be utilized if the director
6 determines their use would be fair, economical and in the best
7 interests of the state, and the commodities to be procured:

- 8 (1) Are subject to low price volatility;
- 9 (2) Have specifications that are common and not complex;
- 10 (3) Vary little between suppliers;
- 11 (4) Are sourced primarily based on price, with limited
12 ancillary considerations;
- 13 (5) Require little collaboration from suppliers; and
- 14 (6) Are sold by a large, competitive supply base.

15 (c) For purposes of this section, “reverse auction” means a
16 process by which bidders compete to provide commodities in an
17 open and interactive market, including but not limited to the
18 Internet. Reverse auction bids are opened and made public upon
19 receipt by the director, and then bidders are given the
20 opportunity to submit revised bids until the bidding process is
21 complete. The contract is awarded to the lowest responsible
22 bidder.

23 (d) The director may contract with qualified,
24 industry-recognized third-party vendors to conduct reverse
25 auctions on behalf of the director.

26 (e) The director shall propose rules for legislative approval
27 in accordance with the provisions of article three, chapter
28 twenty-nine-a of this code to establish the procedures for
29 conducting reverse auctions. The rules shall include procedures
30 for contracting with qualified, industry-recognized third-party
31 vendors.

§5A-3-10e. Master contracts; direct ordering process.

- 1 (a) Subject to the limitations of this section, the director may
2 permit spending units to procure commodities directly from a

3 preapproved vendor through a master contract direct ordering
4 process if the director determines the process is fair, economical
5 and in the best interests of the state.

6 (b) *Definitions.* — For purposes of this section:

7 (1) “Information technology” means hardware and software
8 related to electronic processing, and storage, retrieval,
9 transmittal and manipulation of data.

10 (2) “Master contract” means an agreement, having a term of
11 no more than one year, between the Purchasing Division and at
12 least two preapproved vendors authorizing a spending unit to
13 purchase a commodity directly and on a recurrent basis through
14 the direct ordering process.

15 (3) “Preapproved vendor” means a “vendor”, as that term is
16 defined in section one, article one, chapter five-a of this code,
17 that has entered into a master contract with the Purchasing
18 Division and may participate in the direct ordering process
19 subject to the terms and conditions of the master contract.

20 (4) “Direct ordering process” means the competitive bidding
21 process whereby the preapproved vendors that are parties to a
22 master contract may submit sealed bids directly to spending
23 units to provide a commodity identified in the master contract
24 subject to the limitations set forth in this section.

25 (c) *Master contract procedures.* —

26 (1) For each master contract, the director shall set forth the
27 requirements, technical or otherwise, under which a vendor may
28 be qualified to supply a commodity through the direct ordering
29 process. For each master contract, the director shall follow the
30 notice and advertising requirements set forth in section ten,
31 article three, chapter five-a of this code.

32 (2) A master contract may authorize the direct ordering
33 process for only one type of commodity.

34 (3) A vendor may submit information to the director to
35 establish that it meets the requirements set forth in the master
36 contract.

37 (4) If the director determines that a vendor meets the
38 requirements set forth in the master contract, the vendor may
39 enter into the master contract as a preapproved vendor.

40 (d) *Direct ordering procedures.* —

41 (1) A spending unit may commence the direct ordering
42 process by issuing a request for a commodity identified in the
43 master contract, stating in the request the quantity of the
44 commodity to be procured in that particular instance.

45 (2) The preapproved vendor that submits the lowest bid in
46 response to the request shall be awarded the procurement in that
47 particular instance.

48 (3) The direct ordering process may not be utilized for any
49 request for commodities, other than information technology,
50 anticipated to cost more than \$50,000, unless approved in
51 writing by the Director of Purchasing. The state may not issue a
52 series of orders each anticipated to cost less than \$50,000 to
53 circumvent the monetary limitation in this subsection.

54 (4) The direct ordering process may not be utilized for any
55 request for information technology anticipated to cost more than
56 \$1 million, unless approved in writing by the Director of
57 Purchasing. The state may not issue a series of orders each
58 anticipated to cost less than \$1 million to circumvent the
59 monetary limitation in this subsection.

60 (e) *Rule-making authority.* — The Director of the Purchasing
61 Division shall propose rules for legislative approval in

62 accordance with the provisions of article three, chapter
63 twenty-nine-a of this code to implement this section, including
64 but not limited to provisions to establish procedures for the
65 solicitation and authorization of master contracts, preapproval of
66 vendors and implementation of direct ordering.

**§5A-3-11. Purchasing in open market on competitive bids;
debarment; bids to be based on written
specifications; period for alteration or withdrawal of
bids; awards to lowest responsible bidder; uniform
bids; record of bids; requirements of vendors to pay
taxes, fees and debts; exception; grant exemption.**

1 (a) The director may make a purchase of commodities,
2 printing and services of \$25,000 or less in amount in the open
3 market, but the purchase shall, wherever possible, be based on at
4 least three competitive bids, and shall include the cost of
5 maintenance and expected life of the commodities if the director
6 determines there are nationally accepted industry standards for
7 the commodities being purchased.

8 (b) The director may authorize spending units to purchase
9 commodities, printing and services in the amount of \$2,500 or
10 less in the open market without competitive bids: *Provided*, That
11 the cost of maintenance and expected life of the commodities
12 must be taken into consideration if the director determines there
13 are nationally accepted industry standards for the commodities
14 being purchased.

15 (c) Bids shall be based on the written specifications in the
16 advertised bid request and may not be altered or withdrawn after
17 the appointed hour for the opening of the bids.

18 (d) A vendor who has been debarred pursuant to the
19 provisions of sections thirty-three-b through thirty-three-f of this
20 article may not bid on or be awarded a contract under this
21 section.

22 (e) All open market orders, purchases based on advertised
23 bid requests or contracts made by the director or by a state
24 department shall be awarded to the lowest responsible bidder or
25 bidders, taking into consideration the qualities of the
26 commodities or services to be supplied, their conformity with
27 specifications, their suitability to the requirements of the
28 government, the delivery terms and, if the director determines
29 there are nationally accepted industry standards, cost of
30 maintenance and the expected life of the commodities: *Provided,*
31 That state bids on school buses shall be accepted from all bidders
32 who shall then be awarded contracts if they meet the state
33 board's Minimum Standards for Design and Equipment of
34 School Buses. County boards of education may select from those
35 bidders who have been awarded contracts and shall pay the
36 difference between the state aid formula amount and the actual
37 cost of bus replacement. Any or all bids may be rejected.

38 (f) If all bids received on a pending contract are for the same
39 unit price or total amount, the director has the authority to reject
40 all bids, and to purchase the required commodities, printing and
41 services in the open market, if the price paid in the open market
42 does not exceed the bid prices.

43 (g) The bid must be received by the Purchasing Division
44 prior to the specified date and time of the bid opening. The
45 failure to deliver or the nonreceipt of the bid by the Purchasing
46 Division prior to the appointed date and hour shall result in the
47 rejection of the bid. The vendor is solely responsible for the
48 receipt of bid by the Purchasing Division prior to the appointed
49 date and hour of the bid opening. All bids will be opened
50 publicly by two or more persons from the Purchasing Division.
51 Vendors will be given notice of the day, time and place of the
52 public bid opening. Bids may be viewed immediately after being
53 opened.

54 (h) After the award of the order or contract, the director, or
55 someone appointed by him or her for that purpose, shall indicate
56 upon the successful bid that it was the successful bid. Thereafter,
57 the copy of each bid in the possession of the director shall be
58 maintained as a public record, shall be open to public inspection
59 in the office of the director and may not be destroyed without the
60 written consent of the Legislative Auditor.

61 (i)(1) A grant awarded by the state is exempt from the
62 competitive bidding requirements set forth in this chapter, unless
63 the grant is used to procure commodities or services that directly
64 benefit a spending unit.

65 (2) If a grant awarded to the state requires the procurement
66 of commodities or services that will directly benefit a spending
67 unit, the procurement is not exempt from the competitive
68 bidding requirements set forth in this chapter.

69 (3) If a grant awarded to the state requires the state to
70 transfer some or all of the grant to an individual, entity or vendor
71 as a subgrant to accomplish a public purpose, and no contract for
72 commodities or services directly benefitting a spending unit will
73 result, the subgrant is not subject to the competitive bidding
74 requirements set forth in this chapter.

§5A-3-17. Purchases or contracts violating article void; personal liability.

1 If a spending unit purchases or contracts for commodities or
2 services contrary to the provisions of this article or the rules and
3 regulations made thereunder, such purchase or contract shall be
4 void and of no effect. The spending officer of such spending
5 unit, or any other individual charged with responsibility for the
6 purchase or contract, shall be personally liable for the costs of
7 such purchase or contract and, if already paid out of state funds,
8 the amount thereof may be recovered in the name of the state in
9 an appropriate action instituted therefor: *Provided*, That the state

10 establishes by a preponderance of the evidence that the
11 individual acted knowingly and willfully.

**§5A-3-28. Financial interest of secretary, etc.; receiving reward
from interested party; penalty; application of bribery
statute.**

1 (a) Neither the secretary, nor the director nor any employee
2 of the Division of Purchasing, shall be financially interested, or
3 have any beneficial personal interest, directly or indirectly, in the
4 purchase of any commodities, services or printing, nor in any
5 firm, partnership, corporation or association furnishing them.
6 Neither the secretary, nor the director nor any employee of the
7 Division of Purchasing, shall accept or receive directly or
8 indirectly from any person, firm or corporation, known by such
9 secretary, director or employee to be interested in any bid,
10 contract or purchase, by rebate, gift or otherwise, any money or
11 other thing of value whatsoever, or any promise, obligation or
12 contract for future reward or compensation.

13 (b) A person who violates this section shall be guilty of a
14 misdemeanor, and, upon conviction thereof, shall be confined in
15 jail not less than three months nor more than one year, or fined
16 not less than \$50 nor more than \$1,000, or both, in the discretion
17 of the court: *Provided*, That any person who violates any of the
18 provisions of the last sentence of the first paragraph of this
19 section under circumstances constituting the crime of bribery
20 under the provisions of section three, article five-a, chapter
21 sixty-one of this code, shall, upon conviction of bribery, be
22 punished as provided in said article five-a.

**§5A-3-30. Statement of purpose; obtaining money and property
under false pretenses or by fraud from the state;
penalties; definition.**

1 (a) The Legislature of the State of West Virginia hereby
2 declares that the purpose of this statute is to promote equal and
3 fair bidding for the purchase of commodities and services by the

4 state, to eliminate fraud in the procurement of commodities and
5 services by the state.

6 (b) It is unlawful for any person to obtain any services,
7 money, goods or other property from the state under any contract
8 made under the provisions of this article, by false pretense, token
9 or representation, or by delivery of inferior commodities, with
10 intent to defraud. A person who violates this subsection is guilty
11 of a felony and, upon conviction thereof, shall be confined in a
12 state correctional facility for not less than one year nor more
13 than five years, and shall be fined not exceeding \$10,000.

14 (c) It shall not be a defense to a charge under this section
15 that: (1) The commodities or services purchased were accepted
16 and used, or are being used, by the state; or (2) the commodities
17 or services are functional or suitable for the purpose for which
18 the commodities or services were purchased by the state
19 notwithstanding the standard or specification issued by the
20 purchasing agency or the Division of Purchasing.

21 (d) For the purpose of this section, "inferior commodities"
22 includes, but shall not be limited to: (1) Any commodity which
23 does not meet the specification or standard issued by the
24 purchasing agency and the Division of Purchasing, or any
25 change order approved by both the purchasing agency and
26 Division of Purchasing; and (2) any commodity which is of a
27 lesser quality, quantity or measure of any kind set forth within
28 the specification or standard issued by the purchasing agency
29 and the Division of Purchasing.

**§5A-3-31. Corrupt actions, combinations, collusions or
conspiracies prohibited; penalties.**

1 (a) It shall be unlawful for any person to corruptly act alone
2 or combine, collude or conspire with one or more other persons
3 with respect to the purchasing or supplying of services,

4 commodities or printing to the state under the provisions of this
5 article if the purpose or effect of such action, combination,
6 collusion or conspiracy is either to: (1) Lessen competition
7 among prospective vendors; or (2) cause the state to pay a higher
8 price for such services, commodities or printing than would be
9 or would have been paid in the absence of such action,
10 combination, collusion or conspiracy; or (3) cause one
11 prospective vendor or vendors to be preferred over one or more
12 other prospective vendor or vendors.

13 (b) Any person who violates any provision of this section is
14 guilty of a felony and, upon conviction thereof, shall be
15 imprisoned in a state correctional facility not less than one nor
16 more than five years, and be fined not exceeding \$10,000.

§5A-3-60. Annual purchasing training.

1 (a) All executive department secretaries, commissioners,
2 deputy commissioners, assistant commissioners, directors,
3 deputy directors, assistant directors, department heads, deputy
4 department heads and assistant department heads are hereby
5 required to take two hours of training on purchasing procedures
6 and purchasing cards annually.

7 (b) The Director of the Purchasing Division and the Auditor
8 shall offer the two-hour training required by this section at least
9 two times per year and shall develop its substance in accordance
10 with the requirements of this article and other relevant
11 provisions of this code. The training shall be recorded by audio
12 and visual means and shall be made available to the individuals
13 listed in subsection (a) of this section in the event they are
14 unable to attend the training in person.

15 (c) All individuals listed in subsection (a) of this section
16 shall certify, in writing and on a form developed by the Director
17 of the Purchasing Division, the date, time, location and manner

18 in which they took the training. Completed forms shall be
19 returned to the director and maintained in his or her office.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10d. Purchasing Card Fund created; expenditures.

1 (a) All money received by the state pursuant to any
2 agreement with vendors providing purchasing charge cards, and
3 any interest or other return earned on the money, shall be
4 deposited in a special revenue revolving fund, designated the
5 Purchasing Card Administration Fund, in the State Treasury to
6 be administered by the Auditor. The fund shall be used to pay all
7 expenses incurred by the Auditor in the implementation and
8 operation of the Purchasing Card Program and may be used to
9 pay expenses related to the general operation of the Auditor's
10 office. The Auditor also may use the fund to pay expenses
11 incurred by spending units associated with the use of the card,
12 including system and program enhancements, and inspection and
13 monitoring of compliance with all applicable rules and
14 procedures. Expenditures from the fund shall be made in
15 accordance with appropriations by the Legislature pursuant to
16 the provisions of article three, chapter twelve of this code and
17 upon fulfillment of the provisions of article two, chapter five-a
18 of this code.

19 (b) Within three days of receiving rebate moneys resulting
20 from state spending unit purchasing card purchases, the Auditor
21 shall transfer fifteen and one-half percent of such rebate moneys
22 to the Purchasing Improvement Fund created pursuant to section
23 fifty-eight, article three, chapter five-a of this code.

24 (c) Within three days of receiving rebate moneys resulting
25 from state spending unit purchasing card purchases, the Auditor

26 shall transfer ten percent of such rebate moneys to the Hatfield-
27 McCoy Regional Recreation Authority and ten percent of such
28 moneys to the State Park Operating Fund.

CHAPTER 152

(S. B. 585 - By Senator Palumbo)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to repeal §24-3-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-1-1 of said code, relating to removing unconstitutional language regarding access to rail lines.

Be it enacted by the Legislature of West Virginia:

That §24-3-3b of the Code of West Virginia, 1931, as amended, be repealed; and that §24-1-1 of said code be amended and reenacted to read as follows:

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.

86 In carrying out the provisions of this section the commission
87 shall have jurisdiction over such persons, whether public utilities
88 or not, as may be in the opinion of the commission necessary to
89 the 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.

CHAPTER 153

**(S. B. 444 - By Senators Kirkendoll, Cann,
Edgell, Carmichael and Plymale)**

[Passed February 19, 2014; in effect from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §5-10-2, §5-10-31 and §5-10-48 of the
Code of West Virginia, 1931, as amended, all relating to the Public

Employees Retirement System; defining “compensation” and “employee” in this article; removing the requirement to set employer contribution rate by legislative rule; and allowing employee and employer retirement contributions to be credited to the participating public employer when a retirant is reemployed for less than one year.

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-31 and §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**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

16 the mortality tables and interest rates required to comply with
17 those 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: *Provided*, That
39 members hired in a position for the first time on or after July 1,
40 2014, who receive nonmonetary remuneration shall not have
41 nonmonetary remuneration included in compensation for
42 retirement purposes and nonmonetary remuneration may not be
43 used in calculating a member's final average salary. Any lump
44 sum or other payments paid to members that do not constitute
45 regular salary or wage payments are not considered
46 compensation for the purpose of withholding contributions for

47 the system or for the purpose of calculating a member's final
48 average salary. These payments include, but are not limited to,
49 attendance or performance bonuses, one-time flat fee or lump
50 sum payments, payments paid as a result of excess budget or
51 employee recognition payments. The board shall have final
52 power to decide whether the payments shall be considered
53 compensation for purposes of this article;

54 (9) "Contributing service" means service rendered by a
55 member within this state and for which the member made
56 contributions to a public retirement system account of this state,
57 to the extent credited him or her as provided by this article;

58 (10) "Credited service" means the sum of a member's prior
59 service credit, military service credit, workers' compensation
60 service credit and contributing service credit standing to his or
61 her credit as provided in this article;

62 (11) "Employee" means any person who serves regularly as
63 an officer or employee, full time, on a salary basis, whose tenure
64 is not restricted as to temporary or provisional appointment, in
65 the service of, and whose compensation is payable, in whole or
66 in part, by any political subdivision, or an officer or employee
67 whose compensation is calculated on a daily basis and paid
68 monthly or on completion of assignment, including technicians
69 and other personnel employed by the West Virginia National
70 Guard whose compensation, in whole or in part, is paid by the
71 federal government: *Provided*, That an employee of the
72 Legislature whose term of employment is otherwise classified as
73 temporary and who is employed to perform services required by
74 the Legislature for its regular sessions or during the interim
75 between regular sessions and who has been or is employed
76 during regular sessions or during the interim between regular
77 sessions in seven or more consecutive calendar years, as certified
78 by the clerk of the house in which the employee served, is an
79 employee, any provision to the contrary in this article

80 notwithstanding, and is entitled to credited service in accordance
81 with provisions of section fourteen, article ten, chapter five of
82 this code and: *Provided, however,* That members of the
83 legislative body of any political subdivision and judges of the
84 State Court of Claims are employees receiving one year of
85 service credit for each one-year term served and pro rated
86 service credit for any partial term served, anything contained in
87 this article to the contrary notwithstanding: *Provided further,*
88 That only a compensated board member of a participating public
89 employer appointed to a board of a nonlegislative body for the
90 first time on or after July 1, 2014, who normally is required to
91 work twelve months per year and one thousand forty hours of
92 service per year is an employee. In any case of doubt as to who
93 is an employee within the meaning of this article, the Board of
94 Trustees shall decide the question;

95 (12) "Employer error" means an omission,
96 misrepresentation, or violation of relevant provisions of the West
97 Virginia Code or of the West Virginia Code of State Regulations
98 or the relevant provisions of both the West Virginia Code and of
99 the West Virginia Code of State Regulations by the participating
100 public employer that has resulted in an underpayment or
101 overpayment of contributions required. A deliberate act contrary
102 to the provisions of this section by a participating public
103 employer does not constitute employer error.

104 (13) "Final average salary" means either of the following:
105 *Provided,* That salaries for determining benefits during any
106 determination period may not exceed the maximum
107 compensation allowed as adjusted for cost of living in
108 accordance with section seven, article ten-d, chapter five of this
109 code and Section 401(a)(17) of the Internal Revenue Code:
110 *Provided, however,* That the provisions of section twenty-two-h
111 of this article are not applicable to the amendments made to this
112 subdivision during the 2011 Regular Session of the Legislature.

113 (A) The average of the highest annual compensation
114 received by a member (including a member of the Legislature
115 who participates in the retirement system in the year 1971 or
116 thereafter), during any period of three consecutive years of
117 credited service contained within the member's fifteen years of
118 credited service immediately preceding the date his or her
119 employment with a participating public employer last
120 terminated; or

121 (B) If the member has less than five years of credited
122 service, the average of the annual rate of compensation received
123 by the member during his or her total years of credited service;
124 and in determining the annual compensation, under either
125 paragraph (A) or (B) of this subdivision, of a member of the
126 Legislature who participates in the retirement system as a
127 member of the Legislature in the year 1971, or in any year
128 thereafter, his or her actual legislative compensation (the total of
129 all compensation paid under sections two, three, four and five,
130 article two-a, chapter four of this code), in the year 1971, or in
131 any year thereafter, plus any other compensation he or she
132 receives in any year from any other participating public
133 employer including the State of West Virginia, without any
134 multiple in excess of one times his or her actual legislative
135 compensation and other compensation, shall be used: *Provided*,
136 That "final average salary" for any former member of the
137 Legislature or for any member of the Legislature in the year
138 1971, who, in either event, was a member of the Legislature on
139 November 30, 1968, or November 30, 1969, or November 30,
140 1970, or on November 30 in any one or more of those three years
141 and who participated in the retirement system as a member of the
142 Legislature in any one or more of those years means: (I) Either
143 (notwithstanding the provisions of this subdivision preceding
144 this proviso) \$1,500 multiplied by eight, plus the highest other
145 compensation the former member or member received in any
146 one of the three years from any other participating public
147 employer including the State of West Virginia; or (ii) "final

148 average salary” determined in accordance with paragraph (A) or
149 (B) of this subdivision, whichever computation produces the
150 higher final average salary (and in determining the annual
151 compensation under subparagraph (ii) of this proviso, the
152 legislative compensation of the former member shall be
153 computed on the basis of \$1,500 multiplied by eight, and the
154 legislative compensation of the member shall be computed on
155 the basis set forth in the provisions of this subdivision
156 immediately preceding this proviso or on the basis of \$1,500
157 multiplied by eight, whichever computation as to the member
158 produces the higher annual compensation);

159 (14) “Internal Revenue Code” means the Internal Revenue
160 Code of 1986, as amended, codified at Title 26 of the United
161 States Code;

162 (15) “Limited credited service” means service by employees
163 of the West Virginia Educational Broadcasting Authority, in the
164 employment of West Virginia University, during a period when
165 the employee made contributions to another retirement system,
166 as required by West Virginia University, and did not make
167 contributions to the Public Employees Retirement System:
168 *Provided*, That while limited credited service can be used for the
169 formula set forth in subsection (e), section twenty-one of this
170 article, it may not be used to increase benefits calculated under
171 section twenty- two of this article;

172 (16) “Member” means any person who has accumulated
173 contributions standing to his or her credit in the members’
174 deposit fund;

175 (17) “Participating public employer” means the State of
176 West Virginia, any board, commission, department, institution
177 or spending unit, and includes any agency created by rule of the
178 Supreme Court of Appeals having full-time employees, which
179 for the purposes of this article is considered a department of state

180 government; and any political subdivision in the state which has
181 elected to cover its employees, as defined in this article, under
182 the West Virginia Public Employees Retirement System;

183 (18) "Plan year" means the same as referenced in section
184 forty-two of this article;

185 (19) "Political subdivision" means the State of West
186 Virginia, a county, city or town in the state; a school corporation
187 or corporate unit; any separate corporation or instrumentality
188 established by one or more counties, cities or towns, as permitted
189 by law; any corporation or instrumentality supported in most part
190 by counties, cities or towns; and any public corporation charged
191 by law with the performance of a governmental function and
192 whose jurisdiction is coextensive with one or more counties,
193 cities or towns: *Provided*, That any mental health agency
194 participating in the Public Employees Retirement System before
195 July 1, 1997, is considered a political subdivision solely for the
196 purpose of permitting those employees who are members of the
197 Public Employees Retirement System to remain members and
198 continue to participate in the retirement system at their option
199 after July 1, 1997: *Provided, however*, That the Regional
200 Community Policing Institute which participated in the Public
201 Employees Retirement System before July 1, 2000, is considered
202 a political subdivision solely for the purpose of permitting those
203 employees who are members of the Public Employees
204 Retirement System to remain members and continue to
205 participate in the Public Employees Retirement System after July
206 1, 2000;

207 (20) "Prior service" means service rendered prior to July 1,
208 1961, to the extent credited a member as provided in this article;

209 (21) "Regular interest" means the rate or rates of interest per
210 annum, compounded annually, as the Board of Trustees adopts
211 from time to time;

212 (22) "Required beginning date" means April 1 of the
213 calendar year following the later of: (A) The calendar year in
214 which the member attains age seventy and one-half years of age;
215 or (B) the calendar year in which a member who has attained the
216 age seventy and one-half years of age and who ceases providing
217 service covered under this system to a participating employer;

218 (23) "Retirant" means any member who commences an
219 annuity payable by the retirement system;

220 (24) "Retirement" means a member's withdrawal from the
221 employ of a participating public employer and the
222 commencement of an annuity by the retirement system;

223 (25) "Retirement system" or "system" means the West
224 Virginia Public Employees Retirement System created and
225 established by this article;

226 (26) "Retroactive service" means: (1) Service between July
227 1, 1961, and the date an employer decides to become a
228 participating member of the Public Employees Retirement
229 System; (2) service prior to July 1, 1961, for which the employee
230 is not entitled to prior service at no cost in accordance with 162
231 CSR 5.13; and (3) service of any member of a legislative body
232 or employees of the State Legislature whose term of employment
233 is otherwise classified as temporary for which the employee is
234 eligible, but for which the employee did not elect to participate
235 at that time;

236 (27) "Service" means personal service rendered to a
237 participating public employer by an employee of a participating
238 public employer; and

239 (28) "State" means the State of West Virginia.

§5-10-31. Employers Accumulation Fund; employers contributions.

1 (a) The Employers Accumulation Fund is hereby continued.
2 It is the fund in which shall be accumulated the contributions
3 made by the participating public employers to the retirement
4 system, and from which transfers shall be made as provided in
5 this section.

6 (b) Based upon the provisions of section thirteen of this
7 article, the participating public employers' contributions to the
8 retirement system, as determined by the Consolidated Public
9 Retirement Board, shall be a percent of the members' total
10 annual compensation related to benefits under this retirement
11 system. In determining the amount, the board shall give
12 consideration to setting the amount at a sum equal to an amount
13 which, if paid annually by the participating public employers,
14 will be sufficient to provide for the total normal cost of the
15 benefits expected to become payable to all members and to
16 amortize any unfunded liability found by application of the
17 actuarial funding method chosen for that purpose by the
18 Consolidated Public Retirement Board, over a period of years
19 determined actuarially appropriate.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

1 (a) The Legislature finds that a compelling state interest
2 exists in maintaining an actuarially sound retirement system and
3 that this interest necessitates that certain limitations be placed
4 upon an individual's ability to retire from the system and to then
5 later return to state employment as an employee with a
6 participating public employer while contemporaneously drawing
7 an annuity from the system. The Legislature hereby further finds
8 and declares that the interests of the public are served when
9 persons having retired from public employment are permitted,

10 within certain limitations, to render post-retirement employment
11 in positions of public service, either in elected or appointed
12 capacities. The Legislature further finds and declares that it has
13 the need for qualified employees and that in many cases an
14 employee of the Legislature will retire and be available to return
15 to work for the Legislature as a per diem employee. The
16 Legislature further finds and declares that in many instances
17 these employees have particularly valuable expertise which the
18 Legislature cannot find elsewhere. The Legislature further finds
19 and declares that reemploying these persons on a limited per
20 diem basis after they have retired is not only in the best interests
21 of this state, but has no adverse effect whatsoever upon the
22 actuarial soundness of this particular retirement system.

23 (b) For the purposes of this section: (1) "Regularly employed
24 on a full-time basis" means employment of an individual by a
25 participating public employer, in a position other than as an
26 elected or appointed public official, which normally requires
27 twelve months per year service and at least one thousand forty
28 hours of service per year in that position; (2) "temporary
29 full-time employment" or "temporary part-time employment"
30 means employment of an individual on a temporary or
31 provisional basis by a participating public employer, other than
32 as an elected or appointed public official, in a position which
33 does not otherwise render the individual as regularly employed;
34 (3) "former employee of the Legislature" means any person who
35 has retired from employment with the Legislature and who has
36 at least ten years' contributing service with the Legislature; and
37 (4) "reemployed by the Legislature" means a former employee
38 of the Legislature who has been reemployed on a per diem basis
39 not to exceed one hundred seventy-five days per calendar year.

40 (c) In the event a retirant becomes regularly employed on a
41 full-time basis by a participating public employer, payment of
42 his or her annuity shall be suspended during the period of his or
43 her reemployment and he or she shall become a contributing

44 member to the retirement system. If his or her reemployment is
45 for a period of one year or longer, his or her annuity shall be
46 recalculated and he or she shall be granted an increased annuity
47 due to the additional employment, the annuity to be computed
48 according to section twenty-two of this article. If his or her
49 reemployment is for a period less than one year, he or she may
50 request in writing that the employee and employer retirement
51 contributions submitted during reemployment be credited to the
52 participating public employer pursuant to section forty-four of
53 this article, and his or her previous annuity shall be reinstated
54 effective the first day of the month following termination of
55 reemployment and the board's receipt of written notice thereof.
56 A retirant may accept legislative per diem, temporary full-time
57 or temporary part-time employment from a participating
58 employer without suspending his or her retirement annuity so
59 long as he or she does not receive annual compensation in excess
60 of \$20,000.

61 (d) In the event a member retires and is then subsequently
62 elected to a public office or is subsequently appointed to hold an
63 elected public office, or is a former employee of the Legislature
64 who has been reemployed by the Legislature, he or she has the
65 option, notwithstanding subsection (c) of this section, to either:

66 (1) Continue to receive payment of his or her annuity while
67 holding public office or during any reemployment of a former
68 employee of the Legislature on a per diem basis, in addition to
69 the salary he or she may be entitled to as an office holder or as
70 a per diem reemployed former employee of the Legislature; or

71 (2) Suspend the payment of his or her annuity and become
72 a contributing member of the retirement system as provided in
73 subsection (c) of this section. Notwithstanding the provisions of
74 this subsection, a member who is participating in the system as
75 an elected public official may not retire from his or her elected
76 position and commence to receive an annuity from the system

77 and then be elected or reappointed to the same position unless
78 and until a continuous twelve-month period has passed since his
79 or her retirement from the position: *Provided*, That a former
80 employee of the Legislature may not be reemployed by the
81 Legislature on a per diem basis until at least sixty days after the
82 employee has retired: *Provided, however*, That the limitation on
83 compensation provided by subsection (c) of this section does not
84 apply to the reemployed former employee: *Provided further*,
85 That in no event may reemployment by the Legislature of a per
86 diem employee exceed one hundred seventy-five days per
87 calendar year.

88 (e) A member who is participating in the system
89 simultaneously as both a regular, full-time employee of a
90 participating public employer and as an elected or appointed
91 member of the legislative body of the state or any political
92 subdivision may, upon meeting the age and service requirements
93 of this article, elect to retire from his or her regular full-time
94 state employment and may commence to receive an annuity from
95 the system without terminating his or her position as a member
96 of the legislative body of the state or political subdivision:
97 *Provided*, That the retired member shall not, during the term of
98 his or her retirement and continued service as a member of the
99 legislative body of a political subdivision, be eligible to continue
100 his or her participation as a contributing member of the system
101 and shall not continue to accrue any additional service credit or
102 benefits in the system related to the continued service.

103 (f) Notwithstanding the provisions of section twenty-seven-b
104 of this article, any publicly elected member of the legislative
105 body of any political subdivision or of the State Legislature, the
106 Clerk of the House of Delegates and the Clerk of the Senate may
107 elect to commence receiving in-service retirement distributions
108 from this system upon attaining the age of seventy and one-half
109 years: *Provided*, That the member is eligible to retire under the
110 provisions of section twenty or twenty-one of this article:

111 *Provided, however,* That the member elects to stop actively
112 contributing to the system while receiving the in-service
113 distributions.

114 (g) The provisions of section twenty-two-h of this article are
115 not applicable to the amendments made to this section during the
116 2006 Regular Session.

CHAPTER 154

(S. B. 452 - By Senators Kirkendoll, Cann,
Edgell, Carmichael and Plymale)

[Passed February 19, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2014.]

AN ACT to amend and reenact §5-13-2 and §5-13-4 of the Code of West Virginia, 1931, as amended, all relating to the Teachers Retirement System annuity calculation for reciprocal service credit; defining “teacher final average salary”; and providing procedure for annuity calculation for reciprocal service.

Be it enacted by the Legislature of West Virginia:

That §5-13-2 and §5-13-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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.

20 (e) "Public system" means the West Virginia Public
21 Employees Retirement System established in article ten, chapter
22 five of this code.

23 (f) "Reciprocal service credit" for a member of the public
24 system who subsequently becomes a member of the teacher
25 system, or vice versa, means the sum of his or her credited
26 service in force acquired as a member of the public system and
27 his or her credited service in force acquired as a member of the
28 teacher system.

29 (g) "State system" means the West Virginia Public
30 Employees Retirement System and the State Teachers
31 Retirement System.

32 (h) "Teacher final average salary" means a member's final
33 average salary computed according to the law governing the

34 teacher system. In computing his or her teacher final average
35 salary, the compensation, if any, received by the member for
36 services rendered in positions covered by the public system shall
37 be used in the same manner as if the compensation were received
38 for services covered by the teacher system.

39 (i) "Teacher system" means the State Teachers Retirement
40 System established in article seven-a, chapter eighteen of this
41 code.

42 (j) The masculine gender includes the feminine, and words
43 of the singular number with respect to persons include the plural
44 number, and vice versa.

§5-13-4. Reciprocal service.

1 In the event a member leaves a position covered by the
2 public system and within five years thereafter becomes
3 employed in a position covered by the teacher system, or a
4 member leaves the position covered by the teacher system and
5 within five years thereafter becomes employed in a position
6 covered by the public system, in either case, the following
7 provisions shall apply.

8 (a) A member's reciprocal service credit in force shall be
9 used to satisfy the service requirements for retirement under the
10 state system from which he or she retires.

11 (b) If a member, who has reciprocal service credit in force,
12 retires under the public system, he or she shall receive an annuity
13 payable by the public system and an annuity payable by the
14 teacher system. His or her public system annuity shall be based
15 upon: (1) The portion of his or her reciprocal service credit
16 acquired as a member of the public system; and (2) his or her
17 public final average salary. The member's teacher system
18 annuity shall be based upon: (1) The portion of his or her
19 reciprocal service credit acquired as a member of the teacher

20 system; and (2) his or her teachers' final average salary as
21 provided by the teachers retirement act. His or her teacher
22 system annuity shall begin as of the date he or she retires under
23 the public system, but in no case prior to the date the member
24 would have been eligible to retire under the teacher system if all
25 his or her reciprocal service credit had been acquired as a
26 member of the teacher system.

27 (c) If a member, who has reciprocal service credit in force,
28 retires under the teacher system, he or she shall receive an
29 annuity payable by the teacher system and an annuity payable by
30 the public system. The member's teacher system annuity shall be
31 based upon: (1) The portion of his or her reciprocal service credit
32 acquired as a member of the teacher system; and (2) his or her
33 teachers' final average salary as provided by the teachers
34 retirement act. His or her public system annuity shall be based
35 upon: (1) The portion of the reciprocal service credit acquired as
36 a member of the public system; and (2) his or her public final
37 average salary. His or her public system annuity shall begin as
38 of the date he or she retired under the teacher system, but in no
39 case prior to the date he or she would have been eligible to retire
40 under the public system if all his or her reciprocal service credit
41 had been acquired as a member of the public system.

CHAPTER 155

**(S. B. 443 - By Senators Kirkendoll, Cann,
Edgell and Carmichael)**

[Passed February 19, 2014; in effect from passage.]

[Approved by the Governor on March 7, 2014.]

AN ACT to amend and reenact §15-2A-2, §15-2A-5 and §15-2A-11a
of the Code of West Virginia, 1931, as amended, all relating to the

West Virginia State Police Retirement System; providing definitions; removing the requirement to set the employer contribution rate by legislative rule; requiring that a disability retireant's annuity be terminated when the board determines that the recipient has engaged in substantial gainful activity; requiring that a partially disabled retireant's annuity be terminated when they become employed as a law-enforcement officer; providing for reapplication of disability retirement within ninety days of effective termination; and clarifying that application for regular retirement benefits may be made by those terminated upon meeting eligibility requirements.

Be it enacted by the Legislature of West Virginia:

That §15-2A-2, §15-2A-5 and §15-2A-11a 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-2. Definitions.

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

3 (1) "Accumulated contributions" means the sum of all
4 amounts deducted from base salary, together with four percent
5 interest compounded annually.

6 (2) "Active military duty" means full-time active duty with
7 the armed forces of the United States, namely, the United States
8 Air Force, Army, Coast Guard, Marines or Navy; and service
9 with the National Guard or reserve military forces of any of the
10 armed forces when the employee has been called to active full-
11 time duty.

12 (3) “Actuarially equivalent” or “of equal actuarial value”
13 means a benefit of equal value computed upon the basis of the
14 mortality table and interest rates as set and adopted by the
15 retirement board in accordance with the provisions of this
16 article: *Provided*, That when used in the context of compliance
17 with the federal maximum benefit requirements of Section 415
18 of the Internal Revenue Code, “actuarially equivalent” shall be
19 computed using the mortality tables and interest rates required
20 to comply with those requirements.

21 (4) “Agency” means the West Virginia State Police.

22 (5) “Base salary” means compensation paid to an employee
23 without regard to any overtime pay.

24 (6) “Beneficiary” means a surviving spouse or other
25 surviving beneficiary who is entitled to, or will be entitled to, an
26 annuity or other benefit payable by the fund.

27 (7) “Board” means the Consolidated Public Retirement
28 Board created pursuant to article ten-d, chapter five of this code.

29 (8) “Dependent child” means any unmarried child or
30 children born to or adopted by a member or retirant of the fund
31 who:

32 (A) Is under the age of eighteen;

33 (B) After reaching eighteen years of age, continues as a full-
34 time student in an accredited high school, college, university or
35 business or trade school until the child or children reaches the
36 age of twenty-three years; or

37 (C) Is financially dependent on the member or retirant by
38 virtue of a permanent mental or physical disability upon
39 evidence satisfactory to the board.

40 (9) “Dependent parent” means the member’s or retirant’s
41 parent or stepparent claimed as a dependent by the member or

42 retirant for federal income tax purposes at the time of the
43 member's or retirant's death.

44 (10) "Employee" means any person regularly employed in
45 the service of the agency as a law-enforcement officer after
46 March 12, 1994, and who is eligible to participate in the fund.

47 (11) "Final average salary" means the average of the highest
48 annual compensation received for employment with the agency,
49 including compensation paid for overtime service, received by
50 the employee during any five calendar years within the
51 employee's last ten years of service: *Provided*, That annual
52 compensation for determining benefits during any determination
53 period may not exceed the maximum compensation allowed as
54 adjusted for cost of living in accordance with section seven,
55 article ten-d, chapter five of this code and Section 401(a)(17) of
56 the Internal Revenue Code.

57 (12) "Fund", "plan", "system" or "retirement system" means
58 the West Virginia State Police Retirement Fund created and
59 established by this article.

60 (13) "Internal Revenue Code" means the Internal Revenue
61 Code of 1986, as amended.

62 (14) "Law-enforcement officer" means an individual
63 employed or otherwise engaged in either a public or private
64 position which involves the rendition of services relating to
65 enforcement of federal, state or local laws for the protection of
66 public or private safety, including, but not limited to, positions
67 as deputy sheriffs, police officers, marshals, bailiffs, court
68 security officers or any other law-enforcement position which
69 requires certification, but excluding positions held by elected
70 sheriffs or appointed chiefs of police whose duties are purely
71 administrative in nature.

72 (15) "Member" means any person who has contributions
73 standing to his or her credit in the fund and who has not yet
74 entered into retirement status.

75 (16) "Month of service" means each month for which an
76 employee is paid or entitled to payment for at least one hour of
77 service for which contributions were remitted to the fund. These
78 months shall be credited to the member for the calendar year in
79 which the duties are performed.

80 (17) "Partially disabled" means an employee's inability, on
81 a probable permanent basis, to perform the essential duties of a
82 law-enforcement officer by reason of any medically
83 determinable physical or mental impairment which has lasted or
84 can be expected to last for a continuous period of not less than
85 twelve months, but which impairment does not preclude the
86 employee from engaging in other types of nonlaw-enforcement
87 employment.

88 (18) "Physical or mental impairment" means an impairment
89 that results from an anatomical, physiological or psychological
90 abnormality that is demonstrated by medically accepted clinical
91 and laboratory diagnostic techniques.

92 (19) "Plan year" means the twelve-month period
93 commencing on July 1 of any designated year and ending the
94 following June 30.

95 (20) "Qualified public safety employee" means any
96 employee of a participating state or political subdivision who
97 provides police protection, fire fighting services or emergency
98 medical services for any area within the jurisdiction of the state
99 or political subdivision, or such other meaning given to the term
100 by Section 72(t)(10)(B) of the Internal Revenue Code or by
101 Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be
102 amended from time to time.

103 (21) "Required beginning date" means April 1 of the
104 calendar year following the later of: (a) The calendar year in
105 which the member attains age seventy and one-half years; or (b)
106 the calendar year in which he or she retires or otherwise
107 separates from service with the agency after having attained the
108 age of seventy and one-half years.

109 (22) "Retirant" or "retiree" means any member who
110 commences an annuity payable by the retirement system.

111 (23) "Salary" means the compensation of an employee,
112 excluding any overtime payments.

113 (24) "Surviving spouse" means the person to whom the
114 member or retirant was legally married at the time of the
115 member's or retirant's death and who survived the member or
116 retirant.

117 (25) "Totally disabled" means an employee's probable
118 permanent inability to engage in substantial gainful activity by
119 reason of any medically determined physical or mental
120 impairment that can be expected to result in death or that has
121 lasted or can be expected to last for a continuous period of not
122 less than twelve months. For purposes of this subdivision, an
123 employee is totally disabled only if his or her physical or mental
124 impairments are so severe that he or she is not only unable to
125 perform his or her previous work as an employee of the agency,
126 but also cannot, considering his or her age, education and work
127 experience, engage in any other kind of substantial gainful
128 employment which exists in the state regardless of whether: (A)
129 The work exists in the immediate area in which the employee
130 lives; (B) a specific job vacancy exists; or (C) the employee
131 would be hired if he or she applied for work.

132 (26) "Years of service" means the months of service
133 acquired by a member while in active employment with the

134 agency divided by twelve. Years of service shall be calculated in
135 years and fraction of a year from the date of active employment
136 of the member with the agency through the date of termination
137 of employment or retirement from the agency. If a member
138 returns to active employment with the agency following a
139 previous termination of employment with the agency and the
140 member has not received a refund of contributions plus interest
141 for the previous employment under section eight of this article,
142 service shall be calculated separately for each period of
143 continuous employment and years of service shall be the total
144 service for all periods of employment. Years of service shall
145 exclude any periods of employment with the agency for which
146 a refund of contributions plus interest has been paid to the
147 member unless the employee repays the previous withdrawal, as
148 provided in section eight of this article, to reinstate the years of
149 service.

**§15-2A-5. Employee contributions; employer contributions;
forfeitures.**

1 (a) There shall be deducted from the monthly payroll of each
2 employee and paid into the fund created pursuant to section four
3 of this article twelve percent of the amount of his or her salary:
4 *Provided*, That after July 1, 2008, if the funding percentage of
5 the fund determined by the board falls below the ninety-percent
6 threshold, then the employee rate of contribution shall be
7 increased to thirteen percent of the amount of the employee's
8 salary until the ninety-percent or better funding level is again
9 achieved. Once that funding level is achieved the employee
10 contribution rate will be reduced to twelve percent.

11 (b) The State of West Virginia's contributions to the
12 retirement system, as determined by the board, shall be a percent
13 of the employees' total annual base salary related to benefits
14 under this retirement system. In determining the amount, the
15 board shall give consideration to setting the amount at a sum

16 equal to an amount which, if paid annually by the state, will be
17 sufficient to provide for the total normal cost of the benefits
18 expected to become payable to all members and retirants and to
19 amortize any unfunded liability found by application of the
20 actuarial funding method chosen for that purpose by the board
21 over a period of years determined actuarially appropriate. The
22 state's contributions shall be paid monthly into the fund created
23 pursuant to section four of this article out of the annual
24 appropriation for the agency.

25 (c) Notwithstanding any other provisions of this article,
26 forfeitures under the system shall not be applied to increase the
27 benefits any member or retirant would otherwise receive under
28 the system.

**§15-2A-11a. Physical examinations of prospective members;
application for disability benefit; determinations.**

1 (a) Not later than thirty days after an employee becomes a
2 member of the fund, the employer shall forward to the board a
3 copy of the physician's report of a physical examination which
4 incorporates the standards or procedures described in section
5 seven, article two, chapter fifteen of this code. A copy of the
6 physicians's report shall be placed in the employee's retirement
7 system file maintained by the board.

8 (b) Application for a disability benefit may be made by an
9 employee or, if the employee is under an incapacity, by a person
10 acting with legal authority on the employee's behalf. After
11 receiving an application for a disability benefit, the board shall
12 notify the superintendent of the agency that an application has
13 been filed: *Provided*, That when, in the judgment of the
14 superintendent, an employee is no longer physically or mentally
15 fit for continued duty as an employee of the agency and the
16 employee has failed or refused to make application for disability
17 benefits under this article, the superintendent may petition the

18 board to retire the employee on the basis of disability pursuant
19 to legislative rules proposed in accordance with article three,
20 chapter twenty-nine-a of this code. Within thirty days of the
21 superintendent's receipt of the notice from the board or the filing
22 of the superintendent's petition with the board, the
23 superintendent shall forward to the board a statement certifying
24 the duties of the employee's job description, information relating
25 to the superintendent's position on the work relatedness of the
26 employee's alleged disability, complete copies of the employee's
27 medical file and any other information requested by the board in
28 its processing of the application.

29 (c) The board shall propose legislative rules in accordance
30 with article three, chapter twenty-nine-a of this code relating to
31 the processing of applications and petitions for disability
32 retirement under this article.

33 (d) The board shall notify an employee and the
34 superintendent of its final action on the disability application or
35 petition within ten days of the board's final action. The notice
36 shall be sent by certified mail, return receipt requested. If either
37 the employee or the superintendent is aggrieved by the decision
38 of the board and intends to pursue judicial review of the board's
39 decision as provided in section four, article five, chapter twenty-
40 nine-a of this code, the party aggrieved shall notify the board
41 within twenty days of the employee's or superintendent's receipt
42 of the board's notice that they intend to pursue judicial review of
43 the board's decision.

44 (e) The board may require a disabled retirant to file an
45 annual statement of earnings and any other information required
46 in rules which may be adopted by the board. The board may
47 waive the requirement that a disabled retirant file the annual
48 statement of earnings if the board's physician certifies that the
49 recipient's disability is ongoing. The board shall annually
50 examine the information submitted by the disabled retirant. If a

51 disabled retirant refuses to file the statement or information, the
52 disability benefit shall be suspended until the statement and
53 information are filed.

54 (f) If after review of a disability retirant's annual statement
55 of earnings, tax records or other financial information, as
56 required or otherwise obtained by the board, the board
57 determines that earnings of the recipient of total disability
58 benefits in the preceding year are sufficient to show that the
59 recipient engaged in substantial gainful activity, the disability
60 retirant's disability annuity shall be terminated by the board,
61 upon recommendation of the board's disability review
62 committee, on the first day of the month following the board's
63 action.

64 (g) If the board obtains information that a partially disabled
65 disability retirant is employed as a law-enforcement officer, the
66 disability retirant's disability annuity shall be terminated by the
67 board, upon recommendation of the board's disability review
68 committee, the first day of the month following the board's
69 action.

70 (h) Any person who wishes to reapply for disability
71 retirement and whose disability retirement has been terminated
72 by the board pursuant to this section may do so within ninety
73 days of the effective date of termination: *Provided*, That any
74 person reapplying for disability benefits shall undergo an
75 examination at the applicant's expense by an appropriate
76 medical professional selected by the board as part of the
77 reapplication process.

78 (I) Notwithstanding other provisions in this section, any
79 person whose disability retirement has been terminated by the
80 board pursuant to this section may apply for regular retirement
81 benefits upon meeting eligibility requirements of age and years
82 of service.

CHAPTER 156

**(Com. Sub. for S. B. 393 - By Senators Kessler (Mr. President)
and M. Hall)**

[By Request of the Executive]

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 24, 2014.]

AN ACT to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended, relating to the Revenue Shortfall Reserve Fund; and allowing the Governor to borrow money from the fund prior to the first day of April, 2014, if revenues are inadequate to make timely payments of the state's obligations.

Be it enacted by the Legislature of West Virginia:

That §11B-2-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

1 (a) Notwithstanding any provision of this section, the
2 Governor may reduce appropriations according to any of the
3 methods set forth in sections twenty-one and twenty-two of this
4 article. The Governor may, in lieu of imposing a reduction in
5 appropriations, request an appropriation by the Legislature from
6 the Revenue Shortfall Reserve Fund established in this section.

7 (b) The Revenue Shortfall Reserve Fund is continued within
8 the State Treasury. The Revenue Shortfall Reserve Fund shall be

9 funded continuously and on a revolving basis in accordance with
10 this subsection up to an aggregate amount not to exceed thirteen
11 percent of the total appropriations from the State Fund, General
12 Revenue, for the fiscal year just ended. The Revenue Shortfall
13 Reserve Fund shall be funded as set forth in this subsection from
14 surplus revenues, if any, in the State Fund, General Revenue, as
15 the surplus revenues may accrue from time to time.

16 Within sixty days of the end of each fiscal year, the secretary
17 shall cause to be deposited into the Revenue Shortfall Reserve
18 Fund such amount of the first fifty percent of all surplus
19 revenues, if any, determined to have accrued during the fiscal
20 year just ended, as may be necessary to bring the balance of the
21 Revenue Shortfall Reserve Fund to thirteen percent of the total
22 appropriations from the State Fund, General Revenue, for the
23 fiscal year just ended. If at the end of any fiscal year the
24 Revenue Shortfall Reserve Fund is funded at an amount equal to
25 or exceeding thirteen percent of the state's General Revenue
26 Fund budget for the fiscal year just ended, then there shall be no
27 further deposit by the secretary under the provisions of this
28 section of any surplus revenues as set forth in this subsection
29 until that time the Revenue Shortfall Reserve Fund balance is
30 less than thirteen percent of the total appropriations from the
31 State Fund, General Revenue.

32 (c) Not earlier than November 1 of each calendar year, if the
33 state's fiscal circumstances are such as to otherwise trigger the
34 authority of the Governor to reduce appropriations under this
35 section or section twenty-one or twenty-two of this article, then
36 in that event the Governor may notify the presiding officers of
37 both houses of the Legislature in writing of his or her intention
38 to convene the Legislature pursuant to section nineteen, article
39 VI of the Constitution of West Virginia for the purpose of
40 requesting the introduction of a supplementary appropriation bill
41 or to request a supplementary appropriation bill at the next

42 preceding regular session of the Legislature to draw money from
43 the surplus Revenue Shortfall Reserve Fund to meet any
44 anticipated revenue shortfall. If the Legislature fails to enact a
45 supplementary appropriation from the Revenue Shortfall
46 Reserve Fund during any special legislative session called for the
47 purposes set forth in this section or during the next preceding
48 regular session of the Legislature, then the Governor may
49 proceed with a reduction of appropriations pursuant to sections
50 twenty-one and twenty-two of this article. Should any amount
51 drawn from the Revenue Shortfall Reserve Fund pursuant to an
52 appropriation made by the Legislature prove insufficient to
53 address any anticipated shortfall, then the Governor may also
54 proceed with a reduction of appropriations pursuant to sections
55 twenty-one and twenty-two of this article.

56 (d) Upon the creation of the fund, the Legislature is
57 authorized and may make an appropriation from the Revenue
58 Shortfall Reserve Fund for revenue shortfalls, for emergency
59 revenue needs caused by acts of God or natural disasters or for
60 other fiscal needs as determined solely by the Legislature.

61 (e) Prior to October 31 in any fiscal year in which revenues
62 are inadequate to make timely payments of the state's
63 obligations, the Governor may, by executive order, after first
64 notifying the presiding officers of both houses of the Legislature
65 in writing, borrow funds from the Revenue Shortfall Reserve
66 Fund: *Provided*, That for the fiscal year 2014, pursuant to this
67 subsection and subject to all other conditions, requirements and
68 limitations set forth in this section, the Governor may borrow
69 funds from the Revenue Shortfall Reserve Fund prior to the first
70 day of April. The amount of funds borrowed under this
71 subsection shall not exceed one and one-half percent of the
72 general revenue estimate for the fiscal year in which the funds
73 are to be borrowed, or the amount the Governor determines is
74 necessary to make timely payment of the state's obligations,

75 whichever is less. Any funds borrowed pursuant to this
76 subsection shall be repaid, without interest, and redeposited to
77 the credit of the Revenue Shortfall Reserve Fund within ninety
78 days of their withdrawal.

79 (f) The Revenue Shortfall Reserve Fund – Part B is
80 continued within the State Treasury. The Revenue Shortfall
81 Reserve Fund – Part B shall consist of moneys transferred from
82 the West Virginia Tobacco Settlement Medical Trust Fund
83 pursuant to the provisions of section two, article eleven-a,
84 chapter four of this code, repayments made of the loan from the
85 West Virginia Tobacco Settlement Medical Trust Fund to the
86 Physician’s Mutual Insurance Company pursuant to the
87 provisions of article twenty-f, chapter thirty-three of this code
88 and all interest and other return earned on the moneys in the
89 Revenue Shortfall Reserve Fund – Part B. Moneys in the
90 Revenue Shortfall Reserve Fund – Part B may be expended
91 solely for the purposes set forth in subsection (d) of this section,
92 subject to the following conditions:

93 (1) No moneys in the Revenue Shortfall Reserve Fund – Part
94 B nor any interest or other return earned thereon may be
95 expended for any purpose unless all moneys in the Revenue
96 Shortfall Reserve Fund described in subsection (b) of this section
97 have first been expended, except that the interest or other return
98 earned on moneys in the Revenue Shortfall Reserve Fund – Part
99 B may be expended as provided in subdivision (2) of this
100 subsection;

101 (2) Notwithstanding any other provision of this section to the
102 contrary, the Legislature may appropriate any interest and other
103 return earned thereon that may accrue on the moneys in the
104 Revenue Shortfall Reserve Fund – Part B after June 30, 2025, for
105 expenditure for the purposes set forth in section three, article
106 eleven-a, chapter four of this code; and

107 (3) Any appropriation made from Revenue Shortfall Reserve
108 Fund – Part B shall be made only in instances of revenue
109 shortfalls or fiscal emergencies of an extraordinary nature.

110 (g) Subject to the conditions upon expenditures from the
111 Revenue Shortfall Reserve Fund – Part B prescribed in
112 subsection (f) of this section, in appropriating moneys pursuant
113 to the provisions of this section, the Legislature may in any fiscal
114 year appropriate from the Revenue Shortfall Reserve Fund and
115 the Revenue Shortfall Reserve Fund – Part B a total amount up
116 to, but not exceeding, ten percent of the total appropriations from
117 the State Fund, General Revenue, for the fiscal year just ended.

118 (h) (1) Of the moneys in the Revenue Shortfall Reserve
119 Fund, \$100 million, or such greater amount as may be certified
120 as necessary by the Director of the Budget Office for the
121 purposes of subsection (e) of this section, shall be made
122 available to the West Virginia Board of Treasury Investments for
123 management and investment of the moneys in accordance with
124 the provisions of article six-c, chapter twelve of this code. All
125 other moneys in the Revenue Shortfall Reserve Fund shall be
126 made available to the West Virginia Investment Management
127 Board for management and investment of the moneys in
128 accordance with the provisions of article six, chapter twelve of
129 this code. Any balance of the Revenue Shortfall Reserve Fund,
130 including accrued interest and other return earned thereon at the
131 end of any fiscal year, does not revert to the General Fund but
132 shall remain in the Revenue Shortfall Reserve Fund for the
133 purposes set forth in this section.

134 (2) All of the moneys in the Revenue Shortfall Reserve Fund
135 – Part B shall be made available to the West Virginia Investment
136 Management Board for management and investment of the
137 moneys in accordance with the provisions of article six, chapter
138 twelve of this code. Any balance of the Revenue Shortfall

139 Reserve Fund – Part B, including accrued interest and other
140 return earned thereon at the end of any fiscal year, shall not
141 revert to the General Fund but shall remain in the Revenue
142 Shortfall Reserve Fund – Part B for the purposes set forth in this
143 section.

CHAPTER 157

**(Com. Sub. for H. B. 4156 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-16D-1, §17-16D-2, §17-16D-3, §17-16D-4, §17-16D-5, §17-16D-6, §17-16D-7, §17-16D-8, §17-16D-9, §17-16D-10, §17-16D-11, §17-16D-12, §17-16D-13 and §17-16D-14, all relating to electronic collection and enforcement of tolls; defining terms; authorizing the West Virginia Parkways Authority to electronically collect and enforce tolls; establishing liability of the registered owner for violation as a rebuttable inference; providing civil penalties for nonpayment of tolls; providing exceptions when the registered owner is a lessor; providing that certain information collected is confidential and not subject to the Freedom of Information Act; allowing limited restricted and confidential access to certain information pursuant to subpoenas and court orders on a strictly confidential basis; providing criminal penalties for damage to facilities; providing for nonrenewal of vehicle registration; authorizing reciprocal agreements with other jurisdictions for enforcement; and granting 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 §17-16D-1, §17-16D-2, §17-16D-3, §17-16D-4, §17-16D-5, §17-16D-6, §17-16D-7, §17-16D-8, §17-16D-9, §17-16D-10, §17-16D-11, §17-16D-12, §17-16D-13, and §17-16D-14, all to read as follows:

ARTICLE 16D. ELECTRONIC TOLL COLLECTION.

§17-16D-1. Legislative findings and purpose.

1 The Legislature finds and declares that the use of electronic
2 and video technology for collection of tolls on roads, highways
3 and bridges will benefit the citizens of this state by making toll
4 roads, highways and bridges in this state safer and collection of
5 tolls more efficient, by easing traffic congestion, by improving
6 traffic flow, by furthering economic development and by
7 promoting and enhancing more efficient commercial traffic and
8 the shipment of goods in the state. This article shall be known as
9 and may be cited as the “Electronic Toll Collection Act.”

§17-16D-2. Definitions.

1 The following words and phrases have the following
2 meanings when used in this article:

3 (1) “Authority” or “Parkways Authority” means the West
4 Virginia Parkways Authority established by article sixteen-a of
5 this chapter.

6 (2) “Division” means the Division of Highways of the West
7 Virginia Department of Transportation, except where another
8 division is clearly identified.

9 (3) “Electronic toll collection” means a system of collecting
10 tolls or charges that has or includes the capability of charging an

11 account holder, owner or operator of a vehicle for the prescribed
12 toll:

13 (A) By electronic transmission of information between a
14 device on a vehicle and a device located in a toll lane or
15 otherwise used at a toll collection facility; or

16 (B) By means of a video collection system.

17 (4) "Owner" means any person in whose name a motor
18 vehicle is registered under:

19 (A) Article three, chapter seventeen-a of this code;

20 (B) The laws of another state;

21 (C) The laws of a foreign county; or

22 (D) The International Registration Plan.

23 (5) "Toll collection facility" or "toll facility" means any
24 facility, including all related structures, equipment, systems and
25 software, used in connection with collecting or charging tolls for
26 a toll road, highway or bridge in this state, regardless of whether
27 the facility is located on, over or adjacent to the toll road,
28 highway or bridge and regardless of whether the facility has toll
29 lanes with toll booths and toll collection equipment that require
30 passing vehicles to stop or slow down in order to pay a toll or
31 uses additional or different methods, structures, technology and
32 equipment in order to charge or collect tolls from some vehicles
33 passing under or by the facility at highway speeds: *Provided*,
34 That any such facility shall have the ability to accept cash for the
35 payment of tolls.

36 (6) "Toll road" means any road, highway or bridge in this
37 state upon which there is a toll administered, collected and
38 enforced by the Parkways Authority or on behalf of the
39 Authority.

40 (7) "Video collection system" means a vehicle sensor, placed
41 in a location to work in conjunction with a toll collection facility,
42 that automatically produces a videotape or photograph,
43 microphotograph or other recorded image of the front or rear
44 portion, or both front and rear portion, of each vehicle at the time
45 the vehicle is used or operated on the toll facility in order to
46 charge or collect tolls or detect violations of this article. This
47 phrase includes, without limitation: (A) Any other technology
48 which identifies a vehicle by photographic, electronic or other
49 method; and (B) all related toll invoices, billing notices and
50 other toll collection and violation enforcement efforts made
51 using any such technology and information.

§17-16D-3. Electronic toll collection authorized.

1 Notwithstanding the provisions of article sixteen-a and
2 section five-b, article seventeen-a of this chapter and section
3 seven-a, article six, chapter seventeen-c of this code to the
4 contrary, the collection and enforcement of tolls for the use of
5 roads, highways and bridges may be accomplished by electronic
6 toll collection as provided in this article and in rules promulgated
7 by authority of this article: *Provided*, That the application of this
8 article should not apply to:

9 (1) Future highway construction provided for in the Division
10 of Highways' Statewide Transportation Improvement Plan at the
11 time of the enactment of this article; and

12 (2) Existing toll roads: *Provided*, That this section may not
13 be construed to prohibit the collection and enforcement of tolls
14 pursuant to article sixteen-a, chapter seventeen of this code.

§17-16D-4. Advanced warning signs.

1 Before enforcing a toll, the Parkways Authority, or the
2 operator of the toll facility, must install advance warning signs

3 along the toll road, highway or bridge preceding the location at
4 which the toll collection facility is located.

§17-16D-5. Imposition of liability for payment of tolls.

1 (a) If, as evidenced by a video collection system, a violation
2 of this article occurs, the following applies:

3 (1) The Parkways Authority will prepare and mail a notice
4 of violation as follows:

5 (A) The notice of violation shall be sent by first class mail
6 to each person listed as owner;

7 (B) The notice shall be mailed, postage prepaid, to the
8 address shown on the vehicle registration, which is presumed to
9 be the last known address of the owner.

10 (C) Notice shall be mailed no later than one hundred twenty
11 days after:

12 (i) The violation; or

13 (ii) The date that a lessor provides sufficient information to
14 identify who is the actual owner.

15 (D) Personal service is not required.

16 (E) The notice shall contain the following:

17 (i) Information advising the person of the violation, when
18 and where it occurred and that the violation may be contested.

19 (ii) A warning advising the person receiving the notice:

20 (I) That failure to contest in the manner and time provided
21 is an admission of liability;

22 (II) That a default judgment may be entered on the notice;

23 (III) That a violation of this article may subject the owner or
24 operator to civil penalties, administrative fees, administrative
25 hearing costs, and collection fees and costs as provided in this
26 article; and

27 (IV) That failure to pay civil penalties imposed pursuant to
28 this article may result in denial of an application for a new or
29 renewal of the vehicle registration in this state or in the state in
30 which the vehicle is registered.

31 (F) A manual or automatic record of mailing prepared in the
32 ordinary course of business is prima facie evidence of the
33 mailing of notice on the date specified in the business record.

34 (b) If an owner of a vehicle receives a notice of violation of
35 this article for any time period during which the vehicle was
36 reported to a police department as having been stolen, that owner
37 may not be held liable for the violation under this article if he or
38 she provides a certified copy of the police report on the stolen
39 vehicle to the Parkways Authority within thirty days after
40 receiving the notice of violation.

41 (c) A certified report or a facsimile report of an authorized
42 agent or employee of the Parkways Authority reporting a
43 violation of section six of this article based upon the recorded
44 information obtained from electronic toll collection system is
45 prima facie evidence of the facts contained in the report and is
46 admissible as an official record kept in the ordinary course of
47 business.

48 (d) Notwithstanding any provision in the code to the
49 contrary, videotapes, photographs, microphotographs or other
50 recorded images, written records, reports or facsimiles prepared
51 pursuant to this article are allowed and are for the exclusive use
52 of the Parkways Authority, its authorized agents, its employees

53 and law-enforcement officials for the purpose of discharging
54 duties under this article. Except as may be necessary to enforce
55 collection of tolls, civil penalties, administrative fees,
56 administrative hearing costs and collection fees and costs from
57 persons to whom a notice of violation is sent as provided in this
58 section, or to whom any billing invoice, reminder letter or other
59 toll collection or violation enforcement communication is sent
60 using information from the electronic toll collection system, all
61 images and records created or retained as provided herein that
62 identify individual vehicles or vehicle registration plates, must
63 be destroyed within sixty days after payment in full of the
64 applicable toll or after any toll collection or enforcement action
65 under this article involving the images or records has been
66 resolved. This information may not be considered a public
67 record under chapter twenty-nine-b of this code. The information
68 is not discoverable by court order and it may not be offered in
69 evidence in any action or proceeding that is not directly related
70 to a violation of this article or indemnification permitted by this
71 article. However, these restrictions:

72 (1) Do not preclude a court of competent jurisdiction from
73 issuing an order directing that the information be provided to
74 law-enforcement officials if the information is reasonably
75 described and is requested in connection with a criminal
76 law-enforcement action;

77 (2) Do not preclude the exchange of the information between
78 any entities with jurisdiction over or that operate an electronic
79 toll collection system in this state or any other jurisdiction within
80 or outside of the United States; and

81 (3) Do not prohibit the use of information exclusively for the
82 purpose of billing electronic toll collection account holders,
83 deducting toll charges from the account of an account holder,
84 enforcing toll collection provisions of this code or enforcing the
85 provisions of an account holder agreement.

86 (e) Civil liability under this article is to be based upon a
87 preponderance of evidence. Persons receiving a notice of
88 violation as provided in this section must respond within thirty
89 days of the date the notice was mailed by:

90 (1) Remitting the amount of the unpaid toll and any
91 administrative fee assessed; or

92 (2) Requesting an administrative hearing in accordance with
93 rules promulgated by the Parkways Authority pursuant to this
94 article.

95 (f) In addition to the amount of any unpaid tolls, the
96 Authority shall assess a reasonable administrative fee, in the
97 amount determined by rule promulgated by the Authority, for
98 each notification for each separate violation of this article.
99 Persons who are found to be liable for payment of tolls and the
100 administrative fees in an administrative hearing shall also be
101 liable payment of the costs of the hearing, except where the
102 judgment of the hearing examiner is reversed or set aside by a
103 court of competent jurisdiction on appeal.

104 (g) Failure to remit the unpaid toll, assessed administrative
105 fees and assessed hearing costs or to request a hearing shall
106 result in entry of an administrative default judgment. The
107 Parkways Authority may cause notice of the default judgment to
108 be served on the person to whom the notice of violation was sent
109 by certified mail, return receipt requested, advising the person
110 that failure to pay the unpaid tolls, assessed administrative fees
111 and assessed hearing costs within thirty days of receipt of the
112 notice of default judgment will result in denial of an application
113 for a new vehicle registration in this state. If the unpaid tolls,
114 assessed administrative fees, and assessed administrative hearing
115 costs are not paid as provided in the notice of default judgment,
116 or if the judgment is not set aside by a court of competent
117 jurisdiction, the Authority may take all lawful actions to collect

118 on the judgment and may notify the Commissioner of the
119 Division of Motor Vehicles, who shall refuse the registration or
120 renewal of registration of the vehicle in this state as provided in
121 section eleven of this article.

122 (h) Civil liability under this article is not a conviction and
123 may not be made part of the owner's motor vehicle operating
124 record. It may not be considered in the provision of motor
125 vehicle insurance coverage.

126 (i) A person found to have violated this article is liable for:

127 (1) The amount of the toll evaded or attempted to be evaded;
128 if the amount can be determined, or if it cannot be determined,
129 the minimum toll from the nearest point of entry on the toll
130 facility to the actual point of exit;

131 (2) An administrative fee per notification for each separate
132 violation;

133 (3) Administrative hearing costs assessed under this article;
134 and

135 (4) Reasonable fees and costs of attempting to collect on a
136 judgment under subsection (g) of this section.

§17-16D-6. Liability of owner.

1 (a) All owners and operators of motor vehicles shall pay the
2 posted toll when on any toll road, highway or bridge authorized
3 by the Legislature either by paying the toll at a toll collection
4 facility on the toll road, highway or bridge at the time of travel
5 thereon or by paying the toll within the time prescribed for toll
6 payment in a toll billing notice or invoice generated by an
7 electronic toll collection system. These tolls may be collected by
8 electronic toll collection. If an owner or operator of a vehicle
9 fails to pay the prescribed toll when due, the owner of the
10 vehicle is in violation of this article.

11 (b) If a violation occurs, the registration plate number of the
12 vehicle as recorded by a video collection system establishes a
13 rebuttable presumption for civil enforcement purposes that the
14 owner of the vehicle was operating the vehicle, or had consented
15 to another person operating the vehicle, at that time. This
16 presumption may be overcome only if the owner (1) proves by
17 a preponderance of the evidence that he or she was not in fact
18 operating the vehicle at the time; (2) identifies by name and
19 mailing address the person who was operating the vehicle.

20 (c) If the presumption is not overcome by a preponderance
21 of the evidence, the owner of the vehicle shall be found to have
22 violated this article and be held responsible for payment of the
23 tolls and the administrative fees and money penalties imposed by
24 this article for failure to timely pay the tolls.

25 (d) Nothing in this section prohibits: (1) A law-enforcement
26 officer from issuing a citation to a person in control of a vehicle
27 for a violation of this article or other provisions of law at the
28 time of the violation; or (2) the Parkways Authority from issuing
29 reminder notices or making other communications directly or
30 indirectly in connection with toll collection efforts or efforts to
31 enforce violations of this article. The Parkways Authority is
32 authorized to use secondary sources of information and services
33 including, but not limited to, services such as the National
34 Change of Address Service or skip tracing services.

§17-16D-7. Owner who is lessor.

1 (a) An owner of a vehicle who is a lessor of the vehicle used
2 in violation of the toll collection monitoring system regulations
3 of the authority shall not be responsible for the violation of this
4 article if the lessor submits to the Parkways Authority, in a
5 timely manner, the name and address of the lessee who leased
6 the vehicle on the day of the violation: *Provided*, That a lessor
7 shall provide a copy of the rental agreement, lease or other

8 contract document covering that vehicle on the date of the
9 violation to the Parkways Authority upon written request for a
10 violation that is in litigation.

11 (b) If the lessor fails to provide the information in a timely
12 manner, the lessor shall be held responsible for the violation of
13 this article. If the lessor provides the required information to the
14 Parkways Authority, the lessee of the vehicle on the date of the
15 violation shall be deemed to be the owner of the vehicle for the
16 purposes of enforcement of the violation of this article.

17 (c) Except as otherwise provided in this subsection, a
18 certified report of an employee or agent of the authority
19 reporting a violation of the toll collection monitoring system
20 rules and regulations and any information obtained from a toll
21 collection monitoring system shall be available for the exclusive
22 use of the Parkways Authority and any law enforcement official
23 for the purposes of discharging their duties under this article and
24 the toll collection monitoring system rules and regulations. Any
25 such report or information shall not be deemed a public record
26 under article one, chapter twenty-nine-b of this code or the
27 common law concerning access to public records. The certified
28 reports and information, including but not limited to, any
29 recorded image of any motor vehicle, the license plate of any
30 motor vehicle or the operator or any passenger in any motor
31 vehicle, shall not be discoverable as a public record by any
32 person, entity or governmental agency, except pursuant to a
33 properly issued subpoena or by an order of a court of competent
34 jurisdiction, nor shall they be offered in evidence in any civil or
35 administrative proceeding, not directly related to a violation of
36 the toll collection monitoring system rules and regulations, or in
37 any municipal court prosecution for a violation of the motor
38 vehicle laws of this state. However, in the event that,
39 notwithstanding the provisions of subsection (c), section nine of
40 this article, a recorded image of the face of the operator or any
41 passenger in a motor vehicle is produced by the toll collection

42 monitoring system, that image shall not be used by the Parkways
43 Authority for any purpose nor shall the image or any record or
44 copy thereof be transmitted or communicated to any person,
45 governmental, non-governmental, or judicial or administrative
46 entity.

§17-16D-8. Placement of electronic toll collection devices.

1 An electronic toll collection device that is properly affixed
2 to the front windshield of a vehicle in accordance with rules
3 promulgated by the Parkways Authority, or is mounted
4 elsewhere on a vehicle in accordance with mounting instructions
5 of the manufacturer of the device included with the device, or is
6 otherwise used in a manner that makes it operate as intended, is
7 not a violation of section thirty-six, article fifteen, chapter
8 seventeen-c of this code.

**§17-16D-9. Privacy of electronic toll collection account holder
information; subpoenas and court orders and
related confidentiality protections.**

1 (a) Except as provided in subsection (b) of this section, and
2 notwithstanding any provision in the code to the contrary,
3 videotapes, photographs, microphotographs, other recorded
4 images, written records, reports or facsimiles prepared pursuant
5 to this article are for the exclusive use of the Parkways
6 Authority, its authorized agents, its employees and
7 law-enforcement officials for the purpose of discharging their
8 duties under this article. This information includes names,
9 addresses, account numbers, account balances, personal financial
10 information, vehicle movement records and other information
11 compiled from transactions with the account holders. The
12 information in the hands of the Authority, its authorized agents,
13 its employees and law enforcement officials may not be
14 considered a public record under chapter twenty-nine-b of this
15 code.

16 (b) Notwithstanding subsection (a) of this section,
17 videotapes, photographs, microphotographs, other recorded
18 images, written records, reports or facsimiles prepared and
19 retained pursuant to this article may be discoverable pursuant to
20 a properly issued subpoena or by an order of a court of
21 competent jurisdiction directing that the information be
22 produced in a civil or criminal action or proceeding: *Provided,*
23 That any such information required to be produced in response
24 to a properly issued subpoena or court order shall at all times be
25 confidential and may not be disclosed by the Parkways Authority
26 other than in connection with, and only for the purposes of, the
27 underlying civil action or criminal proceeding, and subject to
28 compliance with the provisions of subsections (c), (d) and (e) of
29 this section.

30 (c) All information disclosed or produced pursuant to
31 subsection (b) of this section shall be clearly marked
32 "CONFIDENTIAL." Any document or other material which is
33 marked "CONFIDENTIAL" or the contents thereof, may only be
34 used by a party to the underlying action or proceeding or a
35 party's attorney, expert witness, consultant or other person who
36 is actively engaged in working on the action or proceeding, and
37 only for the purpose of the underlying action or proceeding and
38 not for any other purpose. Prior to a party disclosing any
39 document or other material marked as "CONFIDENTIAL," or
40 the contents thereof, to an attorney, expert witness, consultant or
41 other person actively engaged in working on such action or
42 proceeding, the party making disclosure must first inform the
43 person that he or she is bound by the duty of confidentiality
44 established under this section and the person to whom disclosure
45 is to be made shall sign an acknowledgment that the information
46 is and shall remain at all times confidential and that the person
47 agrees to abide by the duty of confidentiality established under
48 this section.

49 (d) Prior to the production of any information under this
50 section with any court of competent jurisdiction, the Parkways
51 Authority shall file a motion with the court seeking to have the
52 documents sealed and withheld from the public record
53 throughout the action or proceeding.

54 (e) At the conclusion of the action or proceeding, all
55 documents and other material marked as "CONFIDENTIAL"
56 and any copies thereof, and all related notes and memoranda,
57 shall promptly be returned to the Parkways Authority and in any
58 event, within thirty days following the conclusion of the action
59 or proceeding.

60 (f) All videotapes, photographs, microphotographs, other
61 recorded images, written records, reports or facsimiles prepared
62 pursuant to this article shall be destroyed within sixty days
63 following the conclusion of the action or proceeding.

64 (g) Nothing in this article authorizes any law-enforcement
65 agency to enter any information in a national database that is
66 contained in videotapes, photographs, microphotographs, other
67 recorded images, written records, reports or facsimiles prepared
68 pursuant to this article.

**§17-16D-10. Evading tolls; damaging, interfering with or
obstructing video toll collection or infrastructure;
violations and criminal penalties.**

1 (a) Any person who knowingly or intentionally evades or
2 seeks to evade the payment of tolls, rents, fees or charges
3 established by the Parkways Authority for the use of any toll
4 facility under the jurisdiction of the Authority is guilty of a
5 misdemeanor and, upon conviction, shall be fined not more than
6 \$50 for each violation of this article.

7 (b) Any person who deliberately damages, defaces or
8 obstructs a video collection system infrastructure or power

9 supply with the intent to interfere with or alter or prevent the
10 functioning of the system or electronic toll collection, or who
11 obstructs a license plate or causes it to be unreadable by the
12 video collection system, or who causes a transponder or other
13 device used in an electronic toll system to be inoperable or
14 unreadable thereby causing no toll to be charged, is guilty of a
15 misdemeanor and, in addition to any other penalties provided by
16 the code, and upon conviction, shall be fined not more than \$500
17 for each such action and, if applicable, is additionally liable to
18 the Parkways Authority for all costs incurred by the Authority to
19 repair the damaged, defaced or obstructed property.

§17-16D-11. Nonrenewal of vehicle registration; effect of civil or criminal violation.

1 (a) Upon receipt of a notice from the Parkways Authority
2 that a vehicle owner failed to pay tolls and costs in accordance
3 with a notice of default judgment, or court order, the
4 Commissioner of Motor Vehicles shall refuse to register, or
5 renew the registration of any vehicle of which the person
6 committing the violation is a registered owner or co-owner until
7 such time as the Commissioner of Motor Vehicles receives
8 notice from the Parkways Authority that all fees, penalties and
9 costs imposed on that person pursuant to this article have been
10 paid or satisfied.

11 (b) The Commissioner of Motor Vehicles shall refuse or
12 suspend the registration of any motor vehicle incurring a toll
13 violation under this article if:

14 (1) The Commissioner is notified by the Parkways Authority
15 that a registered owner has been served with a citation in
16 accordance with this article and:

17 (A) Has failed to pay the electronic toll, administrative fee
18 and the civil penalty for the toll violation by the date specified
19 in the citation; or

20 (B) Has failed to contest liability for the toll violation by the
21 date identified and in the manner specified in the citation; or

22 (2) The Commissioner is notified by the Parkways Authority
23 or the circuit court that a person who elected to contest liability
24 for a toll violation under this article has failed to appear for trial
25 or hearing or has been determined to be responsible for the toll
26 violation and has failed to pay the electronic toll and related civil
27 penalty.

28 (c) In conjunction with any rule promulgated by the
29 Parkways Authority, the Commissioner of Motor Vehicles may
30 adopt regulations and develop procedures to carry out the refusal
31 or suspension of a registration as authorized by this section.

32 (d) The procedures specified in this section are in addition
33 to any other penalty provided by law for toll violations.

34 (e) The provisions of this section may be applied to enforce
35 a reciprocal agreement entered into by this state and another
36 jurisdiction in accordance with section thirteen of this article.

37 (f) The provisions of this section shall only become effective
38 when the Parkways Authority and the Commission have
39 reciprocal enforcement agreements with all of the states sharing
40 a common border with this state.

§17-16D-12. Cooperative agreements.

1 In connection with any toll road, highway or bridge in this
2 state authorized by the Legislature and in addition to any powers
3 granted to the Parkways Authority, or to the Commissioner of
4 Highways, in this code, the Authority and the Commissioner
5 may individually or jointly enter into cooperative agreements
6 and arrangements with any agency or other entity that handles or
7 assists in the collection or enforcement of tolls on the adjacent

8 state's connecting toll highway, whereby that agency or entity
9 would assist the Authority in the collection of tolls for the toll
10 roads and bridges in this state or enforcement of toll violations
11 for the toll roads and bridges in this state or both collection of
12 tolls and enforcement of toll violations utilizing electronic toll
13 collection.

§17-16D-13. Reciprocal enforcement agreements.

1 (a) The Parkways Authority and the Commissioner of
2 Highways may individually or jointly enter into agreements with
3 any other jurisdiction that provides for reciprocal enforcement
4 of toll violations between this state and the other jurisdiction.

5 (b) An agreement made under this section shall provide that
6 drivers and vehicles licensed in this state, while operating on the
7 highways of another jurisdiction, shall receive benefits,
8 privileges, and exemptions of a similar kind with regard to toll
9 enforcement as are extended to drivers and vehicles licensed or
10 registered in the other jurisdiction while operated in the state.

11 (c) A reciprocal agreement under this section may provide
12 for enforcement of toll violations by refusal to renew or
13 suspension of the registration of a motor vehicle in accordance
14 with section eleven of this article.

§17-16D-14. Rule-making authority.

1 The Commissioner of Motor Vehicles and the Parkways
2 Authority shall propose rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of the code to implement this article.

CHAPTER 158

**(Com. Sub. for S. B. 391 - By Senators Kessler (Mr. President)
and M. Hall)**

[By Request of the Executive]

[Passed March 8, 2014; in effect July 1, 2014]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §18A-4-2 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating generally to increasing compensation for teachers and school service personnel; and expressing legislative goal.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2 and §18A-4-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

1 (a) It is the goal of the Legislature to increase the state
2 minimum salary for teachers with zero years of experience and
3 an A. B. degree, including the equity supplement, to at least
4 \$43,000 by fiscal year 2019.

5 (b) Beginning July 1, 2014, and continuing thereafter, each
6 teacher shall receive the amount prescribed in the State
7 Minimum Salary Schedule as set forth in this section, specific
8 additional amounts prescribed in this section or article and any
9 county supplement in effect in a county pursuant to section
10 five-a of this article during the contract year.

11

STATE MINIMUM SALARY SCHEDULE

12	Years	4th	3rd	2nd	A.B.		M.A.		M.A.	M.A.	Doc-
13	Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate
14	0	27,917	28,606	28,872	30,315	31,076	32,843	33,604	34,365	35,126	36,161
15	1	28,245	28,934	29,200	30,833	31,594	33,362	34,123	34,883	35,644	36,679
16	2	28,574	29,262	29,528	31,352	32,113	33,880	34,641	35,402	36,163	37,198
17	3	28,902	29,590	29,856	31,871	32,631	34,399	35,160	35,920	36,681	37,716
18	4	29,474	30,162	30,428	32,633	33,394	35,162	35,923	36,683	37,444	38,479
19	5	29,802	30,490	30,756	33,152	33,913	35,680	36,441	37,202	37,963	38,998
20	6	30,130	30,818	31,084	33,670	34,431	36,199	36,960	37,720	38,481	39,516
21	7	30,458	31,147	31,412	34,189	34,950	36,717	37,478	38,239	39,000	40,035
22	8	30,786	31,475	31,741	34,707	35,468	37,236	37,997	38,757	39,518	40,553
23	9	31,114	31,803	32,069	35,226	35,987	37,754	38,515	39,276	40,037	41,072
24	10	31,443	32,131	32,397	35,746	36,506	38,274	39,035	39,796	40,556	41,591
25	11	31,771	32,459	32,725	36,264	37,025	38,793	39,553	40,314	41,075	42,110
26	12	32,099	32,787	33,053	36,783	37,543	39,311	40,072	40,833	41,593	42,628
27	13	32,427	33,115	33,381	37,301	38,062	39,830	40,590	41,351	42,112	43,147
28	14	32,755	33,443	33,709	37,820	38,580	40,348	41,109	41,870	42,630	43,665
29	15	33,083	33,771	34,037	38,338	39,099	40,867	41,627	42,388	43,149	44,184
30	16	33,411	34,099	34,365	38,857	39,617	41,385	42,146	42,907	43,667	44,702
31	17	33,739	34,428	34,693	39,375	40,136	41,904	42,665	43,425	44,186	45,221
32	18	34,067	34,756	35,022	39,894	40,655	42,422	43,183	43,944	44,705	45,740
33	19	34,395	35,084	35,350	40,412	41,173	42,941	43,702	44,462	45,223	46,258

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34	20	34,723	35,412	35,678	40,931	41,692	43,459	44,220	44,981	45,742	46,777
35	21	35,052	35,740	36,006	41,449	42,210	43,978	44,739	45,499	46,260	47,295
36	22	35,380	36,068	36,334	41,968	42,729	44,496	45,257	46,018	46,779	47,814
37	23	35,708	36,396	36,662	42,487	43,247	45,015	45,776	46,536	47,297	48,332
38	24	36,036	36,724	36,990	43,005	43,766	45,534	46,294	47,055	47,816	48,851
39	25	36,364	37,052	37,318	43,524	44,284	46,052	46,813	47,574	48,334	49,369
40	26	36,692	37,380	37,646	44,042	44,803	46,571	47,331	48,092	48,853	49,888
41	27	37,020	37,708	37,974	44,561	45,321	47,089	47,850	48,611	49,371	50,406
42	28	37,348	38,037	38,302	45,079	45,840	47,608	48,368	49,129	49,890	50,925
43	29	37,676	38,365	38,631	45,598	46,358	48,126	48,887	49,648	50,408	51,443
44	30	38,004	38,693	38,959	46,116	46,877	48,645	49,405	50,166	50,927	51,962
45	31	38,333	39,021	39,287	46,635	47,396	49,163	49,924	50,685	51,445	52,480
46	32	38,661	39,349	39,615	47,153	47,914	49,682	50,443	51,203	51,964	52,999
47	33	38,989	39,677	39,943	47,672	48,433	50,200	50,961	51,722	52,483	53,518
48	34	39,317	40,005	40,271	48,190	48,951	50,719	51,480	52,240	53,001	54,036
49	35	39,645	40,333	40,599	48,709	49,470	51,237	51,998	52,759	53,520	54,555

50 (c) Six hundred dollars shall be paid annually to each
51 classroom teacher who has at least twenty years of teaching
52 experience. The payments: (i) Shall be in addition to any
53 amounts prescribed in the applicable State Minimum Salary
54 Schedule; (ii) shall be paid in equal monthly installments; and
55 (iii) shall be considered a part of the state minimum salaries for
56 teachers.

57 (d) To meet the objective of salary equity among the
58 counties as set forth in section five of this article, each teacher

59 shall be paid an equity supplement amount as applicable for his
60 or her classification of certification or classification of training
61 and years of experience as follows, subject to the provisions of
62 that section:

63 (1) For "4th Class" at zero years of experience, \$1,781. An
64 additional \$38 shall be paid for each year of experience up to and
65 including thirty-five years of experience;

66 (2) For "3rd Class" at zero years of experience, \$1,796. An
67 additional \$67 shall be paid for each year of experience up to and
68 including thirty-five years of experience;

69 (3) For "2nd Class" at zero years of experience, \$1,877. An
70 additional \$69 shall be paid for each year of experience up to and
71 including thirty-five years of experience;

72 (4) For "A. B." at zero years of experience, \$2,360. An
73 additional \$69 shall be paid for each year of experience up to and
74 including thirty-five years of experience;

75 (5) For "A. B. + 15" at zero years of experience, \$2,452. An
76 additional \$69 shall be paid for each year of experience up to and
77 including thirty-five years of experience;

78 (6) For "M. A." at zero years of experience, \$2,644. An
79 additional \$69 shall be paid for each year of experience up to and
80 including thirty-five years of experience;

81 (7) For "M. A. + 15" at zero years of experience, \$2,740. An
82 additional \$69 shall be paid for each year of experience up to and
83 including thirty-five years of experience;

84 (8) For "M. A. + 30" at zero years of experience, \$2,836. An
85 additional \$69 shall be paid for each year of experience up to and
86 including thirty-five years of experience;

87 (9) For "M. A. + 45" at zero years of experience, \$2,836. An
 88 additional \$69 shall be paid for each year of experience up to and
 89 including thirty-five years of experience; and

90 (10) For "Doctorate" at zero years of experience, \$2,927. An
 91 additional \$69 shall be paid for each year of experience up to and
 92 including thirty-five years of experience.

93 These payments: (i) Shall be in addition to any amounts
 94 prescribed in the applicable State Minimum Salary Schedule,
 95 any specific additional amounts prescribed in this section and
 96 article and any county supplement in effect in a county pursuant
 97 to section five-a of this article; (ii) shall be paid in equal monthly
 98 installments; and (iii) shall be considered a part of the state
 99 minimum salaries for teachers.

§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

14

15

16

Years	Pay Grade							
Exp.	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
0	1,660	1,681	1,723	1,776	1,829	1,892	1,924	1,997

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17	1	1,692	1,714	1,755	1,808	1,862	1,925	1,956	2,030
18	2	1,725	1,746	1,788	1,841	1,894	1,957	1,989	2,062
19	3	1,757	1,779	1,821	1,874	1,927	1,990	2,022	2,095
20	4	1,790	1,812	1,853	1,906	1,959	2,023	2,054	2,129
21	5	1,823	1,844	1,886	1,939	1,992	2,055	2,087	2,161
22	6	1,855	1,877	1,920	1,972	2,025	2,088	2,120	2,194
23	7	1,889	1,909	1,952	2,004	2,057	2,121	2,152	2,227
24	8	1,922	1,942	1,985	2,037	2,090	2,153	2,185	2,259
25	9	1,954	1,975	2,018	2,071	2,123	2,186	2,217	2,292
26	10	1,987	2,008	2,050	2,103	2,155	2,220	2,251	2,325
27	11	2,020	2,041	2,083	2,136	2,188	2,252	2,284	2,357
28	12	2,052	2,074	2,115	2,169	2,222	2,285	2,316	2,390
29	13	2,085	2,106	2,148	2,201	2,254	2,317	2,349	2,423
30	14	2,118	2,139	2,181	2,234	2,287	2,350	2,382	2,455
31	15	2,150	2,172	2,213	2,266	2,319	2,383	2,414	2,488
32	16	2,183	2,204	2,246	2,299	2,352	2,415	2,447	2,521
33	17	2,215	2,237	2,280	2,332	2,385	2,448	2,480	2,554
34	18	2,248	2,270	2,312	2,364	2,417	2,481	2,512	2,587
35	19	2,282	2,302	2,345	2,397	2,450	2,513	2,545	2,619
36	20	2,314	2,335	2,378	2,431	2,483	2,546	2,578	2,653
37	21	2,347	2,367	2,410	2,463	2,515	2,579	2,610	2,687
38	22	2,380	2,401	2,443	2,496	2,548	2,612	2,644	2,719
39	23	2,412	2,434	2,476	2,529	2,582	2,646	2,678	2,753
40	24	2,445	2,466	2,508	2,561	2,614	2,680	2,711	2,787
41	25	2,478	2,499	2,541	2,594	2,648	2,712	2,745	2,819
42	26	2,510	2,532	2,573	2,628	2,682	2,746	2,777	2,853
43	27	2,543	2,564	2,606	2,660	2,714	2,778	2,811	2,886

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44	28	2,576	2,597	2,640	2,694	2,748	2,812	2,845	2,920	
45	29	2,608	2,631	2,673	2,726	2,781	2,846	2,877	2,954	
46	30	2,642	2,663	2,707	2,760	2,814	2,878	2,911	2,987	
47	31	2,675	2,697	2,741	2,794	2,848	2,912	2,945	3,020	
48	32	2,709	2,730	2,773	2,827	2,880	2,946	2,977	3,054	
49	33	2,743	2,763	2,807	2,861	2,914	2,978	3,011	3,087	
50	34	2,775	2,797	2,841	2,895	2,948	3,012	3,045	3,120	
51	35	2,809	2,831	2,873	2,927	2,980	3,046	3,078	3,154	
52	36	2,843	2,864	2,907	2,961	3,015	3,079	3,112	3,186	
53	37	2,875	2,898	2,941	2,995	3,049	3,113	3,145	3,220	
54	38	2,909	2,930	2,973	3,027	3,081	3,146	3,178	3,254	
55	39	2,943	2,964	3,007	3,061	3,115	3,179	3,212	3,286	
56	40	2,975	2,998	3,040	3,094	3,149	3,213	3,245	3,320	

57 (2) Each service employee shall receive the amount
58 prescribed in the Minimum Pay Scale in accordance with the
59 provisions of this subsection according to their class title and pay
60 grade as set forth in this subdivision:

61	CLASS TITLE	PAY GRADE
62	Accountant I.	D
63	Accountant II.	E
64	Accountant III.	F
65	Accounts Payable Supervisor..	G
66	Aide I.	A
67	Aide II.	B

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68	Aide III.....	C
69	Aide IV.....	D
70	Audiovisual Technician.....	C
71	Auditor.....	G
72	Autism Mentor.....	F
73	Braille Specialist.....	E
74	Bus Operator.....	D
75	Buyer.....	F
76	Cabinetmaker.....	G
77	Cafeteria Manager.....	D
78	Carpenter I.....	E
79	Carpenter II.....	F
80	Chief Mechanic.....	G
81	Clerk I.....	B
82	Clerk II.....	C
83	Computer Operator.....	E
84	Cook I.....	A
85	Cook II.....	B
86	Cook III.....	C
87	Crew Leader.....	F

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88	Custodian I.	A
89	Custodian II.	B
90	Custodian III.	C
91	Custodian IV.	D
92	Director or Coordinator of Services.....	H
93	Draftsman.....	D
94	Early Childhood Classroom Assistant Teacher -	
95	Temporary Authorization.	E
96	Early Childhood Classroom Assistant Teacher -	
97	Permanent Authorization.....	E
98	Early Childhood Classroom Assistant Teacher -	
99	Paraprofessional Certificate.	F
100	Educational Sign Language Interpreter I.....	F
101	Educational Sign Language Interpreter II.....	G
102	Electrician I.	F
103	Electrician II.	G
104	Electronic Technician I.	F
105	Electronic Technician II.	G
106	Executive Secretary.....	G
107	Food Services Supervisor.	G

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108	Foreman.....	G
109	General Maintenance.....	C
110	Glazier.....	D
111	Graphic Artist.....	D
112	Groundsman.....	B
113	Handyman.....	B
114	Heating and Air Conditioning Mechanic I.....	E
115	Heating and Air Conditioning Mechanic II.....	G
116	Heavy Equipment Operator.....	E
117	Inventory Supervisor.....	D
118	Key Punch Operator.....	B
119	Licensed Practical Nurse.....	F
120	Locksmith.....	G
121	Lubrication Man.....	C
122	Machinist.....	F
123	Mail Clerk.....	D
124	Maintenance Clerk.....	C
125	Mason.....	G
126	Mechanic.....	F
127	Mechanic Assistant.....	E

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128	Office Equipment Repairman I.	F
129	Office Equipment Repairman II.	G
130	Painter.	E
131	Paraprofessional.	F
132	Payroll Supervisor.	G
133	Plumber I.	E
134	Plumber II.	G
135	Printing Operator.	B
136	Printing Supervisor.	D
137	Programmer.	H
138	Roofing/Sheet Metal Mechanic.	F
139	Sanitation Plant Operator.	G
140	School Bus Supervisor.	E
141	Secretary I.	D
142	Secretary II.	E
143	Secretary III.	F
144	Sign Support Specialist.	E
145	Supervisor of Maintenance.	H
146	Supervisor of Transportation.	H
147	Switchboard Operator-Receptionist.	D

148 Truck Driver..... D

149 Warehouse Clerk. C

150 Watchman. B

151 Welder. F

152 WVEIS Data Entry and Administrative Clerk..... B

153 (b) An additional \$12 per month is added to the minimum

154 monthly pay of each service person who holds a high school

155 diploma or its equivalent.

156 (c) An additional \$11 per month also is added to the

157 minimum monthly pay of each service person for each of the

158 following:

159 (1) A service person who holds twelve college hours or

160 comparable credit obtained in a trade or vocational school as

161 approved by the state board;

162 (2) A service person who holds twenty-four college hours or

163 comparable credit obtained in a trade or vocational school as

164 approved by the state board;

165 (3) A service person who holds thirty-six college hours or

166 comparable credit obtained in a trade or vocational school as

167 approved by the state board;

168 (4) A service person who holds forty-eight college hours or

169 comparable credit obtained in a trade or vocational school as

170 approved by the state board;

171 (5) A service employee who holds sixty college hours or

172 comparable credit obtained in a trade or vocational school as

173 approved by the state board;

174 (6) A service person who holds seventy-two college hours or
175 comparable credit obtained in a trade or vocational school as
176 approved by the state board;

177 (7) A service person who holds eighty-four college hours or
178 comparable credit obtained in a trade or vocational school as
179 approved by the state board;

180 (8) A service person who holds ninety-six college hours or
181 comparable credit obtained in a trade or vocational school as
182 approved by the state board;

183 (9) A service person who holds one hundred eight college
184 hours or comparable credit obtained in a trade or vocational
185 school as approved by the state board;

186 (10) A service person who holds one hundred twenty college
187 hours or comparable credit obtained in a trade or vocational
188 school as approved by the state board.

189 (d) An additional \$40 per month also is added to the
190 minimum monthly pay of each service person for each of the
191 following:

192 (1) A service person who holds an associate's degree;

193 (2) A service person who holds a bachelor's degree;

194 (3) A service person who holds a master's degree;

195 (4) A service person who holds a doctorate degree.

196 (e) An additional \$11 per month is added to the minimum
197 monthly pay of each service person for each of the following:

198 (1) A service person who holds a bachelor's degree plus
199 fifteen college hours;

200 (2) A service person who holds a master's degree plus
201 fifteen college hours;

202 (3) A service person who holds a master's degree plus thirty
203 college hours;

204 (4) A service person who holds a master's degree plus
205 forty-five college hours; and

206 (5) A service person who holds a master's degree plus sixty
207 college hours.

208 (f) To meet the objective of salary equity among the
209 counties, each service person is paid an equity supplement, as set
210 forth in section five of this article, of \$164 per month, subject to
211 the provisions of that section. These payments: (i) Are in
212 addition to any amounts prescribed in the applicable State
213 Minimum Pay Scale Pay Grade, any specific additional amounts
214 prescribed in this section and article and any county supplement
215 in effect in a county pursuant to section five-b of this article; (ii)
216 are paid in equal monthly installments; and (iii) are considered
217 a part of the state minimum salaries for service personnel.

218 (g) When any part of a school service person's daily shift of
219 work is performed between the hours of six o'clock p. m. and
220 five o'clock a. m. the following day, the employee is paid no less
221 than an additional \$10 per month and one half of the pay is paid
222 with local funds.

223 (h) Any service person required to work on any legal school
224 holiday is paid at a rate one and one-half times the person's
225 usual hourly rate.

226 (i) Any full-time service personnel required to work in
227 excess of their normal working day during any week which
228 contains a school holiday for which they are paid is paid for the
229 additional hours or fraction of the additional hours at a rate of
230 one and one-half times their usual hourly rate and paid entirely
231 from county board funds.

232 (j) A service person may not have his or her daily work
233 schedule changed during the school year without the employee's
234 written consent and the person's required daily work hours may
235 not be changed to prevent the payment of time and one-half
236 wages or the employment of another employee.

237 (k) The minimum hourly rate of pay for extra duty
238 assignments as defined in section eight-b of this article is no less
239 than one seventh of the person's daily total salary for each hour
240 the person is involved in performing the assignment and paid
241 entirely from local funds: *Provided*, That an alternative
242 minimum hourly rate of pay for performing extra duty
243 assignments within a particular category of employment may be
244 used if the alternate hourly rate of pay is approved both by the
245 county board and by the affirmative vote of a two-thirds majority
246 of the regular full-time persons within that classification
247 category of employment within that county: *Provided, however*,
248 That the vote is by secret ballot if requested by a service person
249 within that classification category within that county. The salary
250 for any fraction of an hour the employee is involved in
251 performing the assignment is prorated accordingly. When
252 performing extra duty assignments, persons who are regularly
253 employed on a one-half day salary basis shall receive the same
254 hourly extra duty assignment pay computed as though the person
255 were employed on a full-day salary basis.

256 (l) The minimum pay for any service personnel engaged in
257 the removal of asbestos material or related duties required for

258 asbestos removal is their regular total daily rate of pay and no
259 less than an additional \$3 per hour or no less than \$5 per hour for
260 service personnel supervising asbestos removal responsibilities
261 for each hour these employees are involved in asbestos-related
262 duties. Related duties required for asbestos removal include, but
263 are not limited to, travel, preparation of the work site, removal
264 of asbestos, decontamination of the work site, placing and
265 removal of equipment and removal of structures from the site. If
266 any member of an asbestos crew is engaged in asbestos-related
267 duties outside of the employee's regular employment county, the
268 daily rate of pay is no less than the minimum amount as
269 established in the employee's regular employment county for
270 asbestos removal and an additional \$30 per each day the
271 employee is engaged in asbestos removal and related duties. The
272 additional pay for asbestos removal and related duties shall be
273 payable entirely from county funds. Before service personnel
274 may be used in the removal of asbestos material or related
275 duties, they shall have completed a federal Environmental
276 Protection Act-approved training program and be licensed. The
277 employer shall provide all necessary protective equipment and
278 maintain all records required by the Environmental Protection
279 Act.

280 (m) For the purpose of qualifying for additional pay as
281 provided in section eight, article five of this chapter, an aide is
282 considered to be exercising the authority of a supervisory aide
283 and control over pupils if the aide is required to supervise,
284 control, direct, monitor, escort or render service to a child or
285 children when not under the direct supervision of a certified
286 professional person within the classroom, library, hallway,
287 lunchroom, gymnasium, school building, school grounds or
288 wherever supervision is required. For purposes of this section,
289 "under the direct supervision of a certified professional person"
290 means that certified professional person is present, with and
291 accompanying the aide.

CHAPTER 159

**(H. B. 4256 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to increasing the longevity pay for members of the State Police.

Be it enacted by the Legislature of West Virginia:

That §15-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

1 (a) The superintendent shall establish within the West
2 Virginia State Police a system to provide for: The promotion of
3 members to the supervisory ranks of sergeant, first sergeant,
4 second lieutenant and first lieutenant; the classification of
5 nonsupervisory members within the field operations force to the
6 ranks of trooper, senior trooper, trooper first class or corporal;
7 the classification of members assigned to the forensic laboratory
8 as criminalist I-VIII; and the temporary reclassification of
9 members assigned to administrative duties as administrative
10 support specialist I-VIII.

11 (b) The superintendent may propose legislative rules for
 12 promulgation in accordance with article three, chapter
 13 twenty-nine-a of this code for the purpose of ensuring
 14 consistency, predictability and independent review of any system
 15 developed under the provisions of this section.

16 (c) The superintendent shall provide to each member a
 17 written manual governing any system established under the
 18 provisions of this section and specific procedures shall be
 19 identified for the evaluation and testing of members for
 20 promotion or reclassification and the subsequent placement of
 21 any members on a promotional eligibility or reclassification
 22 recommendation list.

23 (d) Beginning on July 1, 2011, members shall receive annual
 24 salaries as follows:

25 **ANNUAL SALARY SCHEDULE (BASE PAY)**

26 **SUPERVISORY AND NONSUPERVISORY RANKS**

27	Cadet During Training.....	\$ 2,833 Mo.	\$ 33,994
28	Cadet Trooper After Training.	\$ 3,438 Mo.	\$ 41,258
29	Trooper Second Year.....		42,266
30	Trooper Third Year.		42,649
31	Senior Trooper.....		43,048
32	Trooper First Class.....		43,654
33	Corporal.....		44,260
34	Sergeant.		48,561
35	First Sergeant.....		50,712
36	Second Lieutenant.		52,862
37	First Lieutenant.		55,013
38	Captain.....		57,164

39 Major. 59,314

40 Lieutenant Colonel. 61,465

41 **ANNUAL SALARY SCHEDULE (BASE PAY)**

42 **ADMINISTRATION SUPPORT SPECIALIST**
43 **CLASSIFICATION**

44 I 42,266

45 II 43,048

46 III 43,654

47 IV 44,260

48 V 48,561

49 VI 50,712

50 VII. 52,862

51 VIII. 55,013

52 **ANNUAL SALARY SCHEDULE (BASE PAY)**

53 **CRIMINALIST CLASSIFICATION**

54 I 42,266

55 II 43,048

56 III 43,654

57 IV 44,260

58 V 48,561

59 VI 50,712

60 VII. 52,862

61 VIII. 55,013

62 Each member of the West Virginia State Police whose salary
63 is fixed and specified in this annual salary schedule is entitled to
64 the length of service increases set forth in subsection (e) of this

65 section and supplemental pay as provided in subsection (g) of
66 this section.

67 (e) Each member of the West Virginia State Police whose
68 salary is fixed and specified pursuant to this section shall
69 receive, and is entitled to, an increase in salary over that set forth
70 in subsection (d) of this section for grade in rank, based on
71 length of service, including that service served before and after
72 the effective date of this section with the West Virginia State
73 Police as follows: Beginning on January 1, 2015 and continuing
74 thereafter, at the end of two years of service with the West
75 Virginia State Police, the member shall receive a salary increase
76 of \$500 to be effective during his or her next year of service and
77 a like increase at yearly intervals thereafter, with the increases to
78 be cumulative.

79 (f) In applying the salary schedules set forth in this section
80 where salary increases are provided for length of service,
81 members of the West Virginia State Police in service at the time
82 the schedules become effective shall be given credit for prior
83 service and shall be paid the salaries the same length of service
84 entitles them to receive under the provisions of this section.

85 (g) The Legislature finds and declares that because of the
86 unique duties of members of the West Virginia State Police, it is
87 not appropriate to apply the provisions of state wage and hour
88 laws to them. Accordingly, members of the West Virginia State
89 Police are excluded from the provisions of state wage and hour
90 law. This express exclusion shall not be construed as any
91 indication that the members were or were not covered by the
92 wage and hour law prior to this exclusion.

93 In lieu of any overtime pay they might otherwise have
94 received under the wage and hour law, and in addition to their
95 salaries and increases for length of service, members who have

96 completed basic training and who are exempt from federal Fair
97 Labor Standards Act guidelines may receive supplemental pay
98 as provided in this section.

99 The authority of the superintendent to propose a legislative
100 rule or amendment thereto for promulgation in accordance with
101 article three, chapter twenty-nine-a of this code to establish the
102 number of hours per month which constitute the standard work
103 month for the members of the West Virginia State Police is
104 hereby continued. The rule shall further establish, on a graduated
105 hourly basis, the criteria for receipt of a portion or all of
106 supplemental payment when hours are worked in excess of the
107 standard work month. The superintendent shall certify monthly
108 to the West Virginia State Police's payroll officer the names of
109 those members who have worked in excess of the standard work
110 month and the amount of their entitlement to supplemental
111 payment. The supplemental payment may not exceed \$400
112 monthly. The superintendent and civilian employees of the West
113 Virginia State Police are not eligible for any supplemental
114 payments.

115 (h) Each member of the West Virginia State Police, except
116 the superintendent and civilian employees, shall execute, before
117 entering upon the discharge of his or her duties, a bond with
118 security in the sum of \$5,000 payable to the State of West
119 Virginia, conditioned upon the faithful performance of his or her
120 duties, and the bond shall be approved as to form by the
121 Attorney General and as to sufficiency by the Governor.

122 (i) In consideration for compensation paid by the West
123 Virginia State Police to its members during those members'
124 participation in the West Virginia State Police Cadet Training
125 Program pursuant to section eight, article twenty-nine, chapter
126 thirty of this code, the West Virginia State Police may require of
127 its members by written agreement entered into with each of them

128 in advance of such participation in the program that, if a member
129 should voluntarily discontinue employment any time within one
130 year immediately following completion of the training program,
131 he or she shall be obligated to pay to the West Virginia State
132 Police a pro rata portion of such compensation equal to that part
133 of such year which the member has chosen not to remain in the
134 employ of the West Virginia State Police.

135 (j) Any member of the West Virginia State Police who is
136 called to perform active duty training or inactive duty training in
137 the National Guard or any reserve component of the Armed
138 Forces of the United States annually shall be granted, upon
139 request, leave time not to exceed thirty calendar days for the
140 purpose of performing the active duty training or inactive duty
141 training and the time granted may not be deducted from any
142 leave accumulated as a member of the West Virginia State
143 Police.

CHAPTER 160

**(Com. Sub. for S. B. 486 - By Senators Snyder,
Unger, Kessler (Mr. President), Williams,
Wells, Miller, D. Hall, Jenkins, Green and Barnes)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §15-2-7 of the Code of West Virginia, 1931, as amended, relating to establishing annual longevity salary increases for West Virginia State Police civilian employees; providing salary increase for current employees within the West Virginia State Police Forensic Laboratory; and requiring the

Director of the West Virginia State Police Forensic Laboratory to submit a report before January 1, 2018, to the Joint Committee on Government and Finance detailing the West Virginia State Police Forensic Laboratory's ability to retain employees.

Be it enacted by the Legislature of West Virginia:

That §15-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in State Police; civilian employees; forensic laboratory employees; salaries.

1 (a) The superintendent shall establish within the West
2 Virginia State Police a cadet selection board which shall be
3 representative of commissioned and noncommissioned officers
4 within the State Police.

5 (b) The superintendent shall appoint a member to the
6 position of trooper from among the top three names on the
7 current list of eligible applicants established by the cadet
8 selection board.

9 (c) Preference in making appointments shall be given
10 whenever possible to honorably discharged members of the
11 armed forces of the United States and to residents of West
12 Virginia. Each applicant for appointment shall be a person not
13 less than twenty-one years of age nor more than thirty-nine years
14 of age, of sound constitution and good moral character and is
15 required to pass any mental and physical examination and meet
16 other requirements as provided in rules promulgated by the cadet
17 selection board: *Provided*, That a former member may, at the
18 discretion of the superintendent, be reenlisted.

19 (d) No person may be barred from becoming a member of
20 the State Police because of his or her religious or political
21 convictions.

22 (e) The superintendent shall adhere to the principles of equal
23 employment opportunity set forth in article eleven, chapter five
24 of this code and shall take positive steps to encourage
25 applications for State Police membership from females and
26 minority groups within the state. An annual report shall be filed
27 with the Legislature on or before January 1 of each year by the
28 superintendent which includes a summary of the efforts and the
29 effectiveness of those efforts intended to recruit females,
30 African-Americans and other minorities into the ranks of the
31 State Police.

32 (f) Except for the superintendent, no person may be
33 appointed or enlisted to membership in the State Police at a
34 grade or rank above the grade of trooper.

35 (g) The superintendent shall appoint civilian employees as
36 are necessary and all employees may be included in the
37 classified service of the civil service system except those in
38 positions exempt under the provisions of article six, chapter
39 twenty-nine of this code.

40 (h) Effective July 1, 2001, through June 30, 2014, civilian
41 employees with a minimum of five years' service shall receive
42 a salary increase equal to \$100 a year for each year of service as
43 a civilian employee. Every three years thereafter, civilian
44 employees who have five or more years of service shall receive
45 an annual salary increase of \$300. The increases in salary
46 provided by this subsection are in addition to any other increases
47 to which the civilian employees might otherwise be entitled.
48 After June 30, 2014, the provisions of this subsection are not
49 operative.

50 (i) After June 30, 2014, West Virginia State Police civilian
51 employees with a minimum of one year service shall receive an
52 annual longevity salary increase equal to \$500. The increases in
53 salary provided by this subsection are in addition to any other
54 increases to which the civilian employees might otherwise be
55 entitled.

56 (j) Effective July 1, 2014, all current West Virginia State
57 Police Forensic Laboratory analysts, directors and evidence
58 technicians shall receive a one-time, across-the-board salary
59 increase equal to twenty percent of their current salary.

60 (k) On or before January 1, 2018, the Director of the West
61 Virginia State Police Forensic Laboratory shall submit a report
62 to the Joint Committee on Government and Finance detailing the
63 West Virginia State Police Forensic Laboratory's ability to retain
64 employees.

CHAPTER 161

**(Com. Sub. for H. B. 2606 - By Delegates Hartman,
Campbell, A. Evans, Rowan, Boggs and Lynch)**

[Passed March 8, 2014; in effect from passage.]

[Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-18-4a, all relating to having the salary of the executive director of the West Virginia State Rail Authority set by the authority; and limiting such salary.

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; and that said code be amended by adding thereto a new section, designated §29-18-4a, all to read as follows:

**CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.**

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such 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; Transportation,
30 \$95,000: *Provided*, That if the same person is serving as both the
31 Secretary of Transportation and the Commissioner of Highways,
32 he or she shall be paid \$120,000; Revenue, \$95,000; Military
33 Affairs and Public Safety, \$95,000; Administration, \$95,000;
34 Education and the Arts, \$95,000; Commerce, \$95,000; Veterans'
35 Assistance, \$95,000; and Environmental Protection, \$95,000:
36 *Provided, however*, That any officer specified in this subsection
37 whose salary is increased by more than \$5,000 as a result of the
38 amendment and reenactment of this section during the 2011
39 regular session of the Legislature shall be paid the salary
40 increase in increments of \$5,000 per fiscal year beginning July
41 1, 2011 up to the maximum salary provided in this subsection.

42 (b) Each of the state officers named in this subsection shall
43 continue to be appointed in the manner prescribed in this code,
44 and shall be paid an annual salary as follows:

45 Director, Board of Risk and Insurance Management,
46 \$80,000; Director, Division of Rehabilitation Services, \$70,000;
47 Director, Division of Personnel, \$70,000; Executive Director,
48 Educational Broadcasting Authority, \$75,000; Secretary, Library
49 Commission, \$72,000; Director, Geological and Economic
50 Survey, \$75,000; Executive Director, Prosecuting Attorneys
51 Institute, \$70,000; Executive Director, Public Defender Services,
52 \$70,000; Commissioner, Bureau of Senior Services, \$75,000;
53 Executive Director, Women's Commission, \$45,000; Director,
54 Hospital Finance Authority, \$35,000; member, Racing
55 Commission, \$12,000; Chairman, Public Service Commission,

56 \$85,000; members, Public Service Commission, \$85,000;
57 Director, Division of Forestry, \$75,000; Director, Division of
58 Juvenile Services, \$80,000; and Executive Director, Regional
59 Jail and Correctional Facility Authority, \$80,000.

60 (c) Each of the following appointive state officers named in
61 this subsection shall be appointed by the Governor, by and with
62 the advice and consent of the Senate. Each of the appointive state
63 officers serves at the will and pleasure of the Governor for the
64 term for which the Governor was elected and until the respective
65 state officers' successors have been appointed and qualified.
66 Each of the appointive state officers are subject to the existing
67 qualifications for holding each respective office and each has
68 and is hereby granted all of the powers and authority and shall
69 perform all of the functions and services heretofore vested in and
70 performed by virtue of existing law respecting each office.

71 The annual salary of each named appointive state officer
72 shall be as follows:

73 Commissioner, State Tax Division, \$92,500; Insurance
74 Commissioner, \$92,500; Director, Lottery Commission,
75 \$92,500; Director, Division of Homeland Security and
76 Emergency Management, \$65,000; and Adjutant General,
77 \$125,000.

78 (d) No increase in the salary of any appointive state officer
79 pursuant to this section may be paid until and unless the
80 appointive state officer has first filed with the State Auditor and
81 the Legislative Auditor a sworn statement, on a form to be
82 prescribed by the Attorney General, certifying that his or her
83 spending unit is in compliance with any general law providing
84 for a salary increase for his or her employees. The Attorney
85 General shall prepare and distribute the form to the affected
86 spending units.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.****§29-18-4a. West Virginia State Rail Authority director's salary set by the authority.**

1 (a) Notwithstanding any other provisions of this code to the
 2 contrary, the salary of the Executive Director of the State Rail
 3 Authority shall be set by the authority: *Provided*, That the salary
 4 set by the State Rail Authority for the Executive Director may
 5 not be less than \$60,000 and not more than \$70,000 per year.

CHAPTER 162

(S. B. 375 - By Senators Cann and Snyder)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2014.]

AN ACT to amend and reenact §7-11B-3 of the Code of West Virginia, 1931, as amended, relating to tax increment financing; and adding items to those which are excluded from base assessed value and current assessed value of real and personal property.

Be it enacted by the Legislature of West Virginia:

That §7-11B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1 (a) *General*. — When used in this article, words and phrases
 2 defined in this section have the meanings ascribed to them in this

3 section unless a different meaning is clearly required either by
4 the context in which the word or phrase is used or by specific
5 definition in this article.

6 (b) *Words and phrases defined.* —

7 (1) “Agency” includes a municipality, a county or municipal
8 development agency established pursuant to authority granted in
9 section one, article twelve of this chapter, a port authority, an
10 airport authority or any other entity created by this state or an
11 agency or instrumentality of this state that engages in economic
12 development activity.

13 (2) “Base assessed value” means the taxable assessed value
14 of all real and tangible personal property, excluding personal
15 motor vehicles, having a tax situs within a development or
16 redevelopment district as shown upon the landbooks and
17 personal property books of the assessor on July 1 of the calendar
18 year preceding the effective date of the order or ordinance
19 creating and establishing the development or redevelopment
20 district: *Provided*, That for any development or redevelopment
21 district approved after the effective date of the amendments to
22 this section enacted during the regular session of the Legislature
23 in 2014, personal trailers, personal boats, personal campers,
24 personal motor homes, personal ATVs and personal motorcycles
25 having a tax situs within a development or redevelopment
26 district are excluded from the base assessed value.

27 (3) “Blighted area” means an area within the boundaries of
28 a development or redevelopment district located within the
29 territorial limits of a municipality or county in which the
30 structures, buildings or improvements, by reason of dilapidation,
31 deterioration, age or obsolescence, inadequate provision for
32 access, ventilation, light, air, sanitation, open spaces, high
33 density of population and overcrowding or the existence of
34 conditions which endanger life or property, are detrimental to the

35 public health, safety, morals or welfare. "Blighted area" includes
36 any area which, by reason of the presence of a substantial
37 number of substandard, slum, deteriorated or deteriorating
38 structures, predominance of defective or inadequate street layout,
39 faulty lot layout in relation to size, adequacy, accessibility or
40 usefulness, unsanitary or unsafe conditions, deterioration of site
41 or other improvements, diversity of ownership, defective or
42 unusual conditions of title or the existence of conditions which
43 endanger life or property by fire and other causes, or any
44 combination of such factors, substantially impairs or arrests the
45 sound growth of a municipality, retards the provision of housing
46 accommodations or constitutes an economic or social liability
47 and is a menace to the public health, safety, morals or welfare in
48 its present condition and use, or any area which is predominantly
49 open and which because of lack of accessibility, obsolete
50 platting, diversity of ownership, deterioration of structures or of
51 site improvements, or otherwise, substantially impairs or arrests
52 the sound growth of the community.

53 (4) "Conservation area" means any improved area within the
54 boundaries of a development or redevelopment district located
55 within the territorial limits of a municipality or county in which
56 fifty percent or more of the structures in the area have an age of
57 thirty-five years or more. A conservation area is not yet a
58 blighted area but is detrimental to the public health, safety,
59 morals or welfare and may become a blighted area because of
60 any one or more of the following factors: Dilapidation;
61 obsolescence; deterioration; illegal use of individual structures;
62 presence of structures below minimum code standards;
63 abandonment; excessive vacancies; overcrowding of structures
64 and community facilities; lack of ventilation, light or sanitary
65 facilities; inadequate utilities; excessive land coverage;
66 deleterious land use or layout; depreciation of physical
67 maintenance; and lack of community planning. A conservation

68 area shall meet at least three of the factors provided in this
69 subdivision.

70 (5) "County commission" means the governing body of a
71 county of this state and, for purposes of this article only, includes
72 the governing body of a Class I or II municipality in this state.

73 (6) "Current assessed value" means the annual taxable
74 assessed value of all real and tangible personal property,
75 excluding personal motor vehicles, having a tax situs within a
76 development or redevelopment district as shown upon the
77 landbook and personal property records of the assessor:
78 *Provided*, That for any development or redevelopment district
79 approved after the effective date of the amendments to this
80 section enacted during the regular session of the Legislature in
81 2014, personal trailers, personal boats, personal campers,
82 personal motor homes, personal ATVs and personal motorcycles
83 having a tax situs within a development or redevelopment
84 district are excluded from the current assessed value.

85 (7) "Development office" means the West Virginia
86 Development Office created in section one, article two, chapter
87 five-b of this code.

88 (8) "Development project" or "redevelopment project"
89 means a project undertaken in a development or redevelopment
90 district for eliminating or preventing the development or spread
91 of slums or deteriorated, deteriorating or blighted areas, for
92 discouraging the loss of commerce, industry or employment, for
93 increasing employment or for any combination thereof in
94 accordance with a tax increment financing plan. A development
95 or redevelopment project may include one or more of the
96 following:

97 (A) The acquisition of land and improvements, if any, within
98 the development or redevelopment district and clearance of the
99 land so acquired; or

100 (B) The development, redevelopment, revitalization or
101 conservation of the project area whenever necessary to provide
102 land for needed public facilities, public housing or industrial or
103 commercial development or revitalization, to eliminate
104 unhealthful, unsanitary or unsafe conditions, to lessen density,
105 mitigate or eliminate traffic congestion, reduce traffic hazards,
106 eliminate obsolete or other uses detrimental to public welfare or
107 otherwise remove or prevent the spread of blight or
108 deterioration;

109 (C) The financial or other assistance in the relocation of
110 persons and organizations displaced as a result of carrying out
111 the development or redevelopment project and other
112 improvements necessary for carrying out the project plan,
113 together with those site improvements that are necessary for the
114 preparation of any sites and making any land or improvements
115 acquired in the project area available, by sale or lease, for public
116 housing or for development, redevelopment or rehabilitation by
117 private enterprise for commercial or industrial uses in
118 accordance with the plan;

119 (D) The construction of capital improvements within a
120 development or redevelopment district designed to increase or
121 enhance the development of commerce, industry or housing
122 within the development project area; or

123 (E) Any other projects the county commission or the agency
124 deems appropriate to carry out the purposes of this article.

125 (9) "Development or redevelopment district" means an area
126 proposed by one or more agencies as a development or
127 redevelopment district which may include one or more counties,
128 one or more municipalities or any combination thereof, that has
129 been approved by the county commission of each county in
130 which the project area is located if the project is located outside
131 the corporate limits of a municipality, or by the governing body

132 of a municipality if the project area is located within a
133 municipality, or by both the county commission and the
134 governing body of the municipality when the development or
135 redevelopment district is located both within and without a
136 municipality.

137 (10) "Economic development area" means any area or
138 portion of an area within the boundaries of a development or
139 redevelopment district located within the territorial limits of a
140 municipality or county that does not meet the requirements of
141 subdivisions (3) and (4) of this subsection and for which the
142 county commission finds that development or redevelopment
143 will not be solely used for development of commercial
144 businesses that will unfairly compete in the local economy and
145 that development or redevelopment is in the public interest
146 because it will:

147 (A) Discourage commerce, industry or manufacturing from
148 moving their operations to another state;

149 (B) Result in increased employment in the municipality or
150 county, whichever is applicable; or

151 (C) Result in preservation or enhancement of the tax base of
152 the county or municipality.

153 (11) "Governing body of a municipality" means the city
154 council of a Class I or Class II municipality in this state.

155 (12) "Incremental value", for any development or
156 redevelopment district, means the difference between the base
157 assessed value and the current assessed value. The incremental
158 value will be positive if the current value exceeds the base value
159 and the incremental value will be negative if the current value is
160 less than the base assessed value.

161 (13) “Includes” and “including”, when used in a definition
162 contained in this article, shall not exclude other things otherwise
163 within the meaning of the term being defined.

164 (14) “Local levying body” means the county board of
165 education and the county commission and includes the governing
166 body of a municipality when the development or redevelopment
167 district is located, in whole or in part, within the boundaries of
168 the municipality.

169 (15) “Obligations” or “tax increment financing obligations”
170 means bonds, loans, debentures, notes, special certificates or
171 other evidences of indebtedness issued by a county commission
172 or municipality pursuant to this article to carry out a
173 development or redevelopment project or to refund outstanding
174 obligations under this article.

175 (16) “Order” means an order of the county commission
176 adopted in conformity with the provisions of this article and as
177 provided in this chapter.

178 (17) “Ordinance” means a law adopted by the governing
179 body of a municipality in conformity with the provisions of this
180 article and as provided in chapter eight of this code.

181 (18) “Payment in lieu of taxes” means those estimated
182 revenues from real property and tangible personal property
183 having a tax situs in the area selected for a development or
184 redevelopment project which revenues, according to the
185 development or redevelopment project or plan, are to be used for
186 a private use, which levying bodies would have received had a
187 county or municipality not adopted one or more tax increment
188 financing plans and which would result from levies made after
189 the date of adoption of a tax increment financing plan during the
190 time the current assessed value of all taxable real and tangible
191 personal property in the area selected for the development or

192 redevelopment project exceeds the total base assessed value of
193 all taxable real and tangible personal property in the
194 development or redevelopment district until the designation is
195 terminated as provided in this article.

196 (19) "Person" means any natural person, and any
197 corporation, association, partnership, limited partnership, limited
198 liability company or other entity, regardless of its form, structure
199 or nature, other than a government agency or instrumentality.

200 (20) "Private project" means any project that is subject to ad
201 valorem property taxation in this state or to a payment in lieu of
202 tax agreement that is undertaken by a project developer in
203 accordance with a tax increment financing plan in a development
204 or redevelopment district.

205 (21) "Project" means any capital improvement, facility or
206 both, as specifically set forth and defined in the project plan,
207 requiring an investment of capital including, but not limited to,
208 extensions, additions or improvements to existing facilities,
209 including water or wastewater facilities, and the remediation of
210 contaminated property as provided for in article twenty-two,
211 chapter twenty-two of this code, but does not include
212 performance of any governmental service by a county or
213 municipal government.

214 (22) "Project area" means an area within the boundaries of
215 a development or redevelopment district in which a development
216 or redevelopment project is undertaken as specifically set forth
217 and defined in the project plan.

218 (23) "Project costs" means expenditures made in preparation
219 of the development or redevelopment project plan and made, or
220 estimated to be made, or monetary obligations incurred, or
221 estimated to be incurred, by the county commission which are
222 listed in the project plan as capital improvements within a

223 development or redevelopment district, plus any costs incidental
224 thereto. "Project costs" include, but are not limited to:

225 (A) Capital costs, including, but not limited to, the actual
226 costs of the construction of public works or improvements,
227 capital improvements and facilities, new buildings, structures
228 and fixtures, the demolition, alteration, remodeling, repair or
229 reconstruction of existing buildings, structures and fixtures,
230 environmental remediation, parking and landscaping, the
231 acquisition of equipment and site clearing, grading and
232 preparation;

233 (B) Financing costs, including, but not limited to, an interest
234 paid to holders of evidences of indebtedness issued to pay for
235 project costs, all costs of issuance and any redemption
236 premiums, credit enhancement or other related costs;

237 (C) Real property assembly costs, meaning any deficit
238 incurred resulting from the sale or lease as lessor by the county
239 commission of real or personal property having a tax situs within
240 a development or redevelopment district for consideration that
241 is less than its cost to the county commission;

242 (D) Professional service costs including, but not limited to,
243 those costs incurred for architectural planning, engineering and
244 legal advice and services;

245 (E) Imputed administrative costs including, but not limited
246 to, reasonable charges for time spent by county employees or
247 municipal employees in connection with the implementation of
248 a project plan;

249 (F) Relocation costs including, but not limited to, those
250 relocation payments made following condemnation and job
251 training and retraining;

252 (G) Organizational costs including, but not limited to, the
253 costs of conducting environmental impact and other studies and
254 the costs of informing the public with respect to the creation of
255 a development or redevelopment district and the implementation
256 of project plans;

257 (H) Payments made, in the discretion of the county
258 commission or the governing body of a municipality, which are
259 found to be necessary or convenient to creation of development
260 or redevelopment districts or the implementation of project
261 plans; and

262 (I) That portion of costs related to the construction of
263 environmental protection devices, storm or sanitary sewer lines,
264 water lines, amenities or streets or the rebuilding or expansion of
265 streets, or the construction, alteration, rebuilding or expansion of
266 which is necessitated by the project plan for a development or
267 redevelopment district, whether or not the construction,
268 alteration, rebuilding or expansion is within the area or on land
269 contiguous thereto.

270 (24) "Project developer" means any person who engages in
271 the development of projects in the state.

272 (25) "Project plan" means the plan for a development or
273 redevelopment project that is adopted by a county commission
274 or governing body of a municipality in conformity with the
275 requirements of this article and this chapter or chapter eight of
276 this code.

277 (26) "Real property" means all lands, including
278 improvements and fixtures on them and property of any nature
279 appurtenant to them or used in connection with them and every
280 estate, interest and right, legal or equitable, in them, including
281 terms of years and liens by way of judgment, mortgage or
282 otherwise, and indebtedness secured by the liens.

283 (27) “Redevelopment area” means an area designated by a
284 county commission or the governing body of a municipality in
285 respect to which the commission or governing body has made a
286 finding that there exist conditions which cause the area to be
287 classified as a blighted area, a conservation area, an economic
288 development area or a combination thereof, which area includes
289 only those parcels of real property directly and substantially
290 benefitted by the proposed redevelopment project located within
291 the development or redevelopment district or land contiguous
292 thereto.

293 (28) “Redevelopment plan” means the comprehensive
294 program under this article of a county or municipality for
295 redevelopment intended by the payment of redevelopment costs
296 to reduce or eliminate those conditions, the existence of which
297 qualified the redevelopment area as a blighted area, conservation
298 area, economic development area or combination thereof, and to
299 thereby enhance the tax bases of the levying bodies which extend
300 into the redevelopment area. Each redevelopment plan shall
301 conform to the requirements of this article.

302 (29) “Tax increment” means the amount of regular levy
303 property taxes attributable to the amount by which the current
304 assessed value of real and tangible personal property having a
305 tax situs in a development or redevelopment district exceeds the
306 base assessed value of the property.

307 (30) “Tax increment financing fund” means a separate fund
308 for a development or redevelopment district established by the
309 county commission or governing body of the municipality into
310 which all tax increment revenues and other pledged revenues are
311 deposited and from which projected project costs, debt service
312 and other expenditures authorized by this article are paid.

313 (31) “This code” means the Code of West Virginia, 1931, as
314 amended by the Legislature.

315 (32) “Total ad valorem property tax regular levy rate” means
316 the aggregate levy rate of all levying bodies on all taxable
317 property having a tax situs within a development or
318 redevelopment district in a tax year but does not include excess
319 levies, levies for general obligation bonded indebtedness or any
320 other levies that are not regular levies.

CHAPTER 163

(S. B. 601 - By Senator Palumbo)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §11-3-25 of the Code of West Virginia, 1931, as amended, relating to appeals of assessments by the Board of Equalization and Review or order of the Board of Assessment Appeals; removing a phrase giving appeal authority to an entity’s agent, which the Supreme Court of Appeals of West Virginia interpreted as unconstitutional; and clarifying that appeals must be made by attorneys.

Be it enacted by the Legislature of West Virginia:

That §11-3-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-25. Relief in circuit court against erroneous assessment.

1 (a) Any person claiming to be aggrieved by any assessment
2 in any land or personal property book of any county who shall
3 have appeared and contested the valuation as provided in section

4 twenty-four or twenty-four-a of this article, or whose assessment
5 has been raised by the county commission sitting as a Board of
6 Equalization and Review above the assessment fixed by the
7 assessor may, at any time up to thirty days after the adjournment
8 of the board sitting as a Board of Equalization and Review, or at
9 any time up to thirty days after the order of the Board of
10 Assessment Appeals is served on the parties, apply for relief to
11 the circuit court of the county in which the property books are
12 made out; but any person applying for relief in circuit court
13 shall, before any application is heard, give ten days' notice to the
14 prosecuting attorney of the county, whose duty it shall be to
15 attend to the interests of the state, county and district in the
16 matter, and the prosecuting attorney shall give at least five days'
17 notice of hearing to the Tax Commissioner.

18 (b) The right of appeal from any assessment by the Board of
19 Equalization and Review or order of the Board of Assessment
20 Appeals as provided in this section may be taken either by the
21 applicant or by the state, and in case the applicant, by his or her
22 attorney, or in the case of the state, by its prosecuting attorney or
23 other attorney representing the Tax Commissioner. The party
24 desiring to take an appeal from the decision of either board shall
25 have the evidence taken at the hearing of the application before
26 either board, including a transcript of all testimony and all
27 papers, motions, documents, evidence and records as were
28 before the board, certified by the county clerk and transmitted to
29 the circuit court as provided in section four, article three, chapter
30 fifty-eight of this code, except that, any other provision of this
31 code notwithstanding, the evidence shall be certified and
32 transmitted within thirty days after the petition for appeal is filed
33 with the court or judge, in vacation.

34 (c) If there was an appearance by or on behalf of the
35 taxpayer before either board, or if actual notice, certified by the
36 board, was given to the taxpayer, the appeal, when allowed by
37 the court or judge, in vacation, shall be determined by the court

38 from the record as so certified: *Provided*, That in cases where the
39 court determines that the record made before the board is
40 inadequate as a result of the parties having had insufficient time
41 to present evidence at the hearing before the board to make a
42 proper record, as a result of the parties having received
43 insufficient notice of changes in the assessed value of the
44 property and the reason or reasons for the changes to make a
45 proper record at the hearing before the board, as a result of
46 irregularities in the procedures followed at the hearing before the
47 board, or for any other reason not involving the negligence of the
48 party alleging that the record is inadequate, the court may
49 remand the appeal back to the county commission of the county
50 in which the property is located, even after the county
51 commission has adjourned *sine die* as a Board of Equalization
52 and Review or a Board of Assessment Appeals for the tax year
53 in which the appeal arose, for the purpose of developing an
54 adequate record upon which the appeal can be decided. The
55 county commission shall schedule a hearing for the purpose of
56 taking additional evidence at any time within ninety days of the
57 remand order that is convenient for the county commission and
58 for the parties to the appeal. If, however, there was no actual
59 notice to the taxpayer, and no appearance by or on behalf of the
60 taxpayer before the board, or if a question of classification or
61 taxability is presented, the matter shall be heard de novo by the
62 circuit court.

63 (d) If, upon the hearing of appeal, it is determined that any
64 property has been assessed at more than sixty percent of its true
65 and actual value determined as provided in this chapter, the
66 circuit court shall, by an order entered of record, correct the
67 assessment, and fix the assessed value of the property at sixty
68 percent of its true and actual value. A copy of the order or orders
69 entered by the circuit court reducing the valuation shall be
70 certified to the Auditor, if the order or orders pertain to real
71 property, by the clerk within twenty days after the entering of the
72 same, and every order or judgment shall show that the

73 prosecuting attorney or Tax Commissioner was present and
74 defended the interest of the state, county and district. If it be
75 ascertained that any property has been valued too high, and that
76 the taxpayer has paid the excess tax, it shall be refunded or
77 credited to the taxpayer in accordance with the provisions of
78 section twenty-five-a of this article, and if not paid, he or she
79 shall be relieved from the payment thereof. If it is ascertained
80 that any property is valued too low, the circuit court shall, by an
81 order entered of record, correct the valuation and fix it at sixty
82 percent of its true and actual value. A copy of any order entered
83 by any circuit court increasing the valuation of property shall be
84 certified within twenty days, if the order pertains to real
85 property, to the Auditor, the county clerk and the sheriff.
86 However, if the order pertains only to personal property, then the
87 copy shall be certified within twenty days to the county clerk and
88 to the sheriff and it shall be the duty of the Auditor, the county
89 clerk and the sheriff to charge the taxpayer affected with the
90 increase of taxes occasioned by the increase of valuation by
91 applying the rate of levies for every purpose in the district where
92 the property is situated for the current year. The order shall also
93 be filed in the office of the Auditor and clerk of the county
94 commission. The circuit court shall review the record submitted
95 from the board. If the court determines that the record is
96 adequate, it shall establish a briefing and argument schedule that
97 will result in the appeal being submitted to the court for decision
98 within a reasonable time, but not to exceed eight months after
99 the appeal is filed. All final decisions or orders of the circuit
100 court shall be issued within a reasonable time, not to exceed
101 ninety days, from the date the last brief is filed and the case is
102 submitted to the court for decision. The state or the aggrieved
103 taxpayer may appeal a question of valuation to the Supreme
104 Court of Appeals if the assessed value of the property is \$50,000
105 or more, and either party may appeal a question of classification
106 or taxability.

107 (e) All persons applying for relief to the circuit court under
108 this section shall be governed by the same presumptions,
109 burdens and standards of proof as established by law for
110 taxpayers applying for such relief.

111 (f) *Effective date.* — The amendments to this section enacted
112 in 2010 shall apply to tax years beginning after December 31,
113 2011.

CHAPTER 164

**(Com. Sub. for S. B. 574 - By Senators Tucker,
Fitzsimmons and Edgell)**

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §11-5-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17A-3-12b of said code, all relating to cancelling certificates of title for certain mobile and manufactured homes; clarifying that a mobile home permanently attached to the real estate by the owner may not be classified as personal property if the owner has filed a canceled certificate of title with the clerk of the county commission and the clerk has recorded the canceled certificate of title; and providing a procedure for returning a canceled title to an owner or lienholder.

Be it enacted by the Legislature of West Virginia:

That §11-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17A-3-12b of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.**ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.****§11-5-12. Mobile homes situate upon property owned by a person other than owner of mobile home.**

1 Mobile homes situated upon property owned by a person
2 other than the owner of the mobile home are classified as
3 personal property whether or not the mobile home is
4 permanently affixed to the real estate and, unless subject to
5 assessment as Class II property under section eleven of this
6 article or section two, article four of this chapter, are assessed as
7 Class III or Class IV personal property, as may be appropriate in
8 the circumstances.

9 A mobile home permanently attached to the real estate of the
10 owner may not be classified as personal property if the owner
11 has filed a canceled certificate of title with the clerk of the
12 county commission and the clerk has recorded it in the same
13 manner as deeds are recorded and indexed.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE AND
ANTITHEFT PROVISIONS.****ARTICLE 3. ORIGINAL AND RENEWAL OF
REGISTRATION; ISSUANCE OF
CERTIFICATES OF TITLE.****§17A-3-12b. Canceled certificates of title for certain mobile and
manufactured homes.**

1 The commissioner may cancel a certificate of title for a
2 mobile or manufactured home affixed to the real property of the
3 owner of the mobile or manufactured home. The person
4 requesting the cancellation shall submit to the commissioner an

5 application for cancellation together with the certificate of title.
6 The application shall be on a form prescribed by the
7 commissioner. The commissioner shall return one copy of the
8 cancellation certificate to the owner and shall send a copy of the
9 cancellation certificate to the clerk of the county commission to
10 be recorded and indexed in the same manner as a deed, with the
11 owner's name being indexed in the grantor index. The
12 commissioner shall charge a fee of \$10 per certificate of title
13 canceled. The clerk shall return a copy of the recorded
14 cancellation certificate to the owner, unless there is a lien
15 attached to the mobile or manufactured home, in which case the
16 copy of the recorded cancellation certificate shall be returned to
17 the lienholder. Upon its recording in the county clerk's office,
18 the mobile or manufactured home shall be treated for all
19 purposes as an appurtenance to the real estate to which it is
20 affixed and be transferred only as real estate and the ownership
21 interest in the mobile or manufactured home, together with all
22 liens and encumbrances on the home, shall be transferred to and
23 shall encumber the real property to which the mobile or
24 manufactured home has become affixed.

CHAPTER 165

(Com. Sub. for S. B. 416 - By Senators Prezioso and Edgell)

[Passed March 4, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §11-6K-4 and §11-6K-5 of the Code of West Virginia, 1931, as amended, all relating to tentative appraisals of natural resources property by the Tax Commissioner for ad valorem property tax purposes; clarifying that notice requirements apply to all oil and natural gas property in production

and reserve; and clarifying that informal review procedures do not apply to oil or natural gas property in production and reserve.

Be it enacted by the Legislature of West Virginia:

That §11-6K-4 and §11-6K-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 6K. ASSESSMENT OF INDUSTRIAL PROPERTY
AND NATURAL RESOURCES PROPERTY.**

§11-6K-4. Review of returns; procuring information for tentative appraisals; tentative appraisals by Tax Commissioner; notification to taxpayers.

1 (a) All returns delivered to the Tax Commissioner shall be
2 examined by him or her, and if found insufficient in form,
3 defective, imperfect or not in compliance with law, he or she
4 shall compel the person delivering the return to make it in proper
5 and sufficient form in all respects as required by law.

6 (b) If any owner, operator or producer fails to make a
7 required return, the Tax Commissioner shall proceed to obtain
8 the facts and information required to be furnished by the returns.

9 (c) For the purposes of ascertaining the correctness of any
10 return filed pursuant to this article or of valuing the property of
11 any industrial taxpayer or natural resources property owner or
12 operator, the Tax Commissioner may exercise all of the powers
13 and authority granted to him or her by sections five-a, five-b and
14 five-c, article ten of this chapter.

15 (d) Using information provided on the returns and all other
16 pertinent evidence, information and data the Tax Commissioner
17 has been able to procure, the Tax Commissioner shall annually
18 value and make tentative appraisals of all industrial property and
19 natural resources property as provided in section ten, article
20 one-c of this chapter.

21 (e) (1) On or before October 15 of the assessment year, the
22 Tax Commissioner shall complete the preparation of tentative
23 appraisals of all industrial property and natural resources
24 property and shall notify the affected owner or operator of the
25 amount of the tentative appraisals: *Provided*, That in the case of
26 oil property, natural gas property and managed timberland, the
27 Tax Commissioner shall complete the preparation of tentative
28 appraisals and notify the affected owner or operator by
29 December 1 of the assessment year, and: *Provided, however*,
30 That no notification shall be required where the total increase in
31 the aggregate amount of the tentative appraisals to the affected
32 owner or operator does not exceed \$1,000 and the total tentative
33 appraisals did not increase by more than ten percent from the
34 prior year's appraisals. Notification may, at the reasonable
35 discretion of the Tax Commissioner, be:

36 (A) By written notice deposited in the United States mail,
37 addressed to the owner or operator at the principal office or place
38 of business of the owner or operator;

39 (B) By electronic notification; or

40 (C) By any other means designed to communicate the
41 tentative appraisal information to the owner or operator in a
42 timely and efficient manner and in a convenient useable form.

43 (2) Any notice required to be provided under this section to
44 an owner or operator shall also be provided by the Tax
45 Commissioner to the assessor of the county in which the
46 property is located. The Tax Commissioner shall retain in his or
47 her office true copies of tentative appraisals and of the
48 underlying work sheets used to compute the tentative appraisals,
49 all of which shall be available for inspection by any owner or
50 operator or his or her duly authorized representative.

§11-6K-5. Informal petition to Tax Commissioner for review of tentative appraisals.

1 (a) A taxpayer who is of the opinion that the tentative
2 appraisal of its industrial property or natural resources property,
3 except oil property, natural gas property and managed
4 timberland, does not reflect the true and actual value of the
5 property or is otherwise improperly valued may, after receiving
6 its tentative appraisal and on or before November 15 of the
7 assessment year, informally petition the Tax Commissioner
8 requesting a review of the tentative appraisal. Likewise, an
9 assessor who is of the opinion that the tentative appraisal of any
10 industrial property or natural resources property, except oil
11 property, natural gas property and managed timberland, located
12 in the county does not reflect the true and actual value of the
13 property or is otherwise improperly valued may, after receiving
14 the tentative appraisal and on or before November 15 of the
15 assessment year, informally petition the Tax Commissioner
16 requesting a review of the tentative appraisal. The Tax
17 Commissioner may require the petition be made on a written
18 form prescribed by the Tax Commissioner. At the time a petition
19 is filed by a taxpayer with the Tax Commissioner, the petitioner
20 shall provide a copy of the petition to the assessor of the county
21 in which the property is located. At the time a petition is filed by
22 an assessor with the Tax Commissioner, the petitioner shall
23 provide a copy of the petition to the taxpayer involved.

24 (b) At the petitioner's request, the Tax Commissioner or his
25 or her representative shall meet with the petitioner or the
26 petitioner's representative to discuss the petition at a time and
27 place designated at least five working days in advance by the
28 Tax Commissioner after the petition is filed. If the petitioner is
29 unable to appear and meet with the Tax Commissioner at the
30 time and place set by the Tax Commissioner, the petitioner may
31 submit written evidence to support the petition if it is submitted
32 before the date of the meeting.

33 (c) The Tax Commissioner shall consider and rule on each
34 informal petition filed under this section on or before January 15
35 of the tax year. If the Tax Commissioner agrees with the petition
36 he or she shall modify the tentative appraisal accordingly. The
37 Tax Commissioner shall then notify the petitioner and assessor
38 of the county in which the property is located in writing of his or
39 her decision and shall include supporting data that the assessor
40 might need to evaluate the appraisal.

CHAPTER 166

(S. B. 402 - By Senators Prezioso, Edgell and Plymale)

[Passed February 20, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 7, 2014.]

AN ACT to amend and reenact §11-10-5n of the Code of West Virginia, 1931, as amended, relating to recovery of service charges and fees charged to the Tax Commissioner by financial institutions relating to all permitted forms of payment returned or not duly paid; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That §11-10-5n of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5n. Payment by commercially acceptable means.

1 (a) *Authority to receive.*— The Tax Commissioner may
2 receive in payment for taxes or fees collected under this article

3 (or in payment for excise tax stamps and tax crowns) any
4 commercially acceptable means that the commissioner considers
5 appropriate to the extent and under the conditions provided in
6 rules proposed by the commissioner for legislative approval in
7 accordance with article three, chapter twenty-nine-a of this code.

8 (b) *Ultimate liability.*— If a check, money order or other
9 method of payment, including payment by credit card, debit card
10 or charge card received in payment of taxes or fees or tax stamps
11 or crowns is not duly paid, or is paid and subsequently charged
12 back to the Tax Commissioner, the person by whom the check,
13 money order or other method of payment was tendered remains
14 liable for payment of the tax or fee or for the tax stamps or
15 crowns, and for all legal penalties and additions thereto, to the
16 same extent as if the check, money order or other method of
17 payment had not been tendered.

18 (c) *Liability of bank and others.*— If any certified,
19 treasurer's or cashier's check (or other guaranteed draft), any
20 money order or any means of payment that has been guaranteed
21 by a financial organization (such as a credit card, debit card or
22 charge card transaction which has been guaranteed expressly by
23 a financial organization), is received for payment of taxes or fees
24 or tax stamps or crowns and is not duly paid, the State of West
25 Virginia shall, in addition to its right to exact payment from the
26 party originally indebted therefor, have a lien for:

27 (1) The amount of the check (or draft) upon all the assets of
28 the financial institution on which it is drawn;

29 (2) The amount of the money order upon all the assets of the
30 issuer thereof; or

31 (3) The guaranteed amount of any other transaction upon all
32 assets of the institution making the guarantee; and the amount
33 shall be paid out of the assets in preference to any other claims

34 whatsoever against the financial institution, issuer or
35 guaranteeing institution, except the necessary costs and expenses
36 of administration and perfected liens that are prior in time.

37 (d) *Charges and fees due to insufficient funds or nonpayment*
38 *by financial institution.*— If any check, money order or any other
39 commercially acceptable method of payment permitted under
40 this article, its amendments and related rules, tendered in
41 payment of any amount of tax or fee or tax stamps or crowns or
42 any interest, additions to tax or penalties is not duly paid, then,
43 in addition to any other penalties provided by law, there shall be
44 paid as a penalty by the person who tendered the payment,
45 regardless of its form, upon written notice and demand by the
46 Tax Commissioner, in the same manner as tax, an amount equal
47 to the service charge or fee which the bank or other financial
48 institution charged the state for each payment returned or not
49 duly paid to the Tax Commissioner because the account is
50 closed, there are insufficient funds in the account, payment was
51 stopped or payment was refused by the bank, financial institution
52 or other entity, including the state or political subdivision
53 thereof. Recovery of such charges and fees will apply to all
54 methods of payment permitted under this section. The Tax
55 Commissioner may propose rules necessary to carry out this
56 subsection and to provide guidelines and requirements necessary
57 to ensure uniform administrative practices statewide to effect the
58 intent of this subsection, all in accordance with article three,
59 chapter twenty-nine-a of this code: *Provided*, That for purposes
60 of this subsection, the term “payment” includes any transaction
61 performed at the request of the taxpayer, including claims for
62 refund that result in a service charge or fee.

63 (e) *Payment by other means.*—

64 (1) *Authority to prescribe rule.*— The Tax Commissioner
65 shall propose rules for legislative approval, in accordance with
66 article three, chapter twenty-nine-a of this code, as the Tax

67 Commissioner considers necessary to receive payment by
68 commercially acceptable means, including rules that:

69 (A) Specify which methods of payment by commercially
70 acceptable means are acceptable;

71 (B) Specify when payment by those means shall be
72 considered received;

73 (C) Identify types of nontax matters related to payment by
74 those means that are to be resolved by persons ultimately liable
75 for payment and financial intermediaries, without the
76 involvement of the Tax Commissioner; and

77 (D) Ensure that tax matters shall be resolved by the Tax
78 Commissioner, without the involvement of financial
79 intermediaries.

80 (2) *Obtaining services.*— The Tax Commissioner shall use
81 the State Treasurer's contracts and system for receiving
82 payments by credit card, debit card, charge card or any other
83 commercially acceptable means. The Tax Commissioner may
84 not pay any fee or provide any other consideration in obtaining
85 these services. The State Treasurer may not pay any fee or
86 provide any consideration for receiving payments of taxes or
87 fees (or in payment for excise tax stamps and tax crowns)
88 described in this section by credit card, debit card, charge card
89 or any other commercially acceptable means, and any cost for
90 processing the payment shall be included, in advance, in the
91 amount of the transaction and assessed to the party making the
92 payment.

93 (3) *Special provisions for use of credit cards.*— If use of
94 credit cards is accepted as a method of payment of taxes
95 pursuant to subsection (a) of this section:

96 (A) To the extent allowed under federal law, a payment of
97 taxes or fees collected under this article (or in payment for
98 excise tax stamps and tax crowns) by a person by use of a credit
99 card shall not be subject to Section 161 of the Truth in Lending
100 Act (15 U. S. C. §1666), or to any similar provisions of state law,
101 if the error alleged by the person is an error relating to the
102 underlying tax liability, rather than an error relating to the credit
103 card account such as a computational error or numerical
104 transposition in the credit card transaction or an issue as to
105 whether the person authorized payment by use of the credit card;

106 (B) To the extent allowed under federal law, a payment of
107 taxes or fees collected under this article (or in payment for
108 excise tax stamps and tax crowns) shall not be subject to Section
109 170 of the Truth in Lending Act (15 U. S. C. 1666i), or to any
110 similar provisions of state law;

111 (C) To the extent allowed under federal law, a payment of
112 taxes or fees collected under this article (or in payment for
113 excise tax stamps and tax crowns) by a person by use of a debit
114 card shall not be subject to Section 908 of the Electronic Fund
115 Transfer Act (15 U. S. C. 1693f), or to any similar provisions of
116 state law, if the error alleged by the person is an error relating to
117 the underlying tax liability, rather than an error relating to the
118 debit card account such as a computational error or numerical
119 transposition in the debit card transaction or an issue as to
120 whether the person authorized payment by use of the debit card;

121 (D) To the extent allowed under federal law, the term
122 “creditor” under Section 103(f) of the Truth in Lending Act (15
123 U. S. C. §1602(f)) shall not include the Tax Commissioner with
124 respect to credit card transactions in payment of taxes or fees
125 collected under this article (or in payment for excise tax stamps
126 and tax crowns); and

127 (E) Notwithstanding any other provisions of law to the
128 contrary, in the case of payment made by credit card or debit
129 card transaction of an amount owed to a person as the result of
130 the correction of an error under Section 161 of the Truth in
131 Lending Act (15 U. S. C. §1666) or Section 908 of the Electronic
132 Fund Transfer Act (15 U. S. C. §1693f), the Tax Commissioner
133 is authorized to provide such amount to such person as a credit
134 to that person's credit card or debit card account through the
135 applicable credit card or debit card system.

136 (f) *Confidentiality of information.*—

137 (1) *In general.*— Except as otherwise authorized by this
138 subsection, no person may use or disclose any information
139 relating to credit card, debit card or charge card transactions
140 other than for purposes directly related to the processing of the
141 transactions or the billing or collection of amounts charged or
142 debited pursuant thereto.

143 (2) *Exceptions.*—

144 (A) Credit card, debit card or charge card issuers or others
145 acting on behalf of the issuers may also use and disclose the
146 information for purposes directly related to servicing an issuer's
147 accounts.

148 (B) Credit card, debit card or charge card issuers or others
149 directly involved in the processing of credit card, debit card or
150 charge card transactions or the billing or collection of amounts
151 charged or debited to the credit card, debit card or charge card,
152 may also use and disclose the information for purposes directly
153 related to:

154 (I) Statistical risk and profitability assessment;

155 (ii) Transferring receivables, accounts or interest therein;

- 156 (iii) Auditing the account information;
- 157 (iv) Complying with federal, state or local law; and
- 158 (v) Properly authorized civil, criminal or regulatory
159 investigation by federal, state or local authorities.
- 160 (3) *Procedures.*— Use and disclosure of information under
161 this paragraph shall be made only to the extent authorized by
162 written procedures promulgated by the Tax Commissioner.

CHAPTER 167

**(Com. Sub. for S. B. 414 - By Senators Prezioso,
Edgell and Plymale)**

[Passed March 8, 2014; in effect July 1, 2014.]
[Approved by the Governor on March 20, 2014.]

AN ACT to amend and reenact § 11-11-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact § 44-1-14 of said code, all relating to the filing of estate appraisement and nonprobate inventory forms; eliminating certain filing with the Tax Commissioner; providing for maintenance and preservation of certain forms by the county clerk; providing for disclosure of certain forms under certain circumstances; and providing for confidentiality of certain forms under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That § 11-11-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that § 44-1-14 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.**ARTICLE 11. ESTATE TAXES.****§11-11-7. Nonprobate inventory of estates; penalties.**

1 (a) The personal representative of every resident decedent
2 who owned or had an interest in any nonprobate personal
3 property, and the personal representative of every nonresident
4 decedent who owned or had an interest in any nonprobate
5 personal property which is a part of the taxable estate located in
6 West Virginia, shall, under oath, list and appraise on a
7 nonprobate inventory form prescribed by the Tax Commissioner
8 all tangible and intangible nonprobate personal property owned
9 by the decedent or in which the decedent had an interest, at its
10 fair market value on the date of the decedent's death. The
11 nonprobate personal property to be included on the nonprobate
12 inventory form includes, but is not limited to, the following:

13 (1) Personal property held as joint tenants with right of
14 survivorship with one or more third parties;

15 (2) Personal property payable on the death of the decedent
16 to one or more third parties;

17 (3) Personal property held by the decedent as a life tenant;

18 (4) Insurance on the decedent's life payable to beneficiaries
19 other than the executor or administrator of the decedent's estate;
20

21 (5) Powers of appointment;

22 (6) Annuities;

23 (7) Transfers during the decedent's life in which any
24 beneficial interest passes by trust or otherwise to another person
25 by reason of the death of the decedent;

26 (8) Revocable transfers in trust or otherwise;

27 (9) Taxable gifts under Section 2503 of the United States
28 Internal Revenue Code of 1986; and

29 (10) All other nonprobate personal property included in the
30 federal gross estate of the decedent.

31 (b) For purposes of this section, “nonprobate personal
32 property” means all personal property which does not pass by
33 operation of the decedent’s will or by the laws of intestate
34 descent and distribution or is otherwise not subject to
35 administration in a decedent’s estate at common law.

36 (c) The personal representative shall prepare the nonprobate
37 inventory form and file it, together with the appraisement form
38 required by section fourteen, article one, chapter forty-four of
39 this code, for estates of decedents dying on or after July 13,
40 2001, with the clerk of the county commission or the fiduciary
41 supervisor within ninety days of the date of qualification of the
42 personal representative in this state: *Provided*, That for estates
43 of decedents dying on or after July 13, 2001, but before the date
44 the amendments to this section become effective, the
45 requirement to file the nonprobate inventory form with the clerk
46 or supervisor applies only if that form has not already been filed
47 with Tax Commissioner.

48 (d) The nonprobate inventory form shall be maintained and
49 preserved by the clerk of the county commission or the fiduciary
50 supervisor, but shall not be recorded in the records of the clerk
51 of the county commission. The nonprobate inventory form is
52 confidential tax return information subject to the provisions of
53 section five-d, article ten, chapter eleven of this code and may
54 not be disclosed by the clerk of the county commission and his
55 or her officers and employees or former officers and employees.
56 Nothing in this section may be construed to hinder, abrogate or

57 prevent disclosure of information as authorized in section
58 thirty-five, article eleven, chapter eleven of this code.

59 (e) Any personal representative who fails to comply with the
60 provisions of this section, without reasonable cause, is guilty of
61 a misdemeanor and, upon conviction thereof, shall be fined not
62 less than \$25 nor more than \$500.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisalment of real estate and probate personal property of decedents; disposition; hiring of experts.

1 (a) The personal representative of an estate of a deceased
2 person shall appraise the deceased's real estate and personal
3 probate property, or any real estate or personal probate property
4 in which the deceased person had an interest at the time of his or
5 her death, as provided in this section.

6 (b) After having taken the appropriate oath, the personal
7 representative shall, on the appraisalment form prescribed by the
8 Tax Commissioner, list the following items owned by the
9 decedent or in which the decedent had an interest and the fair
10 market value of the items at the date of the decedent's death:

11 (1) All probate and nonprobate real estate including, but not
12 limited to, real estate owned by the decedent, as a joint tenant
13 with right of survivorship with one or more parties, as a life
14 estate, subject to a power of appointment of the decedent, or in
15 which any beneficial interest passes by trust or otherwise to
16 another person by reason of the death of the decedent; and

17 (2) All probate personal property, whether tangible or
18 intangible, including, but not limited to, stocks and bonds, bank

19 accounts, mortgages, notes, cash, life insurance payable to the
20 executor or administrator of the decedent's estate and all other
21 items of probate personal property.

22 (c) Any real estate or interest in real estate so appraised must
23 be identified with particularity and description. The personal
24 representative shall identify the source of title in the decedent
25 and the location of the realty for purposes of real property ad
26 valorem taxation.

27 (d) For purposes of this section, the term "probate personal
28 property" means all personal property which passes by or under
29 the decedent's will or by the laws of intestate descent and
30 distribution or is otherwise subject to administration in a
31 decedent's estate under common law.

32 (e) The personal representative shall complete, under oath,
33 a questionnaire included in the appraisal form designed by
34 the Tax Commissioner for the purpose of reporting whether the
35 decedent owned or had an interest in any nonprobate personal
36 property: *Provided*, That the Tax Commissioner shall design a
37 questionnaire that is as much as possible phrased in
38 understandable English.

39 (f) The appraisal form shall be executed and signed by
40 the personal representative. The original appraisal form and
41 two of its copies, together with the completed and notarized
42 nonprobate inventory form required by section seven, article
43 eleven, chapter eleven of this code, shall be returned to the clerk
44 of the county commission by whom the personal representative
45 was appointed or to the fiduciary supervisor within ninety days
46 of the date of qualification of the personal representative. The
47 clerk or supervisor shall inspect the appraisal form to
48 determine whether it is in proper form. If the appraisal form
49 is returned to a fiduciary supervisor, within ten days after being
50 received and approved, the supervisor shall deliver the

51 documents to the clerk of the county commission. Upon receipt
52 of the appraisal form, the clerk of the county commission
53 shall record it with the certificate of approval of the supervisor.
54 The date of return of an appraisal form must be entered by
55 the clerk of the county commission in his or her record of
56 fiduciaries. The nonprobate inventory form shall be maintained
57 and preserved by the clerk of the county commission or the
58 fiduciary supervisor, but shall not be recorded in the records of
59 the clerk of the county commission. The nonprobate inventory
60 form is confidential tax return information subject to the
61 provisions of section five-d, article ten, chapter eleven of this
62 code and may not be disclosed by the clerk of the county
63 commission and his or her officers and employees or former
64 officers and employees. Nothing in this section may be
65 construed to hinder, abrogate or prevent disclosure of
66 information as authorized in section thirty-five, article eleven,
67 chapter eleven of this code.

68 (g) An executed and signed appraisal form is prima facie
69 evidence:

70 (1) Of the value of the property listed;

71 (2) That the property is subject to administration; and

72 (3) That the property was received by the personal
73 representative.

74 (h) Any personal representative who refuses or declines,
75 without reasonable cause, to comply with the provisions of this
76 section is guilty of a misdemeanor and, upon conviction thereof,
77 shall be fined not less than \$25 nor more than \$500.

78 (i) Every personal representative has authority to retain the
79 services of an expert as may be appropriate to assist and advise
80 him or her concerning his or her duties in appraising any asset or
81 property pursuant to the provisions of this section. An expert so

82 retained shall be compensated a reasonable sum by the personal
83 representative from the assets of the estate. The compensation
84 and its reasonableness is subject to review and approval by the
85 county commission, upon recommendation of the fiduciary
86 supervisor.

87 (j) Except as specifically provided in subdivision (1),
88 subsection (b) of this section and in section seven, article eleven,
89 chapter eleven of this code, the personal representative is not
90 required to list and appraise nonprobate real estate or nonprobate
91 personal property of the decedent on the forms required in this
92 section or section seven, article eleven, chapter eleven of this
93 code.

CHAPTER 168

**(Com. Sub. for H. B. 4449 - By Delegates R. Phillips,
Lynch, Tomblin, Eldridge, Barker, Marcum, White,
Caputo, Skaff, Craig and Sumner)**

[Passed March 6, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact §11-13BB-3 and §11-13BB-14 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Innovative Mine Safety Technology Tax Credit Act; including proximity detection systems and cameras used on continuous mining machines and underground haulage equipment for tax credit purposes; and extending termination date for credit.

Be it enacted by the Legislature of West Virginia:

That §11-13BB-3 and §11-13BB-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE
SAFETY TECHNOLOGY TAX
CREDIT ACT.**

§11-13BB-3. Definitions.

1 (a) Any term used in this article has the meaning ascribed by
2 this section unless a different meaning is clearly required by the
3 context of its use or by definition in this article.

4 (b) For purposes of this article, the term:

5 (1) "Certified eligible safety property" means eligible safety
6 property in which an eligible taxpayer has made qualified
7 investment for which credit has been certified under this article.

8 (2) "Coal mining company" means:

9 (A) A person subject to tax imposed on the severance of coal
10 by section three, article thirteen-a of this chapter; or

11 (B) A person working as a contract miner of coal, mining
12 coal in this state, under contract with a person subject to tax
13 imposed on the severance of coal by section three, article
14 thirteen-a of this chapter.

15 (3) "Director" means the Director of the Office of Miners'
16 Health, Safety and Training or West Virginia Office of Miners'
17 Health, Safety and Training established under article one,
18 chapter twenty two-a of this code.

19 (4) "Eligible safety property" means safety technology
20 equipment that, at the time of acquisition, is on the list of
21 approved innovative mine safety technology: *Provided*, That
22 eligible safety property includes proximity detection systems and
23 cameras used on continuous mining machines and underground
24 haulage equipment and machine mounted methane monitors

25 required by section forty-three, article two, chapter twenty-two-a
26 of this code.

27 (5) "Eligible taxpayer" means a coal mining company that
28 purchases eligible safety property.

29 (6) "List of approved innovative mine safety technology"
30 means the list required to be compiled and maintained by the
31 Mine Safety Technology Task Force and approved and published
32 by the director under this article.

33 (7) "Office of Miners' Health, Safety and Training" or
34 "West Virginia Office of Miners' Health, Safety and Training"
35 means the Office of Miners' Health, Safety and Training
36 established under article one, chapter twenty two-a of this code.

37 (8) "Person" includes any corporation, limited liability
38 company or partnership.

39 (9) "Qualified investment" means the eligible taxpayer's
40 investment in eligible safety property pursuant to a qualified
41 purchase as qualified and limited by section six of this article.

42 (10) "Qualified purchase" means and includes only
43 acquisitions of eligible safety property for use in this state.

44 (A) A lease of eligible safety property may constitute a
45 qualified purchase if the lease was entered into and became
46 effective at a time when the equipment is on the list of approved
47 innovative mine safety technology and if the primary term of the
48 lease for the eligible safety property is five years or more. Leases
49 having a primary term of less than five years do not qualify.

50 (B) "Qualified purchase" does not include:

51 (i) Purchases or leases of realty or any cost for, or related to,
52 the construction of a building, facility or structure attached to
53 realty;

54 (ii) Purchases or leases of property not exclusively used in
55 West Virginia;

56 (iii) Repair costs including materials used in the repair
57 unless, for federal income tax purposes, the cost of the repair
58 must be capitalized and not expensed;

59 (iv) Motor vehicles licensed by the Division of Motor
60 Vehicles;

61 (v) Clothing;

62 (vi) Airplanes;

63 (vii) Off-premises transportation equipment;

64 (viii) Leases of tangible personal property having a primary
65 term of less than five years;

66 (ix) Property that is used outside this state; and

67 (x) Property that is acquired incident to the purchase of the
68 stock or assets of an industrial taxpayer that was or had been
69 used by the seller in his or her industrial business in this state or
70 in which investment was previously the basis of a credit against
71 tax taken under any other article of this chapter.

72 (C) Acquisitions, including leases, of eligible safety property
73 may constitute qualified purchases for purposes of this article
74 only if:

75 (i) The property is not acquired from a person whose
76 relationship to the person acquiring it would result in the
77 disallowance of deductions under Section 267 or 707(b) of the
78 United States Internal Revenue Code of 1986, as amended;

79 (ii) The property is not acquired from a related person or by
80 one component member of a controlled group from another
81 component member of the same controlled group but the Tax

82 Commissioner may waive this requirement if the property was
83 acquired from a related party for its then fair market value; and

84 (iii) The basis of the property for federal income tax
85 purposes, in the hands of the person acquiring it, is not
86 determined, in whole or in part, by reference to the federal
87 adjusted basis of the property in the hands of the person from
88 whom it was acquired or under Section 1014(e) of the United
89 States Internal Revenue Code of 1986, as amended.

90 (11) "Safety technology" means depreciable tangible
91 personal property and equipment, other than clothing, principally
92 designed to directly minimize workplace injuries and fatalities
93 in coal mines.

94 (12) "Taxpayer" means a person subject to any of the taxes
95 imposed by article thirteen-a, twenty-three or twenty-four of this
96 chapter.

§11-13BB-14. Termination.

1 The tax credit authorized in this article shall terminate
2 December 31, 2018.

CHAPTER 169

(S. B. 328 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed March 4, 2014; in effect from passage.]
[Approved by the Governor on March 14, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13R-13, relating to expiration of the Strategic Research and Development Tax Credit.

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 §11-13R-13, to read as follows:

ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.

§11-13R-13. Expiration of tax credit.

1 The Strategic Research and Development Tax Credit Act
2 terminates on January 1, 2014, and no credit is available to any
3 taxpayer for any qualified investment or expenditure made on or
4 after that date. Taxpayers which have gained entitlement to the
5 credit pursuant to qualified investment or expenditure prior to
6 January 1, 2014, retain that entitlement and may apply the credit
7 pursuant to the requirements and limitations of this article.

CHAPTER 170

**(H. B. 4154 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)**

[By Request of the Executive]

[Passed March 5, 2014; in effect from passage.]

[Approved by the Governor on March 20, 2014.]

AN ACT to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended, relating to clarifying that the refundable amount from the flat rate component of the motor fuel excise tax for certain qualified persons remains six cents per gallon.

Be it enacted by the Legislature of West Virginia:

That §11-14C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

2 (a) *Per se exemptions from flat rate component of tax.* –
3 Sales of motor fuel to the following, or as otherwise stated in this
4 subsection, are exempt per se from the flat rate of the tax levied
5 by section five of this article and the flat rate may not be paid at
6 the rack:

7 (1) All motor fuel exported from this state to any other state
8 or nation: *Provided*, That the supplier collects and remits to the
9 destination state or nation the appropriate amount of tax due on
10 the motor fuel transported to that state or nation. This exemption
11 does not apply to motor fuel which is transported and delivered
12 outside this state in the motor fuel supply tank of a highway
13 vehicle;

14 (2) Sales of aviation fuel;

15 (3) Sales of dyed special fuel; and

16 (4) Sales of propane unless sold for use in a motor vehicle.

17 (b) *Per se exemptions from variable component of tax.* –
18 Sales of motor fuel to the following are exempt per se from the
19 variable component of the tax levied by section five of this
20 article and the variable component may not be paid at the rack:

21 All motor fuel exported from this state to any other state or
22 nation: *Provided*, That the supplier collects and remits to the
23 destination state or nation the appropriate amount of tax due on

24 the motor fuel transported to that state or nation. This exemption
25 does not apply to motor fuel which is transported and delivered
26 outside this state in the motor fuel supply tank of a highway
27 vehicle.

28 (c) *Refundable exemptions from flat rate component of*
29 *tax.* – A person having a right or claim to any of the following
30 exemptions from the flat rate component of the tax levied by
31 section five of this article shall first pay the tax levied by this
32 article and then apply to the Tax Commissioner for a refund:

33 (1) The United States or agency thereof: *Provided*, That if
34 the United States government, or agency or instrumentality
35 thereof, does not pay the seller the tax imposed by section five
36 of this article on a purchase of motor fuel, the person selling tax
37 previously paid motor fuel to the United States government, or
38 its agencies or instrumentalities, may claim a refund of the flat
39 rate component of tax imposed by section five of this article on
40 those sales;

41 (2) A county government or unit or agency thereof;

42 (3) A municipal government or any agency thereof;

43 (4) A county board of education;

44 (5) An urban mass transportation authority created pursuant
45 to the provisions of article twenty-seven, chapter eight of this
46 code;

47 (6) A municipal, county, state or federal civil defense or
48 emergency service program pursuant to a government contract
49 for use in conjunction therewith or to a person who is required
50 to maintain an inventory of motor fuel for the purpose of the
51 program: *Provided*, That motor fueling facilities used for these
52 purposes are not capable of fueling motor vehicles and the

53 person in charge of the program has in his or her possession a
54 letter of authority from the Tax Commissioner certifying his or
55 her right to the exemption. In order for this exemption to apply,
56 motor fuel sold under this subdivision and subdivisions (1)
57 through (5), inclusive, of this subsection shall be used in vehicles
58 or equipment owned and operated by the respective government
59 entity or government agency or authority;

60 (7) All invoiced gallons of motor fuel purchased by a
61 licensed exporter and subsequently exported from this state to
62 any other state or nation: *Provided*, That the exporter has paid
63 the applicable motor fuel tax to the destination state or nation
64 prior to claiming this refund or the exporter has reported to the
65 destination state or nation that the motor fuel was sold in a
66 transaction not subject to tax in that state or nation. A refund
67 may not be granted on motor fuel which is transported and
68 delivered outside this state in the motor fuel supply tank of a
69 highway vehicle;

70 (8) All gallons of motor fuel used and consumed in
71 stationary off-highway turbine engines;

72 (9) All gallons of fuel used for heating any public or private
73 dwelling, building or other premises;

74 (10) All gallons of fuel used for boilers;

75 (11) All gallons of motor fuel used as a dry cleaning solvent
76 or commercial or industrial solvent;

77 (12) All gallons of motor fuel used as lubricants, ingredients
78 or components of a manufactured product or compound;

79 (13) All gallons of motor fuel sold for use or used as a motor
80 fuel for commercial watercraft;

81 (14) All gallons of motor fuel sold for use or consumed in
82 railroad diesel locomotives;

83 (15) All gallons of motor fuel purchased in quantities of
84 twenty-five gallons or more for use as a motor fuel for internal
85 combustion engines not operated upon highways of this state;

86 (16) All gallons of motor fuel purchased in quantities of
87 twenty-five gallons or more and used to power a power take-off
88 unit on a motor vehicle. When a motor vehicle with auxiliary
89 equipment uses motor fuel and there is no auxiliary motor for the
90 equipment or separate tank for a motor, the person claiming the
91 refund may present to the Tax Commissioner a statement of his
92 or her claim and is allowed a refund for motor fuel used in
93 operating a power take-off unit on a cement mixer truck or
94 garbage truck equal to twenty-five percent of the tax levied by
95 this article paid on all motor fuel used in such a truck;

96 (17) Motor fuel used by a person regularly operating a
97 vehicle under a certificate of public convenience and necessity
98 or under a contract carrier permit for transportation of persons
99 when purchased in an amount of twenty-five gallons or more:
100 *Provided*, That the amount refunded is equal to \$0.06 per gallon:
101 *Provided, however*, That the gallons of motor fuel have been
102 consumed in the operation of urban and suburban bus lines and
103 the majority of passengers use the bus for traveling a distance
104 not exceeding forty miles, measured one way, on the same day
105 between their places of abode and their places of work, shopping
106 areas or schools; and

107 (18) All gallons of motor fuel that are not otherwise exempt
108 under subdivisions (1) through (6), inclusive, of this subsection
109 and that are purchased and used by any bona fide volunteer fire
110 department, nonprofit ambulance service or emergency rescue
111 service that has been certified by the municipality or county

112 wherein the bona fide volunteer fire department, nonprofit
113 ambulance service or emergency rescue service is located.

114 (d) *Refundable exemptions from variable rate component of*
115 *tax.* – Any of the following persons may claim an exemption
116 from the variable rate component of the tax levied by section
117 five of this article on the purchase and use of motor fuel by first
118 paying the tax levied by this article and then applying to the Tax
119 Commissioner for a refund.

120 (1) The United States or agency thereof: *Provided*, That if
121 the United States government, or agency or instrumentality
122 thereof, does not pay the seller the tax imposed by section five
123 of this article on any purchase of motor fuel, the person selling
124 tax previously paid motor fuel to the United States government,
125 or its agencies or instrumentalities, may claim a refund of the
126 variable rate of tax imposed by section five of this article on
127 those sales.

128 (2) This state and its institutions;

129 (3) A county government or unit or agency thereof;

130 (4) A municipal government or agency thereof;

131 (5) A county board of education;

132 (6) An urban mass transportation authority created pursuant
133 to the provisions of article twenty-seven, chapter eight of this
134 code;

135 (7) A municipal, county, state or federal civil defense or
136 emergency service program pursuant to a government contract
137 for use in conjunction therewith, or to a person who is required
138 to maintain an inventory of motor fuel for the purpose of the
139 program: *Provided*, That fueling facilities used for these
140 purposes are not capable of fueling motor vehicles and the

141 person in charge of the program has in his or her possession a
142 letter of authority from the Tax Commissioner certifying his or
143 her right to the exemption;

144 (8) A bona fide volunteer fire department, nonprofit
145 ambulance service or emergency rescue service that has been
146 certified by the municipality or county where the bona fide
147 volunteer fire department, nonprofit ambulance service or
148 emergency rescue service is located; or

149 (9) All invoiced gallons of motor fuel purchased by a
150 licensed exporter and subsequently exported from this state to
151 any other state or nation: *Provided*, That the exporter has paid
152 the applicable motor fuel tax to the destination state or nation
153 prior to claiming this refund. A refund may not be granted on
154 motor fuel which is transported and delivered outside this state
155 in the motor fuel supply tank of a highway vehicle.

156 (e) The provision in subdivision (9), subsection (a), section
157 nine, article fifteen of this chapter that exempts as a sale for
158 resale those sales of gasoline and special fuel by a distributor or
159 importer to another distributor does not apply to sales of motor
160 fuel under this article.

CHAPTER 171

(S. B. 331 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed March 5, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §11-15-16 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §11-21-74

of said code, all relating to providing accelerated payment of consumers sales and service and use tax and employee withholding taxes for certain taxpayers and employers.

Be it enacted by the Legislature of West Virginia:

That §11-15-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-21-74 of said code be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-16. Tax return and payment; exception; requiring a combined return.

1 (a) *Payment of tax.* — Subject to the exceptions set forth in
2 subsection (b) of this section, the taxes levied by this article are
3 due and payable in monthly installments, on or before the
4 twentieth day of the month next succeeding the month in which
5 the tax accrued, except as otherwise provided in this article.

6 (b) *Combined return required.* —

7 (1) The Tax Commissioner shall, no later than June 15,
8 2008, design a return that combines filing of the taxes levied by
9 this article and article fifteen-a of this chapter.

10 (2) Beginning July 1, 2008, each person required to file a
11 return required by this article or article fifteen-a of this chapter,
12 or both this article and article fifteen-a of this chapter, shall
13 complete and file the return required by the Tax Commissioner.

14 (3) The Tax Commissioner may promulgate rules pursuant
15 to article three, chapter twenty-nine-a of this code and otherwise
16 use any combination of notices, forms and instructions he or she
17 determines necessary to implement the use of the form required
18 by subsection (c) of this section.

19 (c) *Tax return.* — The taxpayer shall, on or before the
20 twentieth day of each month, make out and mail to the Tax
21 Commissioner a return for the preceding month, in the form
22 prescribed by the Tax Commissioner, showing:

23 (1) The total gross proceeds of the vendor's business for the
24 preceding month;

25 (2) The gross proceeds of the vendor's business upon which
26 the tax is based;

27 (3) The amount of the tax for which the vendor is liable; and

28 (4) Any further information necessary in the computation
29 and collection of the tax which the Tax Commissioner may
30 require, except as otherwise provided in this article or article
31 fifteen-b of this chapter.

32 (d) *Remittance to accompany return.* — Except as otherwise
33 provided in this article or article fifteen-b of this chapter, a
34 remittance for the amount of the tax shall accompany the return.

35 (e) *Deposit of collected tax.* — Tax collected by the Tax
36 Commissioner shall be deposited as provided in section thirty of
37 this article, except that:

38 (1) Tax collected on sales of gasoline and special fuel shall
39 be deposited in the State Road Fund; and

40 (2) Any sales tax collected by the Alcohol Beverage Control
41 Commissioner from persons or organizations licensed under
42 authority of article seven, chapter sixty of this code shall be paid
43 into a revolving fund account in the State Treasury, designated
44 the Drunk Driving Prevention Fund, to be administered by the
45 Commission on Drunk Driving Prevention, subject to
46 appropriations by the Legislature.

47 (f) *Return to be signed.* — A return shall be signed by the
48 taxpayer or the taxpayer's duly authorized agent, when a paper
49 return is prepared and filed. When the return is filed
50 electronically, the return shall include the digital mark or digital
51 signature, as defined in article three, chapter thirty-nine-a of this
52 code, or the personal identification number of the taxpayer, or
53 the taxpayer's duly authorized agent, made in accordance with
54 any procedural rule that may be promulgated by the Tax
55 Commissioner.

56 (g) *Accelerated payment.* —

57 (1) Notwithstanding any other provision of this code to the
58 contrary, after June 30, 2014, taxpayers whose average monthly
59 payment of the taxes levied by this article and article fifteen-a of
60 this chapter during the previous calendar year exceeds \$100,000,
61 shall remit the tax attributable to the first fifteen days of June
62 each year by June 20.

63 (2) For purposes of complying with subdivision (1) of this
64 subsection, the taxpayer shall remit an amount equal to the
65 amount of tax imposed by this article and article fifteen-a of this
66 chapter on actual taxable sales of tangible personal property and
67 custom software and sales of taxable services during the first
68 fifteen days of June or, at the taxpayer's election, the taxpayer
69 may remit an amount equal to fifty percent of the taxpayer's
70 liability for tax under this article on taxable sales of tangible
71 personal property and custom software and sales of taxable
72 services made during the preceding month of May.

73 (3) For a business which has not been in existence for a full
74 calendar year, the total tax due from the business during the prior
75 calendar year shall be divided by the number of months,
76 including fractions of a month, that it was in business during the
77 prior calendar year; and if that amount exceeds \$100,000, the tax
78 attributable to the first fifteen days of June each year shall be
79 remitted by June 20 as provided in subdivision (2) of this
80 subsection.

81 (4) When a taxpayer required to make an advanced payment
82 of tax under subdivision (1) of this subsection makes out its
83 return for the month of June, which is due by July 20, the
84 taxpayer may claim as a credit against liability under this article
85 for tax on taxable transactions during the month of June the
86 amount of the advanced payment of tax made under subdivision
87 (1) of this subsection.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Filing of employer's withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employer.

1 (a) *General.* — Every employer required to deduct and
2 withhold tax under this article shall, for each calendar quarter, on
3 or before the last day of the month following the close of the
4 calendar quarter, file a withholding return as prescribed by the
5 Tax Commissioner and pay over to the Tax Commissioner the
6 taxes required to be deducted and withheld. Where the average
7 quarterly amount deducted and withheld by any employer is less
8 than \$150 and the aggregate for the calendar year can reasonably
9 be expected to be less than \$600, the Tax Commissioner may by
10 rule permit an employer to file an annual return and pay over to
11 the Tax Commissioner the taxes deducted and withheld on or
12 before the last day of the month following the close of the
13 calendar year. The Tax Commissioner may, by nonemergency
14 legislative rules promulgated pursuant to article three, chapter
15 twenty-nine-a of this code, change the minimum amounts
16 established by this subsection. The Tax Commissioner may, if he
17 or she determines necessary for the protection of the revenues,
18 require any employer to make the return and pay to him or her
19 the tax deducted and withheld at any time or from time to time.
20 Notwithstanding the provisions of this subsection, after
21 December 31, 2008, every employer required to deduct and
22 withhold tax under this article shall file a withholding return as

23 prescribed by the Tax Commissioner and pay over to the Tax
24 Commissioner the taxes required to be deducted and withheld,
25 in accordance with the procedures established by the Internal
26 Revenue Service pursuant to Section 3402 of the Internal
27 Revenue Code.

28 (b) *Monthly returns and payments of withheld tax after*
29 *December 31, 2000.* — Notwithstanding the provisions of
30 subsection (a) of this section, after December 31, 2000, every
31 employer required to deduct and withhold tax under this article
32 shall, for each of the first eleven months of the calendar year, by
33 the twentieth day of the succeeding month, and for the last
34 calendar month of the year, by the last day of the succeeding
35 month, file a withholding return as prescribed by the Tax
36 Commissioner and pay over to the Tax Commissioner the taxes
37 required to be deducted and withheld, if the withheld taxes
38 aggregate \$250 or more for the month, except any employer with
39 respect to whom the Tax Commissioner may have by rule
40 provided otherwise in accordance with the provisions of
41 subsection (a) of this section. Notwithstanding the provisions of
42 this subsection, after December 31, 2008, every employer
43 required to deduct and withhold tax under this article shall file
44 a withholding return as prescribed by the Tax Commissioner and
45 pay over to the Tax Commissioner the taxes required to be
46 deducted and withheld. The due dates for returns and payments
47 shall be established by the Tax Commissioner to match as
48 closely as practicable the due dates in effect for federal income
49 tax purposes, in accordance with the procedures established by
50 the Internal Revenue Service pursuant to Section 3402 of the
51 Internal Revenue Code.

52 (c) *Annual returns and payments of withheld tax of certain*
53 *domestic and household employees.* — Employers of domestic
54 and household employees whose withholdings of federal income
55 tax are annually paid and reported by the employer pursuant to
56 the filing of Schedule H of federal form 1040, 1040A, 1040NR,

57 1040NR-EZ, 1040SS or 1041 may, on or before January 31 next
58 succeeding the end of the calendar year for which withholdings
59 are deducted and withheld, file an annual withholding return
60 with the Tax Commissioner and annually remit to the Tax
61 Commissioner West Virginia personal income taxes deducted
62 and withheld for the employees. The Tax Commissioner may
63 promulgate legislative or other rules pursuant to article three,
64 chapter twenty-nine-a of this code for implementation of this
65 subsection. Notwithstanding the provisions of this subsection,
66 after December 31, 2008, every employer required to deduct and
67 withhold tax under this article shall file a withholding return as
68 prescribed by the Tax Commissioner and pay over to the Tax
69 Commissioner the taxes required to be deducted and withheld.
70 The due dates for annual returns and payments shall be
71 established by the Tax Commissioner to match as closely as
72 practicable the due dates in effect for federal income tax
73 purposes in accordance with the procedures established by the
74 Internal Revenue Service pursuant to Section 3402 of the
75 Internal Revenue Code.

76 (d) *Deposit in trust for Tax Commissioner.* — Whenever any
77 employer fails to collect, truthfully account for or pay over the
78 tax, or to make returns of the tax as required in this section, the
79 Tax Commissioner may serve a notice requiring the employer to
80 collect the taxes which become collectible after service of the
81 notice, to deposit the taxes in a bank approved by the Tax
82 Commissioner, in a separate account, in trust for and payable to
83 the Tax Commissioner and to keep the amount of the tax in the
84 separate account until payment over to the Tax Commissioner.
85 The notice remains in effect until a notice of cancellation is
86 served by the Tax Commissioner.

87 (e) *Accelerated payment.* —

88 (1) Notwithstanding the provisions of subsections (a) and (b)
89 of this section, after June 30, 2014, every employer required to
90 deduct and withhold tax whose average payment per calendar

91 month for the preceding calendar year under subsection (b) of
92 this section exceeded \$100,000 shall remit the tax attributable to
93 the first fifteen days of June each year by June 23.

94 (2) For purposes of complying with subdivision (1) of this
95 subsection, the employer shall remit an amount equal to the
96 withholding tax due under this article on employee
97 compensation subject to withholding tax payable or paid to
98 employees for the first fifteen days of June or, at the employer's
99 election, the employer may remit an amount equal to fifty
100 percent of the employer's liability for withholding tax under this
101 article on compensation payable or paid to employees for the
102 preceding month of May.

103 (3) For an employer which has not been in business for a full
104 calendar year, the total amount the employer was required to
105 deduct and withhold under subsection (b) of this section for the
106 prior calendar year shall be divided by the number of months,
107 including fractions of a month, that it was in business during the
108 prior calendar year and if that amount exceeds \$100,000, the
109 employer shall remit the tax attributable to the first fifteen days
110 of June each year by June 23, as provided in subdivision (2) of
111 this subsection.

112 (4) When an employer required to make an advanced
113 payment of withholding tax under subdivision (1) of this
114 subsection makes out its return for the month of June, which is
115 due by July 20, that employer may claim as a credit against its
116 liability under this article for tax on employee compensation
117 paid or payable for employee services rendered during the month
118 of June the amount of the advanced payment of tax made under
119 subdivision (1) of this subsection.

120 (f) The amendments to this section enacted in the year 2006
121 are effective for tax years beginning after December 31, 2005.

122 (g) An annual reconciliation of West Virginia personal
123 income tax withheld shall be submitted by the employer by

124 February 28 following the close of the calendar year, together
125 with Tax Division copies of all withholding tax statements for
126 that preceding calendar year. The reconciliation shall be
127 accompanied by a list of the amounts of income withheld for
128 each employee in such form as the Tax Commissioner prescribes
129 and shall be filed separately from the employer's monthly or
130 quarterly return.

131 (h) Any employer required to file a withholding return for
132 two hundred fifty or more employees shall file its return using
133 electronic filing as defined in section fifty-four of this article:
134 *Provided*, That for any tax period beginning after December 31,
135 2010, any employer with fifty or more employees shall file its
136 return using electronic filing as defined in section fifty-four of
137 this article. An employer that is required to file electronically but
138 does not do so is subject to a penalty in the amount of \$25 per
139 employee for whom the return was not filed electronically,
140 unless the employer shows that the failure is due to a technical
141 inability to comply.

CHAPTER 172

**(H. B. 4549 - By Delegates Manchin, Moore,
Eldridge and Skaff)
[By Request of the Alcohol Beverage
Control Commissioner]**

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §11-16-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-16-17a; and to amend and reenact §11-16-20 and §11-16-21 of said code, all relating to the regulation of

nonintoxicating beer brewers and distributors, agreements, networks, products, brands and extensions of a line of brands; permitting the commissioner to investigate, review and approve or deny franchise agreements, labels, brands and line extensions; providing hearings; extending certain dates; establishing nonintoxicating beer, resident brewers, distributors, franchise distributor networks and line extensions standards; defining terms; providing sanctions; and authorizing rule making.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 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 §11-16-17a; and that §11-16-20 and §11-16-21 of said code be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context
2 clearly requires differently:

3 (1) "Brand" means a nonintoxicating beer product
4 manufactured, brewed, mixed, concocted, blended, bottled or
5 otherwise produced, or imported or transhipped by a brewer or
6 manufacturer, the labels of which have been registered and
7 approved by the commissioner that is being offered for sale or
8 sold in West Virginia by a distributor who has been appointed in
9 a valid franchise agreement or a valid amendment thereto.

10 (2) "Brewer" or "manufacturer" means any person
11 manufacturing, otherwise producing or importing or
12 transshipping nonintoxicating beer or nonintoxicating craft beer
13 for sale at wholesale to any licensed distributor. Brewer or
14 manufacturer may be used interchangeably throughout this

15 article. A brewer may obtain only one brewer's license for its
16 nonintoxicating beer or nonintoxicating craft beer.

17 (3) "Brewpub" means a place of manufacture of
18 nonintoxicating beer owned by a resident brewer, subject to
19 federal and state regulations and guidelines, a portion of which
20 premises are designated for retail sales of nonintoxicating beer
21 or nonintoxicating craft beer by the resident brewer owning the
22 brewpub.

23 (4) "Class A retail license" means a retail license permitting
24 the retail sale of liquor at a freestanding liquor retail outlet
25 licensed pursuant to chapter sixty of this code.

26 (5) "Commissioner" means the West Virginia Alcohol
27 Beverage Control Commissioner.

28 (6) "Distributor" means and includes any person jobbing or
29 distributing nonintoxicating beer or nonintoxicating craft beer to
30 retailers at wholesale and whose warehouse and chief place of
31 business shall be within this state. For purposes of a distributor
32 only, the term "person" means and includes an individual, firm,
33 trust, partnership, limited partnership, limited liability company,
34 association or corporation. Any trust licensed as a distributor or
35 any trust that is an owner of a distributor licensee, and the trustee
36 or other persons in active control of the activities of the trust
37 relating to the distributor license, is liable for acts of the trust or
38 its beneficiaries relating to the distributor license that are
39 unlawful acts or violations of article eleven of this chapter
40 notwithstanding the liability of trustees in article ten, chapter
41 forty-four-d of this code.

42 (7) "Franchise agreement" means the written agreement
43 between a brewer and a distributor that is identical as to terms
44 and conditions between the brewer and all its distributors, which
45 agreement has been approved by the commissioner. The

46 franchise agreement binds the parties so that a distributor,
47 appointed by a brewer, may distribute all of the brewer's
48 nonintoxicating beer products, brands or family of brands
49 imported and offered for sale in West Virginia, including, but
50 not limited to, existing brands, line extensions and new brands
51 all in the brewer's assigned territory for the distributor. All
52 brands and line extensions being imported or offered for sale in
53 West Virginia must be listed by the brewer in the franchise
54 agreement or a written amendment to the franchise agreement.
55 A franchise agreement may be amended by mutual written
56 agreement of the parties as approved by the commissioner with
57 identical terms and conditions for a brewer and all of its
58 distributors. Any approved amendment to the franchise
59 agreement becomes a part of the franchise agreement. A brewer
60 and a distributor may mutually agree in writing to cancel a
61 franchise agreement. A distributor terminated by a brewer as
62 provided in this article and the promulgated rules no longer has
63 a valid franchise agreement. If a brewer has reached an
64 agreement to cancel a distributor or has terminated a distributor,
65 then a brewer may appoint a successor distributor who accedes
66 to all the rights of the cancelled or terminated distributor.

67 (8) "Franchise distributor network" means the distributors
68 who have entered into a binding written franchise agreement,
69 identical as to terms and conditions, to distribute nonintoxicating
70 beer products, brands and line extensions in an assigned territory
71 for a brewer. A brewer may only have one franchise distributor
72 network: *Provided*, That a brewer that has acquired the
73 manufacturing, bottling or other production rights for the sale of
74 nonintoxicating beer at wholesale from a selling brewer as
75 specified in subdivision (2), subsection (a), section twenty-one
76 of this article shall continue to maintain and be bound by the
77 selling brewer's separate franchise distributor's network for any
78 of its existing brands, line extensions and new brands.

79 (9) “Freestanding liquor retail outlet” means a retail outlet
80 that sells only liquor, beer, nonintoxicating beer and other
81 alcohol-related products, as defined pursuant to section four,
82 article three-a, chapter sixty of this code.

83 (10) “Growler” means a glass ceramic or metal container or
84 jug, capable of being securely sealed, utilized by a brewpub for
85 purposes of off-premise sales of nonintoxicating beer or
86 nonintoxicating craft beer for personal consumption not on a
87 licensed premise and not for resale.

88 (11) “Line extension” means any nonintoxicating beer
89 product that is an extension of brand or family of brands that is
90 labeled, branded, advertised, marketed, promoted or offered for
91 sale with the intent or purpose of being manufactured, imported,
92 associated, contracted, affiliated or otherwise related to a
93 brewer’s existing brand through the use of a brewer, its
94 subsidiaries, parent entities, contracted entities, affiliated entities
95 or other related entities’. In determining whether a
96 nonintoxicating beer product is a line extension, the
97 commissioner may consider, but is not limited to, the following
98 factors: name or partial name; trade name or partial trade name;
99 logos; copyrights; trademarks or trade design; product codes;
100 advertising promotion or pricing.

101 (12) “Nonintoxicating beer” means all natural cereal malt
102 beverages or products of the brewing industry commonly
103 referred to as beer, lager beer, ale and all other mixtures and
104 preparations produced by the brewing industry, including malt
105 coolers and nonintoxicating craft beers with no caffeine infusion
106 or any additives masking or altering the alcohol effect containing
107 at least one half of one percent alcohol by volume, but not more
108 than nine and six-tenths of alcohol by weight, or twelve percent
109 by volume, whichever is greater. The word “liquor” as used in
110 chapter sixty of this code does not include or embrace

111 nonintoxicating beer nor any of the beverages, products,
112 mixtures or preparations included within this definition.

113 (13) “Nonintoxicating beer sampling event” means an event
114 approved by the commissioner for a Class A retail Licensee to
115 hold a nonintoxicating beer sampling authorized pursuant to
116 section eleven-a of this article.

117 (14) “Nonintoxicating beer sampling day” means any days
118 and hours of the week where Class A retail licensees may sell
119 nonintoxicating beer pursuant to subdivision (1), subsection (a),
120 section eighteen of this article, and is approved, in writing, by
121 the commissioner to conduct a nonintoxicating beer sampling
122 event.

123 (15) “Nonintoxicating craft beer” means any beverage
124 obtained by the natural fermentation of barley, malt, hops or any
125 other similar product or substitute and containing not less than
126 one half of one percent by volume and not more than twelve
127 percent alcohol by volume or nine and six-tenths percent alcohol
128 by weight with no caffeine infusion or any additives masking or
129 altering the alcohol effect.

130 (16) “Original container” means the container used by the
131 brewer at the place of manufacturing, bottling or otherwise
132 producing nonintoxicating beer for sale at wholesale.

133 (17) “Person” means and includes an individual, firm,
134 partnership, limited partnership, limited liability company,
135 association or corporation.

136 (18) “Resident brewer” means any brewer or manufacturer
137 of nonintoxicating beer or nonintoxicating craft beer whose
138 principal place of business and manufacture is located in the
139 State of West Virginia and which does not brew or manufacture
140 more than twenty-five thousand barrels of nonintoxicating beer
141 or nonintoxicating craft beer annually, and does not self-

142 distribute more than ten thousand barrels thereof in the State of
143 West Virginia annually.

144 (19) "Retailer" means any person selling, serving, or
145 otherwise dispensing nonintoxicating beer and all products
146 regulated by this article, including, but not limited to, malt
147 coolers at his or her established and licensed place of business.

148 (20) "Tax Commissioner" means the Tax Commissioner of
149 the State of West Virginia or the commissioner's designee.

**§11-16-17a. Commissioner to investigate, review and approve or
deny franchise agreements, labels, brands and line
extensions.**

1 (a) The commissioner shall investigate and review:

2 (1) All franchise agreements and any amendments to a
3 franchise agreement to verify compliance with this article and
4 the promulgated rules.

5 (2) The registration of all container labels for brands
6 manufactured, imported or sold in West Virginia.

7 (3) The registration of all brands and line extensions with the
8 commissioner that are the subject of a franchise agreement or an
9 amendment to a franchise agreement.

10 (4) The appointment of all brands or line extensions to a
11 distributor in a brewer's established franchise distributor
12 network and to that distributor's assigned territory from the
13 brewer.

14 (5) The appointment of all brands or line extensions acquired
15 by a brewer as either an acquiring brewer, successor brewer and
16 also any successor entities of a brewer, as specified in
17 subdivision (3), subsection (a), section twenty-one of this article,

18 to the distributor in the selling brewer's established franchise
19 distributor network and to that distributor's assigned territory.

20 (b) The commissioner's investigation and review under
21 subsection (a) of this section may include, but is not limited to:
22 the brewer, its subsidiaries, parent entities, contracted entities,
23 affiliated entities, associated entities or any other related entities,
24 the brewer's corporate structure, the nature of the relatedness of
25 various entities, ownership, trade names or partial trade names,
26 logos, copyrights, trademarks or trade design, product codes,
27 marketing and advertising, promotion or pricing.

28 (c) The commissioner may approve or deny any item listed
29 in subsection (a) of this section as determined by the
30 commissioner in accordance with this article, the promulgated
31 rules as the facts and circumstances dictate.

32 (d) Any brewer adversely affected by a denial as specified in
33 subdivision (3) or (4), subsection (a) of this section, may request,
34 in writing, a final written determination from the commissioner.

35 (e) Upon receipt of final determination as provided in
36 subsection (d), a brewer may request an administrative hearing
37 by filing a written petition and as otherwise required per section
38 twenty-four of this article and the rules promulgated by the
39 commissioner. Upon filing a written petition, the brewer shall
40 file a \$1,000 hearing deposit, via certified check or money order,
41 to cover the costs of the hearing. Such certified check or money
42 order shall be made payable to the commissioner. In any such
43 hearing held by the request of a brewer, the burden of proof is on
44 the brewer and the standard of review for the administrative
45 hearing is by a preponderance of the evidence.

§11-16-20. Unlawful acts of brewers or manufacturers; criminal penalties.

1 (a) It is unlawful:

2 (1) For any brewer or manufacturer, or any other person,
3 firm or corporation engaging in the business of selling
4 nonintoxicating beer, ale or other malt beverage or cooler to a
5 distributor or wholesaler, to discriminate in price, allowance,
6 rebate, refund, commission, discount or service between
7 distributors or wholesalers licensed in West Virginia.
8 “Discriminate,” as used in this section, shall mean granting of
9 more favorable prices, allowances, rebates, refunds,
10 commissions, discounts or services to one West Virginia
11 distributor or wholesaler than to another.

12 (2) For any brewer or manufacturer, or any other person,
13 firm or corporation engaged in the business of selling
14 nonintoxicating beer, ale or other malt beverage or malt cooler
15 to a distributor or wholesaler, to sell or deliver nonintoxicating
16 beer, ale or other malt beverage or malt cooler to any licensed
17 distributor or wholesaler unless and until such brewer,
18 manufacturer, person, firm or corporation, as the case may be,
19 shall have filed the brewery or dock price of such beer, ale or
20 other malt beverage or malt cooler, by brands and container
21 sizes, with the commissioner. The pricing submitted to the
22 commissioner shall also be submitted contemporaneously to the
23 licensed distributor or wholesaler. No price schedule shall be put
24 into effect until ninety days after receipt of same by the
25 commissioner and shall be submitted on or before the following
26 quarterly dates of January 1, April 1, July 1 and October 1 of the
27 calendar year to be effective: *Provided*, That any price shall
28 remain in effect not less than ninety days.

29 (3) For any brewer or manufacturer, resident brewer or any
30 other person, firm or corporation engaged in the business of
31 selling nonintoxicating beer, ale or other malt beverage or malt
32 cooler to a distributor or wholesaler to sell, offer for sale or
33 transport to West Virginia any nonintoxicating beer, ale or other
34 malt beverage or malt cooler unless it has first registered its

35 labels and assigned to the appropriate distributor per an equitable
36 franchise agreement, all as approved by the commissioner.

37 (4) For any brewer or manufacturer, or any other person,
38 firm or corporation engaged in the business of selling
39 nonintoxicating beer, ale or other malt beverage or malt cooler
40 to provide, furnish, transport or sell its nonintoxicating beer
41 products, brands and line extensions to any person or distributor
42 other than the appointed distributor per the franchise agreement
43 and established in the franchise distributor network in the
44 territory assigned to that appointed distributor.

45 (5) For any brewer or manufacturer, or any other person,
46 firm or corporation engaged in the business of selling
47 nonintoxicating beer, ale or other malt beverage or malt cooler
48 to provide, furnish, transport or sell its nonintoxicating beer
49 products, brands and line extensions that have been denied by
50 the commissioner.

51 (6) For any resident brewer that chooses to utilize a franchise
52 agreement and a franchise distributor network, either in addition
53 to or in conjunction with its limited quantity of nonintoxicating
54 beer for self-distribution, to violate this section and the resident
55 brewer is subject to the sanctions in subsections (b) and (c) of
56 this section.

57 (b) The violation of any provision of this section by any
58 brewer or manufacturer shall constitute grounds for the forfeiture
59 of the bond furnished by such brewer or manufacturer in
60 accordance with the provisions of section twelve of this article.

61 (c) The violation of this section by any brewer or
62 manufacturer is grounds for sanctions as determined by the
63 commissioner in accordance with sections twenty-three and
64 twenty-four of this article and the rules promulgated by the
65 commissioner.

66 (d) Any resident brewer that chooses to utilize a franchise
67 agreement and a franchise distributor network, either in addition
68 to or in conjunction with its limited quantity of nonintoxicating
69 beer for self-distribution, shall be treated as a brewer under this
70 article and the applicable promulgated rules.

**§11-16-21. Requirements as to franchise agreements between
brewers and distributors; transfer of franchise by
distributor; franchise distributor network; notice
thereof to brewer; arbitration of disputes as to such
transfer; violations and penalties; limitation of
section.**

1 (a) On and after July 1, 1971, it shall be unlawful for any
2 brewer to transfer or deliver to a distributor any nonintoxicating
3 beer, ale or other malt beverage or malt cooler without first
4 having entered into an equitable franchise agreement with such
5 distributor, which franchise agreement and any amendments to
6 that agreement shall be in writing, shall be identical as to terms
7 and conditions with all other franchise agreements and any
8 amendments between such brewer and its other distributors in
9 this state in its approved franchise distributor network, all as
10 approved by the commissioner and which shall contain a
11 provision in substance or effect as follows:

12 (1) The brewer recognizes that the distributor is free to
13 manage his or her business in the manner the distributor deems
14 best and that this prerogative vests in the distributor, subject to
15 the provisions of this article, the exclusive right: (A) To establish
16 his or her selling prices; (B) to have the distribution rights to the
17 brands and line extensions of nonintoxicating beer products that
18 are bound by franchise agreements specifying a distributor's
19 assigned territory and that are assigned to a franchise distributor
20 network, and, further, that the distributor may determine which
21 brands and line extensions of nonintoxicating beer products he
22 or she wishes to handle; and (C) to determine the efforts and

23 resources which the distributor will exert to develop and promote
24 the sale of the brewer's nonintoxicating beer products handled
25 by the distributor. However, since the brewer's nonintoxicating
26 beer products, brands and line extensions shall only be handled
27 by the distributor with a franchise agreement for a certain
28 territory in West Virginia as a part of the brewer's overall
29 franchise distributor network in West Virginia and will not be
30 sold by other distributors in the territory, the brewer is dependent
31 upon the appointed distributor alone for the sale of such products
32 in the assigned territory. Consequently, the brewer expects that
33 the distributor will price competitively the nonintoxicating beer
34 products handled by the distributor, devote reasonable effort and
35 resources to the sale of such products and maintain a satisfactory
36 sales level.

37 (2) The franchise agreement binds the parties so that a
38 distributor, appointed by a brewer, may distribute all of the
39 brewer's nonintoxicating beer products, brands or family of
40 brands imported and offered for sale in West Virginia, including,
41 but not limited to: existing brands, line extensions and new
42 brands in the brewer's assigned territory for the distributor. All
43 brands and line extensions being imported or offered for sale in
44 West Virginia must be listed by the brewer in the franchise
45 agreement or a written amendment to the franchise agreement.
46 A franchise agreement may be amended by mutual written
47 agreement of the parties as approved by the commissioner with
48 identical terms and conditions for a brewer and all of its
49 distributors. Any approved amendment to the franchise
50 agreement becomes a part of the franchise agreement.

51 (3) Whenever the manufacturing, bottling or other
52 production rights for the sale of nonintoxicating beer at
53 wholesale of any brewer is acquired by another brewer, the
54 franchised distributor and franchise distributor network of the
55 selling brewer shall be entitled to continue distributing the
56 selling brewer's nonintoxicating beer products as authorized in

57 the franchised distributor's existing franchise agreement and the
58 acquiring brewer shall market all the selling brewer's
59 nonintoxicating beer products through said franchised distributor
60 and franchise distributor network as though the acquiring brewer
61 had made the franchise agreement and the acquiring brewer may
62 terminate said franchise agreement only in accordance with
63 subdivision (2), subsection (b) of this section: *Provided*, That the
64 acquiring brewer may distribute any of its other nonintoxicating
65 beer products through its duly authorized franchises and
66 franchise distributor network in accordance with all other
67 provisions of this section. Further, this subdivision shall apply to
68 the brewer, successor brewers and also any successor entities of
69 a brewer who shall be bound by the existing franchise agreement
70 and the franchise distributor network, unless all the parties
71 mutually agree, in writing, to change or cancel the existing
72 franchise agreement and franchise distributor network or unless
73 the brewer terminates a distributor as provided in this article and
74 the promulgated rules.

75 (b) It shall also be unlawful:

76 (1) For any brewer, resident brewer or distributor, or any
77 officer, agent or representative of any brewer, resident brewer or
78 distributor, to coerce or persuade or attempt to coerce or
79 persuade any person licensed to sell, distribute or job
80 nonintoxicating beer, ale or other malt beverage or malt cooler
81 at wholesale or retail, to enter into any contracts or agreements,
82 whether written or oral, or to take any other action which will
83 violate or tend to violate any provision of this article or any of
84 the rules, regulations, standards, requirements or orders of the
85 commissioner promulgated as provided in this section;

86 (2) For any brewer, resident brewer or distributor, or any
87 officer, agent or representative of any brewer, resident brewer or
88 distributor, to cancel, terminate or rescind without due regard for
89 the equities of such brewer, resident brewer or distributor and

90 without just cause, any franchise agreement, whether oral or
91 written, and in the case of an oral franchise agreement, whether
92 the same was entered into on or before June 11, 1971, and in the
93 case of a franchise agreement in writing, whether the same was
94 entered into on, before or subsequent to July 1, 1971. The
95 cancellation, termination or rescission of any such franchise
96 agreement shall not become effective for at least ninety days
97 after written notice of such cancellation, termination or
98 rescission has been served on the affected party and the
99 Commissioner by certified mail, return receipt requested:
100 *Provided*, That said ninety-day period and said notice of
101 cancellation, termination or rescission shall not apply if such
102 cancellation, termination or rescission is agreed to in writing by
103 both the brewer and the distributor involved.

104 (c) In the event a distributor desires to sell or transfer his or
105 her franchise and assigned territory in the brewer or resident
106 brewer's franchise distributor network, such distributor shall
107 give to the brewer, or resident brewer at least sixty days' notice
108 in writing of such impending sale or transfer and the identity of
109 the person, firm or corporation to whom such sale or transfer is
110 to be made and such other information as the brewer or resident
111 brewer may reasonably request. Such notice shall be made upon
112 forms and contain such additional information as the
113 Commissioner by rule or regulation shall prescribe. A copy of
114 such notice shall be forwarded to the commissioner. The brewer
115 or resident brewer shall be given sixty days to approve or
116 disapprove of such sale or transfer. If the brewer or resident
117 brewer neither approves nor disapproves thereof within sixty
118 days of the date of receipt of such notice, the sale or transfer of
119 such franchise shall be deemed to be approved by such brewer
120 or resident brewer. In the event the brewer or resident brewer
121 shall disapprove of the sale or transfer to the prospective
122 franchisee, transferee or purchaser, such brewer or resident
123 brewer shall give notice to the distributor of that fact in writing,
124 setting forth the reason or reasons for such disapproval. The

125 approval shall not be unreasonably withheld by the brewer or
126 resident brewer. The fact that the prospective franchisee,
127 transferee or purchaser has not had prior experience in the
128 nonintoxicating beer business or beer business shall not be
129 deemed sufficient reason in and of itself for a valid disapproval
130 of the proposed sale or transfer, but may be considered in
131 conjunction with other adverse factors in supporting the position
132 of the brewer or resident brewer. Nor may the brewer or resident
133 brewer impose requirements upon the prospective franchisee,
134 transferee or purchaser which are more stringent or restrictive
135 than those currently demanded of or imposed upon the brewer or
136 resident brewers or other distributors in the State of West
137 Virginia. A copy of such notice of disapproval shall likewise be
138 forwarded to the commissioner and to the prospective franchisee,
139 transferee or purchaser. In the event the issue be not resolved
140 within twenty days from the date of such disapproval, either the
141 brewer, resident brewer, distributor or prospective franchisee,
142 transferee or purchaser shall notify the other parties of his or her
143 demand for arbitration and shall likewise notify the
144 commissioner thereof. A dispute or disagreement shall thereupon
145 be submitted to arbitration in the county in which the
146 distributor's principal place of business is located by a board of
147 three arbitrators, which request for arbitration shall name one
148 arbitrator. The party receiving such notice shall within ten days
149 thereafter by notice to the party demanding arbitration name the
150 second arbitrator or, failing to do so, the second arbitrator shall
151 be appointed by the chief judge of the circuit court of the county
152 in which the distributor's principal place of business is located
153 on request of the party requesting arbitration in the first instance.
154 The two arbitrators so appointed shall name the third or, failing
155 to do so within ten days after appointment of the second
156 arbitrator, the third arbitrator may be appointed by said chief
157 judge upon request of either party. The arbitrators so appointed
158 shall promptly hear and determine and the questions submitted
159 pursuant to the procedures established by the American

160 Arbitration Association and shall render their decision with all
161 reasonable speed and dispatch but in no event later than twenty
162 days after the conclusion of evidence. Said decision shall include
163 findings of fact and conclusions of law and shall be based upon
164 the justice and equity of the matter. Each party shall be given
165 notice of such decision. If the decision of the arbitrators be in
166 favor of or in approval of the proposed sale or transfer, the
167 brewer or resident brewer shall forthwith agree to the same and
168 shall immediately transfer the franchise to the proposed
169 franchisee, transferee or purchaser unless notice of intent to
170 appeal such decision is given the arbitrators and all other parties
171 within ten days of notification of such decision. If any such party
172 deems himself or herself aggrieved thereby, such party shall
173 have a right to bring an appropriate action in circuit court. Any
174 and all notices given pursuant to this subsection shall be given
175 to all parties by certified or registered mail, return receipt
176 requested.

177 (d) The violation of any provision of this section by any
178 brewer or resident brewer shall constitute grounds for the
179 forfeiture of the bond furnished by such brewer or resident
180 brewer in accordance with the provisions of section twelve of
181 this article and shall also constitute grounds for sanctions in
182 accordance with sections twenty-three and twenty-four of this
183 article. Moreover, any circuit court of the county in which a
184 distributor's principal place of business is located shall have the
185 jurisdiction and power to enjoin the cancellation, termination or
186 rescission of any franchise agreement between a brewer or
187 resident brewer and such distributor and, in granting an
188 injunction to a distributor, the court shall provide that the brewer
189 or resident brewer so enjoined shall not supply the customers or
190 territory of the distributor while the injunction is in effect.

CHAPTER 173

**(H. B. 4159 - By Delegates Mr. Speaker (Mr. Miley)
and Armstead)**

[By Request of the Executive]

[Passed March 5, 2014; in effect from its passage.]
[Approved by the Governor on March 20, 2014.]

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 date.

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. 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, 2012, but prior to
10 January 1, 2014, 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, 2014, 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 2014 are retroactive to the extent allowable
33 under federal income tax law. With respect to taxable years that
34 began prior to January 1, 2015, 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
42 twenty-one of this article and as reflected in the poverty
43 guidelines 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 174

**(S. B. 327 - By Senators Kessler (Mr. President)
and M. Hall)
[By Request of the Executive]**

[Passed March 4, 2014; in effect from passage.]
[Approved by the Governor on March 14, 2014.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of “federal adjusted gross 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, 2012, but prior to
11 January 1, 2014, 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, 2014, 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 2014 are retroactive to the extent allowable
32 under federal income tax law. With respect to taxable years that
33 began prior to January 1, 2015, 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 175

(S. B. 456 - By Senator Stollings)

[Passed March 6, 2014; in effect from passage.]
[Approved by the Governor on March 19, 2014.]

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 the expiration date for tax rate on eligible acute care hospitals; changing the 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 sixty-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 of
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
45 amount of taxes collected under this section, including any
46 interest, additions to tax and penalties collected under article ten
47 of this chapter, less the amount of allowable refunds, the amount
48 of any 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, 2014, shall be transferred to the West Virginia Medical
81 Services Fund. This transfer shall occur no later than September
82 30, 2014. These funds shall be used during state fiscal year 2015
83 at the discretion of the Bureau of Medical Services. The
84 remaining fifty percent of any funds in the Eligible Acute Care
85 Provider Enhancement Account as of June 30, 2014, shall
86 remain in the Eligible Acute Care Provider Enhancement
87 Account and shall be used in state fiscal year 2015. If the
88 program expires on June 30, 2015, as set forth in subsection (h)
89 of this section, fifty percent of any funds remaining as of June
90 30, 2016, shall be transferred on that date to the West Virginia
91 Medical Services Fund. This transfer shall occur only after state
92 fiscal year 2015 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, 2016. 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 2015.

99 (g) The provisions of this section are retroactive and become
100 effective on the first day of the quarter in which the state plan
101 amendment is submitted.

102 (h) The tax imposed by this section expires on and after June
103 30, 2015, unless otherwise extended by the Legislature.

CHAPTER 176

**(Com. Sub. for H. B. 4237 - By Delegates Lawrence,
Barrett, Guthrie, Skinner, Perdue, Campbell, Marshall, Poore,
Fleischauer, Staggers and A. Evans)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7 and §16-9A-8 of the Code of West Virginia, 1931, as amended, all relating to restrictions placed on tobacco products and tobacco-derived products containing nicotine; defining terms; defining vapor products and alternative nicotine products as tobacco-derived products; creating exclusions; limiting the use of and sale of tobacco-derived products to persons under the age of eighteen in the same manner as tobacco; prohibiting the sale or furnishing of tobacco and tobacco-derived products to individuals under eighteen years of age; prohibiting the use and possession of tobacco or tobacco-derived products by an individual under eighteen years of age; allowing employers to dismiss an employee for cause for the knowing or intentional sale or furnishing of tobacco or tobacco-derived to someone under the age of eighteen; allowing for the conduct of unannounced inspections to ensure compliance with sales restrictions; restricting the use of tobacco and tobacco-derived products on school grounds; restricting the sale of tobacco and tobacco-derived products in vending machines; creating misdemeanor offenses and criminal penalties relating to tobacco-derived products that are consistent with tobacco products; creating a defense in certain circumstances; and authorizing continued rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7 and §16-9A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-2. Definitions; sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, chewing tobacco, pipe tobacco, roll-your-own tobacco, tobacco products, tobacco-derived and alternative nicotine product or vapor products to persons under eighteen; penalties for first and subsequent offense; consideration of prohibited act as grounds for dismissal; impact on eligibility for unemployment benefits.

1 (a) For purposes of this article, the term:

2 (1) “Tobacco product” and “tobacco-derived product” means
3 any product, containing, made or derived from tobacco, or
4 containing nicotine derived from tobacco, that is intended for
5 human consumption, whether smoked, breathed, chewed,
6 absorbed, dissolved, inhaled, vaporized, snorted, sniffed or
7 ingested by any other means, including but not limited to
8 cigarettes, cigars, cigarillos, little cigars, pipe tobacco, snuff,
9 snus, chewing tobacco or other common tobacco-containing
10 products. A “tobacco-derived product” includes electronic
11 cigarettes or similar devices, alternative nicotine products and
12 vapor products. “Tobacco product” or “tobacco-derived product”
13 does not include any product that is regulated by the United
14 States Food and Drug Administration under Chapter V of the
15 Food, Drug and Cosmetic Act.

16 (2) “Alternative nicotine product” means any non-
17 combustible product containing nicotine that is intended for

18 human consumption, whether chewed, absorbed, dissolved or
19 ingested by any other means. “Alternative nicotine product” does
20 not include any tobacco product, vapor product or product
21 regulated as a drug or device by the United States Food and Drug
22 Administration under Chapter V of the Food, Drug and Cosmetic
23 Act.

24 (3) “Vapor product” means any non-combustible product
25 containing nicotine that employs a heating element, power
26 source, electronic circuit or other electronic, chemical or
27 mechanical means, regardless of shape and size, that can be used
28 to produce vapor from nicotine in a solution or other form.
29 “Vapor product” includes any electronic cigarette, electronic
30 cigar, electronic cigarillo, electronic pipe or similar product or
31 device, and any vapor cartridge or other container of nicotine in
32 a solution or other form that is intended to be used with or in an
33 electronic cigarette, electronic cigar, electronic cigarillo,
34 electronic pipe or similar product or device. “Vapor product”
35 does not include any product that is regulated by the United
36 States Food and Drug Administration under Chapter V of the
37 Food, Drug and Cosmetic Act.

38 (b) No person, firm, corporation or business entity may sell,
39 give or furnish, or cause to be sold, given or furnished, to any
40 person under the age of eighteen years:

41 (1) Any pipe, cigarette paper or any other paper prepared,
42 manufactured or made for the purpose of smoking any tobacco
43 or tobacco product;

44 (2) Any cigar, cigarette, snuff, chewing tobacco or tobacco
45 product, in any form; or

46 (3) Any tobacco-derived product, alternative nicotine
47 product or vapor product.

48 (c) Any firm or corporation that violates any of the
49 provisions of subsection (b) of this section and any individual
50 who violates any of the provisions of subsection (b) of this
51 section is guilty of a misdemeanor and, upon conviction thereof,
52 shall be fined \$50 for the first offense. Upon any subsequent
53 violation at the same location or operating unit, the firm,
54 corporation or individual shall be fined as follows: At least \$250
55 but not more than \$500 for the second offense, if it occurs within
56 two years of the first conviction; at least \$500 but not more than
57 \$750 for the third offense, if it occurs within two years of the
58 first conviction; and at least \$1,000 but not more than \$5,000 for
59 any subsequent offenses, if the subsequent offense occurs within
60 five years of the first conviction.

61 (d) Any individual who knowingly and intentionally sells,
62 gives or furnishes or causes to be sold, given or furnished to any
63 person under the age of eighteen years any cigar, cigarette, snuff,
64 chewing tobacco, tobacco product or tobacco-derived product,
65 in any form, is guilty of a misdemeanor and, upon conviction
66 thereof, for the first offense shall be fined not more than \$100;
67 upon conviction thereof for a second or subsequent offense, is
68 guilty of a misdemeanor and shall be fined not less than \$100
69 nor more than \$500.

70 (e) Any employer who discovers that his or her employee
71 has sold or furnished tobacco products or tobacco-derived
72 products to minors may dismiss such employee for cause. Any
73 such discharge shall be considered as "gross misconduct" for the
74 purposes of determining the discharged employee's eligibility
75 for unemployment benefits in accordance with the provisions of
76 section three, article six, chapter twenty-one-a of this code, if the
77 employer has provided the employee with prior written notice in
78 the workplace that such act or acts may result in their
79 termination from employment.

§16-9A-3. Use or possession of tobacco or tobacco products, alternative nicotine products or vapor products by persons under the age of eighteen years; penalties.

1 No person under the age of eighteen years shall have on or
2 about his or her person or premises or use any cigarette, or
3 cigarette paper or any other paper prepared, manufactured or
4 made for the purpose of smoking any tobacco products, in any
5 form; any pipe, snuff, chewing tobacco, tobacco product or
6 tobacco-derived product: *Provided*, That minors participating in
7 the inspection of locations where tobacco products or tobacco-
8 derived products, are sold or distributed pursuant to section
9 seven of this article is not considered to violate the provisions of
10 this section. Any person violating the provisions of this section
11 shall for the first violation be fined \$50 and be required to serve
12 eight hours of community service; for a second violation, the
13 person shall be fined \$100 and be required to serve sixteen hours
14 of community service; and for a third and each subsequent
15 violation, the person shall be fined \$200 and be required to serve
16 twenty-four hours of community service. Notwithstanding the
17 provisions of section two, article five, chapter forty-nine, the
18 magistrate court has concurrent jurisdiction.

§16-9A-4. Use of tobacco, tobacco products, alternative nicotine products or vapor products in certain areas of certain public schools prohibited; penalty.

1 Every person who shall smoke a cigarette or cigarettes, pipe,
2 cigar or other implement, of any type or nature, designed, used
3 or employed for smoking any tobacco or tobacco product; or
4 who shall use any tobacco product or tobacco-derived product in
5 any building or part thereof used for instructional purposes, in
6 any school of this state, as defined in section one, article one,
7 chapter eighteen of this code, or on any lot or grounds actually
8 used for instructional purposes of any such school of this state
9 while such school is used or occupied for school purposes, shall

10 be guilty of a misdemeanor, and, upon conviction thereof, shall
11 be punished for each offense by a fine of not less than one nor
12 more than five dollars: *Provided*, That this prohibition shall not
13 be construed to prevent the use of any tobacco or tobacco
14 product or tobacco-derived product, in any faculty lounge or
15 staff lounge or faculty office or other area of said public school
16 not used for instructional purposes: *Provided, however*, That
17 students do not have access thereto: *Provided further*, That
18 nothing herein contained shall be construed to prevent any
19 county board of education from promulgating rules and
20 regulations that further restrict the use of tobacco products or
21 tobacco-derived products, in any form, from any other part or
22 section of any public school building under its jurisdiction.

**§16-9A-7. Enforcement of youth smoking laws and youth nicotine
restrictions; inspection of retail outlets where
tobacco, tobacco products, vapor products or
alternative nicotine products are sold; use of minors
in inspections; annual reports; penalties; defenses.**

1 (a) The Commissioner of the West Virginia Alcohol
2 Beverage Control Administration, the Superintendent of the
3 West Virginia State Police, the sheriffs of the counties of this
4 state and the chiefs of police of municipalities of this state, may
5 periodically conduct unannounced inspections at locations where
6 tobacco products or tobacco-derived products, are sold or
7 distributed to ensure compliance with the provisions of sections
8 two and three of this article and in such manner as to conform
9 with applicable federal and state laws, rules and regulations.
10 Persons under the age of eighteen years may be enlisted by such
11 commissioner, superintendent, sheriffs or chiefs of police or
12 employees or agents thereof to test compliance with these
13 sections: *Provided*, That the minors may be used to test
14 compliance only if the testing is conducted under the direct
15 supervision of the commissioner, superintendent, sheriffs or
16 chiefs of police or employees or agents thereof and written

17 consent of the parent or guardian of such person is first obtained
18 and such minors shall not be in violation of section three of this
19 article and chapter when acting under the direct supervision of
20 the commissioner, superintendent, sheriffs or chiefs of police or
21 employees or agents thereof and with the written consent of the
22 parent or guardian. It is unlawful for any person to use persons
23 under the age of eighteen years to test compliance in any manner
24 not set forth herein and the person so using a minor is guilty of
25 a misdemeanor and, upon conviction thereof, shall be fined the
26 same amounts as set forth in section two of this article.

27 (b) A person charged with a violation of section two or three
28 of this article as the result of an inspection under subsection (a)
29 of this section has a complete defense if, at the time the cigarette,
30 other tobacco product or tobacco-derived product, or cigarette
31 wrapper, was sold, delivered, bartered, furnished or given:

32 (1) The buyer or recipient falsely evidenced that he or she
33 was eighteen years of age or older;

34 (2) The appearance of the buyer or recipient was such that a
35 prudent person would believe the buyer or recipient to be
36 eighteen years of age or older; and

37 (3) Such person carefully checked a driver's license or an
38 identification card issued by this state or another state of the
39 United States, a passport or a United States armed services
40 identification card presented by the buyer or recipient and acted
41 in good faith and in reliance upon the representation and
42 appearance of the buyer or recipient in the belief that the buyer
43 or recipient was eighteen years of age or older.

44 (c) Any fine collected after a conviction of violating section
45 two of this article shall be paid to the clerk of the court in which
46 the conviction was obtained: *Provided*, That the clerk of the
47 court upon receiving the fine shall promptly notify the
48 Commissioner of the West Virginia Alcohol Beverage Control

49 Administration of the conviction and the collection of the fine:
50 *Provided, however,* That any community service penalty
51 imposed after a conviction of violating section three of this
52 article shall be recorded by the clerk of the court in which the
53 conviction was obtained: *Provided further,* That the clerk of the
54 court upon being advised that community service obligations
55 have been fulfilled shall promptly notify the Commissioner of
56 the West Virginia Alcohol Beverage Control Administration of
57 the conviction and the satisfaction of imposed community
58 service penalty.

59 (d) The Commissioner of the West Virginia Alcohol
60 Beverage Control Administration or his or her designee shall
61 prepare and submit to the Governor on the last day of September
62 of each year a report of the enforcement and compliance
63 activities undertaken pursuant to this section and the results of
64 the same, with a copy to the Secretary of the West Virginia
65 Department of Health and Human Resources. The report shall be
66 in the form and substance that the Governor shall submit to the
67 applicable state and federal programs.

**§16-9A-8. Selling of tobacco products, tobacco-derived products,
alternative nicotine products or vapor products in
vending machines prohibited except in certain places.**

1 No person or business entity may offer for sale any cigarette,
2 tobacco product or tobacco-derived product, in a vending
3 machine. Any person or business entity which violates the
4 provisions of this section is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined \$250: *Provided,* That an
6 establishment is exempt from this prohibition if individuals
7 under the age of eighteen years are not permitted to be in the
8 establishment or if the establishment is licensed by the alcohol
9 beverage control commissioner as a Class A licensee. The
10 alcohol beverage control commissioner shall promulgate rules
11 pursuant to article three, chapter twenty-nine-a of this code to

- 12 establish standards for the location and control of the vending
13 machines in Class A licensed establishments for the purpose of
14 restricting access by minors.

CHAPTER 177

**(Com. Sub. for H. B. 4184 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 20, 2014.]

AN ACT to amend and reenact §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-7, §5B-2E-7a, §5B-2E-8 and §5B-2E-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5B-2E-7b, all relating generally to the West Virginia Tourism Development Act; providing, modifying or eliminating certain definitions; removing requirement for engagement of a consulting firm to review proposed projects; imposing application filing fee; providing additional criteria for evaluation of applications; eliminating limitation on total amount of tourism development expansion project tax credits for all approved companies each calendar year; providing increased tax credit amounts for projects located on or adjacent to state and federal recreational property; establishing tax credit for qualified professional services destination facilities under certain circumstances; specifying benefits upon application and review; providing certain limitations on benefits; authorizing rulemaking by the Tax Commissioner; providing for recapture; extending the deadline for project applications; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-7, §5B-2E-7a, §5B-2E-8 and §5B-2E-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 §5B-2E-7b, all to read as follows:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-3. Definitions.

1 As used in this article, unless the context clearly indicates
2 otherwise:

3 (1) "Agreement" means a tourism development agreement
4 entered into, pursuant to section six of this article, between the
5 development office and an approved company with respect to a
6 project.

7 (2) "Approved company" means any eligible company
8 approved by the development office pursuant to section five of
9 this article seeking to undertake a project.

10 (3) "Approved costs" means:

11 (a) *Included costs*:

12 (i) Obligations incurred for labor and to vendors, contractors,
13 subcontractors, builders, suppliers, delivery persons and material
14 persons in connection with the acquisition, construction,
15 equipping or installation of a project;

16 (ii) The costs of acquiring real property or rights in real
17 property and any costs incidental thereto;

18 (iii) The cost of contract bonds and of insurance of all kinds
19 that may be required or necessary during the course of the

20 acquisition, construction, equipping, or installation of a project
21 which is not paid by the vendor, supplier, delivery person,
22 contractor or otherwise provided;

23 (iv) All costs of architectural and engineering services,
24 including, but not limited to: Estimates, plans and specifications,
25 preliminary investigations and supervision of construction,
26 installation, as well as for the performance of all the duties
27 required by or consequent to the acquisition, construction,
28 equipping or installation of a project;

29 (v) All costs required to be paid under the terms of any
30 contract for the acquisition, construction, equipping or
31 installation of a project;

32 (vi) All costs required for the installation of utilities,
33 including, but not limited to: Water, sewer, sewer treatment, gas,
34 electricity, communications and off-site construction of utility
35 extensions to the boundaries of the real estate on which the
36 facilities are located, all of which are to be used to improve the
37 economic situation of the approved company in a manner that
38 allows the approved company to attract persons; and

39 (vii) All other costs comparable with those described in this
40 subdivision;

41 (b) *Excluded costs.* – The term “approved costs” does not
42 include any portion of the cost required to be paid for the
43 acquisition, construction, equipping or installation of a project
44 that is financed with governmental incentives, grants or bonds or
45 for which the eligible taxpayer elects to qualify for other tax
46 credits, including, but not limited to, those provided by article
47 thirteen-q, chapter eleven of this code. The exclusion of certain
48 costs of a project under this paragraph (b) does not automatically
49 disqualify the remainder of the costs of the project.

50 (4) "Base tax revenue amount" means the average monthly
51 amount of consumer sales and service tax collected by an
52 approved company, based on the twelve-month period ending
53 immediately prior to the opening of a new tourism development
54 project for business or a tourism development expansion project,
55 as certified by the State Tax Commissioner.

56 (5) "Development office" means the West Virginia
57 Development Office as provided in article two of this chapter.

58 (6) "Crafts and products center" means a facility primarily
59 devoted to the display, promotion and sale of West Virginia
60 products and at which a minimum of eighty percent of the sales
61 occurring at the facility are of West Virginia arts, crafts or
62 agricultural products.

63 (7) "Eligible company" means any corporation, limited
64 liability company, partnership, limited liability partnership, sole
65 proprietorship, business trust, joint venture or any other entity
66 operating or intending to operate a project, whether owned or
67 leased, within the state that meets the standards required by the
68 development office. An eligible company may operate or intend
69 to operate directly or indirectly through a lessee.

70 (8) "Ineligible company" means any West Virginia
71 pari-mutuel racing facility licensed to operate multiple video
72 lottery machines as authorized by article twenty-two-a, chapter
73 twenty-nine of this code or any limited lottery retailer holding a
74 valid license issued under article seven, chapter sixty of this
75 code.

76 (9) "Entertainment destination center" means a facility
77 containing a minimum of two hundred thousand square feet of
78 building space adjacent or complementary to an existing tourism
79 attraction, an approved project, or a major convention facility
80 and which provides a variety of entertainment and leisure

81 options that contain at least one major theme restaurant and at
82 least three additional entertainment venues, including, but not
83 limited to, live entertainment, multiplex theaters, large-format
84 theaters, motion simulators, family entertainment centers,
85 concert halls, virtual reality or other interactive games,
86 museums, exhibitions or other cultural and leisure time
87 activities. Entertainment and food and drink options shall occupy
88 a minimum of sixty percent of total gross area, as defined in the
89 application, available for lease and other retail stores shall
90 occupy no more than forty percent of the total gross area
91 available for lease.

92 (10) "Final approval" means the action taken by the
93 executive director of the development office qualifying the
94 eligible company to receive the tax credits provided in this
95 article.

96 (11) "Project" means a tourism development project and/or
97 a tourism development expansion project administered in
98 accordance with the provisions of this article.

99 (12) "Qualified professional services destination facility"
100 means a facility with a minimum qualified investment, as
101 defined in this article, of not less than \$80 million physically
102 located in this state and adjacent or complementary to a historic
103 resort hotel, which primarily furnishes and provides personal or
104 professional services, or both types of services, to individuals
105 who primarily are residents of another state or foreign county.

106 (13) "State agency" means any state administrative body,
107 agency, department, division, board, commission or institution
108 exercising any function of the state that is not a municipal
109 corporation or political subdivision.

110 (14) "Tourism attraction" means a cultural or historical site,
111 a recreation or entertainment facility, an area of natural

112 phenomenon or scenic beauty, a West Virginia crafts and
113 products center, or an entertainment destination center or a
114 qualified professional services destination facility. A project or
115 tourism attraction does not include any of the following:

116 (A) Lodging facility, unless:

117 (i) The facility constitutes a portion of a project and
118 represents less than fifty percent of the total approved cost of the
119 project, or the facility is to be located on recreational property
120 owned or leased by the state or federal government and the
121 facility has received prior approval from the appropriate state or
122 federal agency;

123 (ii) The facility involves the restoration or rehabilitation of
124 a structure that is listed individually in the national register of
125 historic places or is located in a national register historic district
126 and certified by the state historic preservation officer as
127 contributing to the historic significance of the district and the
128 rehabilitation or restoration project has been approved in
129 advance by the state historic preservation officer; or

130 (iii) The facility involves the construction, reconstruction,
131 restoration, rehabilitation or upgrade of a full-service lodging
132 facility or the reconstruction, restoration, rehabilitation or
133 upgrade of an existing structure into a full-service lodging
134 facility having not less than five hundred guest rooms, with
135 construction, reconstruction, restoration, rehabilitation or
136 upgrade costs exceeding ten million dollars;

137 (B) A facility that is primarily devoted to the retail sale of
138 goods, other than an entertainment destination center, a West
139 Virginia crafts and products center or a project where the sale of
140 goods is a secondary and subordinate component of the project;
141 and

142 (C) A recreational facility that does not serve as a likely
143 destination where individuals who are not residents of the state
144 would remain overnight in commercial lodging at or near the
145 project or existing attraction.

146 (15) "Tourism development project" means the acquisition,
147 including the acquisition of real estate by a leasehold interest
148 with a minimum term of ten years, construction and equipping
149 of a tourism attraction; the construction and installation of
150 improvements to facilities necessary or desirable for the
151 acquisition, construction, installation of a tourism attraction,
152 including, but not limited to, surveys, installation of utilities,
153 which may include water, sewer, sewage treatment, gas,
154 electricity, communications and similar facilities; and off-site
155 construction of utility extensions to the boundaries of the real
156 estate on which the facilities are located, all of which are to be
157 used to improve the economic situation of the approved
158 company in a manner that allows the approved company to
159 attract persons, but does not include a project that will be
160 substantially owned, managed or controlled by an eligible
161 company with an existing project located within a ten mile
162 radius, or by a person or persons related by a family relationship,
163 including spouses, parents, children or siblings, to an owner of
164 an eligible company with an existing project located within a ten
165 mile radius.

166 (16) "Tourism development expansion project" means the
167 acquisition, including the acquisition of real estate by a leasehold
168 interest with a minimum term of ten years; the construction and
169 installation of improvements to facilities necessary or desirable
170 for the expansion of an existing tourism attraction including, but
171 not limited to, surveys, installation of utilities, which may
172 include water, sewer, sewage treatment, gas, electricity,
173 communications and similar facilities; and off-site construction
174 of utility extension to the boundaries of real estate on which the
175 facilities are located, all of which are to be used to improve the

176 economic situation of the approved company in a manner that
177 allows the approved company to attract persons.

178 (17) "Tourism development project tax credit" means the
179 tourism development project tax credit allowed by section seven
180 of this article.

181 (18) "Tourism development expansion project tax credit"
182 means the tourism development expansion project tax credit
183 allowed by section seven-a of this article.

§5B-2E-4. Additional powers and duties of the development office.

1 The development office has the following powers and duties,
2 in addition to those set forth in this case, necessary to carry out
3 the purposes of this article including, but not limited to:

4 (1) Make approval of all applications for projects and enter
5 into agreements pertaining to projects with approved companies;

6 (2) Employ fiscal consultants, attorneys, appraisers and other
7 agents as the executive director of the development office finds
8 necessary or convenient for the preparation and administration
9 of agreements and documents necessary or incidental to any
10 project; and

11 (3) Impose and collect fees and charges in connection with
12 any transaction.

13 (4) Impose and collect from the applicant a non-refundable
14 application fee in the amount of \$10,000 to be paid to the
15 Development Office when the application is filed.

§5B-2E-5. Project application; evaluation standards; approval of projects.

1 (a) Each eligible company that seeks to qualify a project for
2 the tourism development project tax credit provided by section

3 seven of this article, or for the tourism development expansion
4 project tax credit provided by section seven-a of this article, as
5 applicable, must file a written application for approval of the
6 project with the Development Office.

7 (b) With respect to each eligible company making an
8 application to the Development Office for a tourism
9 development project tax credit or a tourism development
10 expansion project tax credit, the Development Office shall make
11 inquiries and request documentation, including a completed
12 application, from the applicant that shall include: A description
13 and location of the project; capital and other anticipated
14 expenditures for the project and the sources of funding therefor;
15 the anticipated employment and wages to be paid at the project;
16 business plans that indicate the average number of days in a year
17 in which the project will be in operation and open to the public;
18 and the anticipated revenues and expenses generated by the
19 project.

20 (c) On and after the effective date of this section as amended
21 in 2014, the executive director of the Development Office,
22 within sixty days following receipt of an application or receipt
23 of any additional information requested by the Development
24 Office respecting the application, whichever is later, shall act to
25 grant or not to grant approval of the application, based on the
26 following criteria:

27 (1) The project will attract at least twenty-five percent of its
28 visitors from outside of this state;

29 (2) The project will have approved costs in excess of
30 \$1,000,000;

31 (3) The project will have a significant and positive economic
32 impact on the state considering, among other factors, the extent
33 to which the project will compete directly with or complement
34 existing tourism attractions in the state and the amount by which

35 increased tax revenues from the project will exceed the credit
36 given to the approved company;

37 (4) The project will produce sufficient revenues and public
38 demand to be operating and open to the public for a minimum of
39 one hundred days per year;

40 (5) The project will provide additional employment
41 opportunities in the state;

42 (6) The quality of the proposed project and how it addresses
43 economic problems in the area in which the project will be
44 located;

45 (7) Whether there is substantial and credible evidence that
46 the project is likely to be started and completed in a timely
47 fashion;

48 (8) Whether the project will, directly or indirectly, improve
49 the opportunities in the area where the project will be located for
50 the successful establishment or expansion of other industrial or
51 commercial businesses;

52 (9) Whether the project will, directly or indirectly, assist in
53 the creation of additional employment opportunities in the area
54 where the project will be located;

55 (10) Whether the project helps to diversify the local
56 economy;

57 (11) Whether the project is consistent with the goals of this
58 article;

59 (12) Whether the project is economically and fiscally sound
60 using recognized business standards of finance and accounting;
61 and

62 (13) The ability of the eligible company to carry out the
63 project.

64 (d) The Development Office may establish other criteria for
65 consideration when approving the applications.

66 (e) The decision by the executive director of the
67 Development Office is final.

68 (f) This section as amended and reenacted in 2014 shall apply
69 to applications under review by the director of the development
70 office prior to the effective date of this section as well as to
71 applications filed on and after the effective date of this section
72 as amended and reenacted in 2014.

**§5B-2E-7. Amount of credit allowed for tourism development
project; approved projects.**

1 (a) Approved companies are allowed a credit against the
2 West Virginia consumers sales and service tax imposed by
3 article fifteen, chapter eleven of this code and collected by the
4 approved company on sales generated by or arising from the
5 operations of the tourism development project: *Provided*, That
6 if the consumers sales and service tax collected by the approved
7 company is not solely attributable to sales resulting from the
8 operation of the new tourism development project, the credit
9 shall only be applied against that portion of the consumers sales
10 and service tax collected in excess of the base tax revenue
11 amount. The amount of this credit is determined and applied as
12 provided in this article.

13 (b) The maximum amount of credit allowable in this article
14 is equal to twenty-five percent of the approved company's
15 approved costs as provided in the agreement: *Provided*, That, if
16 the tourism development project site is located within the permit
17 area or an adjacent area of a surface mining operation, as these
18 terms are defined in section three, article three, chapter twenty-
19 two of this code, from which all coal has been or will be
20 extracted prior to the commencement of the tourism

21 development project, or the tourism development project site is
22 located on or adjacent to recreational property owned or leased
23 by the state or federal government and when the project is
24 located on property owned or leased by the state or federal
25 government, the project has received prior approval from the
26 appropriate state or federal agency, the maximum amount of
27 credit allowable is equal to thirty-five percent of the approved
28 company's approved costs as provided in the agreement.

29 (c) The amount of credit allowable must be taken over a ten-
30 year period, at the rate of one tenth of the amount thereof per
31 taxable year, beginning with the taxable year in which the
32 project is opened to the public, unless the approved company
33 elects to delay the beginning of the ten-year period until the next
34 succeeding taxable year. This election shall be made in the first
35 consumers sales and service tax return filed by the approved
36 company following the date the project is opened to the public.
37 Once made, the election cannot be revoked.

38 (d) The amount determined under subsection (b) of this
39 section is allowed as a credit against the consumers sales and
40 service tax collected by the approved company on sales from the
41 operation of the tourism development project. The amount
42 determined under said subsection may be used as a credit against
43 taxes required to be remitted on the approved company's
44 monthly consumers sales and service tax returns that are filed
45 pursuant to section sixteen, article fifteen, chapter eleven of this
46 code. The approved company shall claim the credit by reducing
47 the amount of consumers sales and service tax required to be
48 remitted with its monthly consumers sales and service tax
49 returns by the amount of its aggregate annual credit allowance
50 until such time as the full current year annual credit allowance
51 has been claimed. Once the total credit claimed for the tax year
52 equals the approved company's aggregate annual credit
53 allowance no further reductions to its monthly consumers sales
54 and service tax returns will be permitted.

55 (e) If any credit remains after application of subsection (d)
56 of this section, the amount of credit is carried forward to each
57 ensuing tax year until used or until the expiration of the third
58 taxable year subsequent to the end of the initial ten-year credit
59 application period. If any unused credit remains after the
60 thirteenth year, that amount is forfeited. No carryback to a prior
61 taxable year is allowed for the amount of any unused portion of
62 any annual credit allowance.

**§5B-2E-7a. Amount of credit allowed for tourism development
expansion project; approved projects.**

1 (a) Approved companies are allowed a credit against the
2 West Virginia consumers sales and service tax imposed by
3 article fifteen, chapter eleven of this code and collected by the
4 approved company on sales generated by or arising from the
5 operations of the tourism development expansion project:
6 *Provided*, That the tourism development expansion project tax
7 credit allowed under this section is separate and distinct from
8 any credit allowed for a tourism development project in
9 accordance with the provisions of section seven of this article:
10 *Provided, however*, That if the consumers sales and service tax
11 collected by the approved company is not solely attributable to
12 sales resulting from the operation of the tourism development
13 expansion project, the credit shall only be applied against that
14 portion of the consumers sales and service tax collected in
15 excess of the base tax revenue amount. The amount of this credit
16 is determined and applied as provided in this article.

17 (b) The maximum amount of credit allowable in this article
18 is equal to twenty-five percent of the approved company's
19 approved costs as provided in the agreement: *Provided*, That, if
20 the tourism development expansion project site is located within
21 the permit area or an adjacent area of a surface mining operation,
22 as these terms are defined in section three, article three, chapter
23 twenty-two of this code, from which all coal has been or will be

24 extracted prior to the commencement of the tourism
25 development project, or the tourism development project site is
26 located on or adjacent to recreational property owned or leased
27 by the state or federal government and when the project is
28 located on property owned or leased by the state or federal
29 government, the project has received prior approval from the
30 appropriate state or federal agency, the maximum amount of
31 credit allowable is equal to thirty-five percent of the approved
32 company's approved costs as provided in the agreement.

33 (c) The amount of credit allowable must be taken over a ten-
34 year period, at the rate of one tenth of the amount thereof per
35 taxable year, beginning with the taxable year in which the
36 project is opened to the public, unless the approved company
37 elects to delay the beginning of the ten-year period until the next
38 succeeding taxable year. This election shall be made in the first
39 consumers sales and service tax return filed by the approved
40 company following the date the project is opened to the public.
41 Once made, the election cannot be revoked.

42 (d) The amount determined under subsection (b) of this
43 section is allowed as a credit against the consumers sales and
44 service tax collected by the approved company on sales from the
45 operation of the tourism development expansion project. The
46 amount determined under said subsection may be used as a
47 credit against taxes required to be remitted on the approved
48 company's monthly consumers sales and service tax returns that
49 are filed pursuant to section sixteen, article fifteen, chapter
50 eleven of this code. The approved company shall claim the credit
51 by reducing the amount of consumers sales and service tax
52 required to be remitted with its monthly consumers sales and
53 service tax returns by the amount of its aggregate annual credit
54 allowance until such time as the full current year annual credit
55 allowance has been claimed. Once the total credit claimed for the
56 tax year equals the approved company's aggregate annual credit

57 allowance no further reductions to its monthly consumers sales
58 and service tax returns will be permitted.

59 (e) If any credit remains after application of subsection (d)
60 of this section, the amount of credit is carried forward to each
61 ensuing tax year until used or until the expiration of the third
62 taxable year subsequent to the end of the initial ten-year credit
63 application period. If any unused credit remains after the
64 thirteenth year, that amount is forfeited. No carryback to a prior
65 taxable year is allowed for the amount of any unused portion of
66 any annual credit allowance.

§5B-2E-7b. Credit against taxes.

1 (a) *General.* – When a qualified professional services
2 destination facility is located at or adjacent to an existing historic
3 resort hotel with at least five hundred rooms and the qualified
4 professional services destination facility eligible for credit under
5 this section is primarily engaged in furnishing services that are
6 not subject to the tax imposed by article fifteen, chapter eleven
7 of this code, then in lieu of the credits that otherwise would be
8 allowable under section seven or seven-a of this article, the
9 eligible company that complies with the requirements of this
10 section may claim the credit provided in this section: *Provided,*
11 That the maximum amount of credit allowable under this section
12 is equal to twenty-five percent of the eligible company's
13 qualified investment, as defined in this section.

14 (b) *Definitions.* – The following words and phrases when
15 used in this section have the meanings given to them in this
16 subsection unless the context in which used clearly indicates that
17 a different meaning was intended by the Legislature.

18 (1) “Agreement” means an agreement entered into under
19 subsection (g) of this section.

20 (2) "Compensation" means wages, salaries, commissions
21 and any other form of remuneration paid to employees for
22 personal services.

23 (3) "Cost-of-living adjustment" for any calendar year is the
24 percentage, if any, by which the consumer price index for the
25 preceding calendar year exceeds the consumer price index for
26 the calendar year 2015.

27 (4) "Consumer price index" for any calendar year means the
28 average of the federal consumer price index as of the close of the
29 twelve-month period ending on August 31 of that calendar year.

30 (5) "Eligible company" for purposes of this section means
31 any corporation, limited liability company, partnership, limited
32 liability partnership, sole proprietorship, business trust, joint
33 venture or any other entity operating a qualified professional
34 services destination facility, whether owned or leased, within the
35 state that: (A) creates at least one hundred twenty-five new jobs
36 in this state within thirty-six months after the date the qualified
37 investment is placed into service or use, and maintains those jobs
38 for the entire ten year life of the tax credit specified in this
39 section, (B) makes available to its full-time employees health
40 insurance coverage and pays at least fifty percent of the premium
41 for the health insurance, (C) generates, within thirty-six months
42 after the date the qualified investment is placed into service or
43 use, not less than \$10 million of gross receipts upon which the
44 taxes imposed under article twenty-seven, chapter eleven of this
45 code are paid, and (D) meets the standards, limitations and
46 requirements of this section and of the development office. An
47 eligible company may operate or intend to operate directly or
48 indirectly through a lessee or a contract operator.

49 (6) "Federal consumer price index" means the most recent
50 consumer price index as of August 31 each year for all urban
51 consumers published by the United States Department of Labor.

52 (7) "Health insurance benefits" means employer-provided
53 coverage for medical expenses of the employee or the employee
54 and his or her family under a group accident or health plan, or
55 employer contributions to an Archer medical savings account, as
56 defined in Section 220 of the Internal Revenue Code of 1986, as
57 amended, or to a health savings account, as defined in Section
58 223 of the Internal Revenue Code, of the employee when the
59 employer's contribution to any such account is not less than fifty
60 percent of the maximum amount permitted for the year as
61 employer-provided coverage under Section 220 or 223 of the
62 Internal Revenue Code, whichever section is applicable.

63 (8) "Historic resort hotel" means a resort hotel registered
64 with the United States Department of the Interior on the effective
65 date of this amendment as a national historic landmark in its
66 National Registry of Historic Places having not fewer than five
67 hundred guest rooms.

68 (9) "New employee" means a person residing and domiciled
69 in this state hired by the taxpayer to fill a position or a job in this
70 state which previously did not exist in the taxpayer's business
71 enterprise in this state prior to the date the application was filed
72 under subsection (c) of this section. In no event may the number
73 of new employees exceed the total net increase in the employer's
74 employment in this state: *Provided*, That the Tax Commissioner
75 may require that the net increase in the taxpayer's employment
76 in this state be determined and certified for the taxpayer's
77 controlled group as defined in article twenty-four of this chapter.
78 In addition, a person is a "new employee" only if the person's
79 duties are on a regular, full-time and permanent basis:

80 (A) "Full-time employment" means employment for at least
81 eighty hours per month at a wage not less than the amount
82 specified in subdivision (1), subsection (d) of this section; and

83 (B) "Permanent employment" does not include employment
84 that is temporary or seasonal and therefore the wages, salaries

85 and other compensation paid to the temporary or seasonal
86 employees will not be considered for purposes of this section
87 even if the compensation paid to the temporary or seasonal
88 employee equals or exceeds the amount specified in paragraph
89 (A) of this subdivision.

90 (10) "New job" means a job which did not exist in the
91 business of the taxpayer in this state prior to filing the
92 application for benefits under this section, and which is filled by
93 a new employee.

94 (11) "Professional services" means only those services
95 provided directly by: a physician licensed to practice in this
96 State, a surgeon licensed to practice in this State, a dentist
97 licensed to practice in this State, a podiatrist licensed to practice
98 in this State, an osteopathic physician licensed to practice in this
99 State, a psychologist licensed to practice in this State, an
100 optometrist licensed to practice in this State, a registered nurse
101 licensed to practice in this State, a physician assistant licensed to
102 practice in this State, a licensed practical nurse licensed to
103 practice in this State, a dental hygienist licensed to practice in
104 this State, a social worker licensed to practice in this State, or
105 any other health care professional licensed to practice in this
106 State;

107 (12) "Qualified investment" means one-hundred percent of
108 the cost of property purchased or leased for the construction and
109 equipping of a qualified professional services destination facility
110 which is placed in service or use in this State by an eligible
111 company.

112 (A) The cost of property purchased for a qualified
113 professional services destination facility is determined under the
114 following rules:

115 (i) Cost does not include the value of property given in trade
116 or exchange for the property purchased for business expansion.

117 (ii) If property is damaged or destroyed by fire, flood, storm
118 or other casualty, or is stolen, then the cost of replacement
119 property does not include any insurance proceeds received in
120 compensation for the loss.

121 (iii) The cost of real property acquired by written lease for
122 a primary term of ten years or longer is one hundred percent of
123 the rent reserved for the primary term of the lease, not to exceed
124 ten years.

125 (iv) The cost of tangible personal property acquired by
126 written lease for a primary term of not less than four years.

127 (v) In the case of self-constructed property, the cost thereof
128 is the amount properly charged to the capital account for
129 depreciation in accordance with federal income tax law.

130 (vi) The cost of property used by the taxpayer out-of-state
131 and then brought into this State, is determined based on the
132 remaining useful life of the property at the time it is placed in
133 service or use in this State, and the cost is the original cost of the
134 property to the taxpayer less straight line depreciation allowable
135 for the tax years or portions thereof the taxpayer used the
136 property outside this State. In the case of leased tangible
137 personal property, cost is based on the period remaining in the
138 primary term of the lease after the property is brought into this
139 State for use in a new or expanded business facility of the
140 taxpayer, and is the rent reserved for the remaining period of the
141 primary term of the lease, not to exceed ten years, or the
142 remaining useful life of the property, determined as aforesaid,
143 whichever is less.

144 (c) *Credit against taxes.* – The credit allowed by this section
145 shall be equal to twenty-five percent of the eligible company's
146 qualified investment in the qualified professional services
147 destination facility and shall be taken and applied as provided in
148 this subsection (c). Notwithstanding any other provision of this

149 article to the contrary, no taxpayer or group of taxpayers may
150 gain entitlement to more than \$37.5 million total aggregate tax
151 credit under this section and no taxpayer, or group of taxpayers,
152 in the aggregate may apply more than \$2.5 million of annual
153 credit in any tax year under this section, either in the form of a
154 refund or directly against a tax liability or in any combination
155 thereof. This limitation applies to initial tax credit attributable to
156 qualified investment in a qualified professional services
157 destination facility, and to qualified investment in a follow-up
158 project expansion, so that credit attributable additively and in the
159 aggregate to both may not be applied to exceed \$2.5 million
160 annual credit in any tax year.

161 (1) *Application of credit.* – The amount of credit allowable
162 under this subsection shall be taken over a ten-year period, at the
163 rate of one tenth of the amount thereof per taxable year,
164 beginning with the taxable year in which the eligible company
165 places the qualified professional services destination facility, or
166 part thereof, in service or use in this state, unless the eligible
167 company elected to delay the beginning of the ten-year period
168 until the next succeeding taxable year. This election shall be
169 made in the annual income tax return filed under chapter eleven
170 of this code for the taxable year in which the qualified
171 professional services destination facility is first placed into
172 service or use by the taxpayer. Once made, the election may not
173 be revoked. The annual credit allowance is taken in the manner
174 prescribed in subdivision (3) of this subsection (c): *Provided,*
175 That if any credit remains after the initial ten year credit
176 application period, the amount of remaining credit is carried
177 forward to each ensuing tax year until used or until the
178 expiration of the fifth taxable year subsequent to the end of the
179 initial ten year credit application period. If any unused credit
180 remains after expiration of the fifth taxable year subsequent to
181 the end of the initial ten year credit application period, the
182 amount thereof is forfeited. No carryback to a prior taxable year

183 is allowed for the amount of any unused portion of any annual
184 credit allowance.

185 (2) *Placed in service or use.* – For purposes of the credit
186 allowed by this subsection (c), qualified investment or qualified
187 investment property is considered placed in service or use in the
188 earlier of the following taxable years:

189 (A) The taxable year in which, under the eligible company's
190 depreciation practice, the period for depreciation with respect to
191 the property begins; or

192 (B) The taxable year in which the property is placed in a
193 condition or state of readiness and availability for a specifically
194 assigned function.

195 (3) *Application of annual credit allowance.*

196 (A) *In general.* – The aggregate annual credit allowance for
197 the current taxable year is an amount equal to the one-tenth part
198 allowed under subdivision (1) of this subsection for qualified
199 investment placed into service or use.

200 (B) *Application of current year annual credit allowance.* –
201 The amount determined under this subsection (c) is allowed as
202 a credit against one hundred percent of the eligible company's
203 state tax liabilities applied as provided in paragraphs (C) and (D)
204 of this subdivision (3), and in that order:

205 (C) *Corporation net income taxes.* – The amount of
206 allowable tax credit for the year determined under paragraph (A)
207 of this subdivision (3) shall first be applied to reduce the taxes
208 imposed by article twenty-four, chapter eleven of this code, for
209 the taxable year determined before application of allowable
210 credits against tax.

211 (D) *Personal income taxes.* –

212 (i) If the eligible company is an electing small business
213 corporation, as defined in section 1361 of the United States
214 Internal Revenue Code of 1986, as amended, a partnership, a
215 limited liability company that is treated as a partnership for
216 federal income tax purposes or a sole proprietorship, then any
217 unused credit after application of paragraph (C) of this
218 subdivision (3) is allowed as a credit against the taxes imposed
219 by article twenty-one, chapter eleven of this code on the
220 members, owners, partners or interest holders in the eligible
221 company.

222 (ii) Electing small business corporations, limited liability
223 companies, partnerships and other unincorporated organizations
224 shall allocate the credit allowed by this article among their
225 members in the same manner as profits and losses are allocated
226 for the taxable year.

227 (E) No credit is allowed under this subdivision (3) against
228 any employer withholding taxes imposed by article twenty-one,
229 chapter eleven of this code.

230 (F) The tax credits allowed under articles thirteen-j, thirteen-
231 q, thirteen-s, thirteen-r, thirteen-w, and thirteen-aa of this code
232 may not be applied to offset any tax against which the tax credit
233 allowed under this article is allowed or authorized. No person,
234 entity, company, or eligible company authorized or entitled to
235 any tax credit allowed under this section or any member of the
236 unitary group or any member of the controlled group of which
237 the taxpayer is a member, may gain entitlement to any other
238 economic development tax credit or economic development tax
239 incentive which relates to the investment or activity upon which
240 the credit authorized under this section is based.

241 (G) (i) In order to effectuate the purposes of this subdivision
242 (3), the Tax Commissioner may propose for promulgation rules,
243 including emergency rules, in accordance with article three,
244 chapter twenty-nine-a of this code.

245 (ii) The Tax Commissioner may apply any amount of the tax
246 credit otherwise available to a taxpayer under this article, to pay
247 any delinquent West Virginia state tax liability of the taxpayer,
248 and interest and penalties as applicable.

249 (iii) Any amount of the tax credit otherwise available to a
250 taxpayer under this article may be applied by the applicable
251 administering agency to pay any outstanding obligation to a
252 Workers' Compensation Fund, as defined in article two-c of
253 chapter twenty-three of this code, or any outstanding obligation
254 under the West Virginia Unemployment Compensation Act.

255 (iv) Any amount of the tax credit otherwise available to a
256 taxpayer under this article, may be applied by the applicable
257 administering agency to pay any delinquent or unpaid
258 assessment, fee, fine, civil penalty or monetary imposition
259 imposed by the West Virginia Division of Environmental
260 Protection or the United States Environmental Protection
261 Agency, or any agency charged with enforcing federal, state or
262 local environmental or hazardous waste regulations.

263 (H) *Unused credit, refundable credit.* – If any annual credit
264 remains after application of preceding paragraphs of this
265 subdivision (3), the amount thereof shall be refunded annually to
266 the eligible company, and distributed in accordance with the
267 credit distribution specified in this subdivision (3): *Provided,*
268 That the amount thereof may not exceed the limitation on annual
269 tax credit or the limitation on total aggregate tax credit specified
270 in this section.

271 (I) *Forfeiture of credit.* – If any credit remains after
272 expiration of the fifth taxable year subsequent to the end of the
273 initial ten year credit application period, such credit is forfeited,
274 and may not be used to offset any West Virginia tax liability.

275 (d) *Compensation of employees filling new jobs.*

276 (1) The new jobs and new employee criteria which count
277 toward qualification of a taxpayer as an eligible company for
278 purposes of the tax credit allowed by this section shall be subject
279 to the following limitations and requirements. A job counts
280 toward qualification of a taxpayer as an eligible company if the
281 job is a new job, as defined in this section, held by a new
282 employee, as defined in this section, and the new job:

283 (A) Pays a median wage of at least \$37,000 annually.
284 Beginning January 1, 2015, and on January 1 of each year
285 thereafter, the Tax Commissioner shall prescribe an amount that
286 shall apply in lieu of the \$37,000 amount for new jobs filled
287 during that calendar year. This amount is prescribed by
288 increasing the \$37,000 figure by the cost-of-living adjustment
289 for that calendar year. If any increase under this subdivision is
290 not a multiple of \$50, the increase shall be rounded to the next
291 lowest multiple of \$50;

292 (B) Provides health insurance. The employer may, in
293 addition, offer benefits including child care, retirement and other
294 benefits; and

295 (C) Is a full-time, permanent position, as those terms are
296 defined in this section.

297 (D) Jobs that pay less than the statewide average nonfarm
298 payroll wage, as determined annually by the West Virginia
299 Bureau of Employment Programs, or that pay that salary, but do
300 not also provide health benefits in addition to the salary, do not
301 count toward qualification of a taxpayer as an eligible company
302 under this section. Jobs that are less than full-time, permanent
303 positions do not count toward qualification of a taxpayer as an
304 eligible company under this section.

305 (E) The employer having obtained qualification as an
306 eligible company under this section for the year in which the
307 new job is filled is not required to raise wages of the employees

308 currently employed in the new jobs upon which the initial
309 qualification as an eligible company under this section was based
310 by reason of the cost-of-living adjustment for new jobs filled in
311 subsequent years provided the employer continues to provide
312 healthcare.

313 (e) *Application and review.*

314 (1) *Application.* – An eligible company that meets the
315 requirements of this section may apply to the Development
316 Office for entitlement to the tax credit authorized under this
317 section. The application shall be on a form prescribed by the
318 Development Office and shall include all of the following:

319 (A) The name and address of the applicant;

320 (B) Documentation that the applicant is a eligible company;

321 (C) Documentation that the applicant meets the requirements
322 of this section;

323 (D) Documentation that the applicant does not owe any
324 delinquent taxes or any other amounts to the federal government,
325 this state or any political subdivision of this state;

326 (E) An affidavit that the applicant has not filed for or
327 publicly announced its intention to file for bankruptcy protection
328 and that the company will not seek bankruptcy protection within
329 the next six calendar months following the date of the
330 application;

331 (F) A waiver of confidentiality under section five-d, article
332 ten, chapter eleven of this code for information provided in the
333 application; and

334 (G) Any other information required by the Development
335 Office.

336 (f) *Credit allowable.*

337 (1) *Certified multiple year projects.*

338 (A) *In general.* – A multiple year qualified professional
339 services destination facility project certified by the West
340 Virginia Development Office is eligible for the credit allowable
341 by this article. A project eligible for certification under this
342 section is one where the qualified investment under this article
343 creates at least the required minimum number of new jobs but
344 the qualified investment is placed in service or use over a period
345 of up to three successive tax years: *Provided*, That the qualified
346 investment is made pursuant to a written business facility
347 development plan of the taxpayer providing for an integrated
348 project for investment at one or more new or expanded business
349 facilities, a copy of which must be attached to the taxpayer's
350 application for project certification and approved by the West
351 Virginia Development Office, and the qualified investment
352 placed in service or use during the first tax year would not have
353 been made without the expectation of making the qualified
354 investment placed in service or use during the next two
355 succeeding tax years.

356 (B) *Application for certification.* – The application for
357 certification of a project under this section shall be filed with and
358 approved by the West Virginia Development Office prior to any
359 credit being claimed or allowed for the project's qualified
360 investment and new jobs created as a direct result of the
361 qualified investment. This application shall be approved in
362 writing and contain the information as the West Virginia
363 Development Office may require to determine whether the
364 project should be certified as eligible for credit under this article.

365 (C) *Review.* – Within thirty days of receipt of a complete
366 application, the Development Office, in conjunction with the Tax
367 Division of the Department of Revenue, shall review the

368 application and determine if the applicant is an eligible company
369 and that the requirements of this section have been met.
370 Applications not approved within the thirty days specified in this
371 subdivision are hereby deemed denied.

372 (D) *Approval.* – The Development Office may approve or
373 deny the application. Upon approval of an application, the
374 Development Office shall notify the applicant in writing and
375 enter into an agreement with the eligible company for benefits
376 under this section.

377 (2) *Certified follow-up project expansions.*

378 (A) An eligible company that intends to undertake a follow-
379 up project expansion, may apply to the West Virginia
380 Development Office for certification of a single, one-time,
381 follow-up project expansion, and entitlement to an additional tax
382 credit under this section in an amount which is the lesser of
383 twenty-five percent of qualified investment in the follow-up
384 project expansion or \$12.5 million. No taxpayer, or group of
385 taxpayers, in the aggregate may apply more than \$2.5 million of
386 annual credit in any tax year under this section, either in the form
387 of a refund or directly against a tax liability or in any
388 combination thereof. This limitation applies to initial tax credit
389 attributable to qualified investment in a qualified professional
390 services destination facility, and to qualified investment in a
391 follow-up project expansion, so that credit attributable additively
392 and in the aggregate to both may not be applied to exceed \$2.5
393 million annual credit in any tax year.

394 (B) The requirements, limitations and qualifications
395 applicable to qualified professional services destination facility
396 projects under this section apply to follow-up project expansions,
397 except for those requirements, limitations and qualifications
398 expressly specified in this subdivision (2).

399 (C) Requirements for certification of a follow-up project
400 expansion are as follows:

401 (i) The eligible company, pursuant to certification and
402 authorization for entitlement to tax credit under subsection (1) of
403 this section (f), has placed qualified investment of not less than
404 \$80 million into service in a qualified professional services
405 destination facility within an initial period of not more than three
406 tax years;

407 (ii) The eligible company intends to place additional
408 qualified investment in service or use in the previously certified
409 qualified professional services destination facility project, or an
410 expansion or extension thereof. In no case shall a follow-up
411 project expansion be certified if the follow-up project expansion
412 property is not contiguous to, or within not more than one mile
413 of, the initial qualified professional services destination facility;

414 (iii) The eligible company proposes to place the qualified
415 investment in the follow-up project expansion in service or use
416 in the fourth tax year subsequent to the tax year in which
417 qualified investment was first placed into service or use in the
418 initial qualified professional services destination facility project,
419 or under a multiple year project certification, in the fourth, fifth
420 and sixth tax year subsequent to the tax year in which qualified
421 investment was first placed into service or use in the initial
422 qualified professional services destination facility project;

423 (iv) The follow-up project expansion must create and
424 maintain at least twenty-five net new jobs held by new
425 employees, in addition to the new jobs created by the initial
426 qualified professional services destination facility project. The
427 loss of any West Virginia job at the eligible company will be
428 subtracted from the count of new jobs attributable to the follow-
429 up project expansion;

430 (v) The West Virginia Development Office shall not issue
431 more than one certification for any follow-up project expansion;
432 and

433 (vi) The West Virginia Development Office shall not issue
434 certification of a follow-up project expansion unless the
435 applicant provides convincing evidence to show that the follow-
436 up project expansion will result in jobs creation specified in this
437 subdivision, that such jobs will remain and be maintained in
438 West Virginia for at least ten years subsequent to the placement
439 of qualified investment into service or use in the follow-up
440 project expansion, that the follow-up project expansion will not
441 operate to the detriment of other West Virginia businesses or to
442 the detriment of the economy, public welfare or moral character
443 of West Virginia or its people.

444 (g) *Agreement.*

445 (1) The agreement between the eligible company and the
446 Development Office shall be entered into before any benefits
447 may be provided under this section.

448 (2) The agreement shall do all of the following:

449 (A) Specify the terms and conditions the eligible company
450 must comply with in order to receive benefits under this section,
451 other than those terms, limitations and conditions specified and
452 mandated by statute or regulation; and

453 (B) Require the Development Office to certify all of the
454 following to the Tax Division of the Department of Revenue
455 each taxable year an agreement under this section is in effect:

456 (i) That the eligible company is eligible to receive benefits
457 under this section;

458 (ii) The number of new jobs created by the company during
459 each taxable year;

460 (iii) The amount of gross wages, as determined for purposes
461 of Form W2, as filed with the Internal Revenue Service, being
462 paid to each individual employed in a new job;

463 (iv) The amount of an eligible company's qualified
464 investment;

465 (v) The maximum amount of credit allowable to the eligible
466 company under this section; and

467 (vi) Any other information deemed necessary by the
468 Development Office.

469 (h) *Filing and contents.*

470 (1) *Filing.* – On or before the due date of the income tax
471 return for each tax year in which the agreement is in effect, an
472 eligible company shall file with the Tax Division of the
473 Department of Revenue a form prescribed by the Tax
474 Commissioner.

475 (2) *Contents.* – The form specified under subdivision (1) of
476 this subsection (h) shall request the following information:

477 (A) The name and employer identification number of the
478 eligible company;

479 (B) The effective date of the agreement;

480 (C) The reporting period end date;

481 (D) Information relating to each individual employed in a
482 new job as required by the Tax Commissioner;

483 (E) Aggregate gross receipts for the tax period and gross
484 receipts on which tax has been paid under article twenty-seven,
485 chapter eleven of this code for the tax period; and

486 (F) Any other information required by the Tax
487 Commissioner.

488 (3) *Taking of credit.* – The taxpayer, participant or
489 participants claiming the credit for qualified investments in a
490 certified project shall annually file with their income tax returns
491 filed under chapter eleven of this code:

492 (A) Certification that the taxpayer's or participant's qualified
493 investment property continues to be used in the project and if
494 disposed of during the tax year, was not disposed of prior to
495 expiration of its useful life;

496 (B) Certification that the new jobs created by the project's
497 qualified investment continue to exist and are filled by persons
498 who are residents of this State; and

499 (C) Any other information the Tax Commissioner requires
500 to determine continuing eligibility to claim the annual credit
501 allowance for the project's qualified investment.

502 (4) *Confidentiality.* – The contents of the completed form
503 shall be subject to the confidentiality rules set forth in section
504 five-d, article ten, chapter eleven of this code: *Provided*, That
505 notwithstanding the provisions of section five-d, article ten,
506 chapter eleven of this code, or any other provision of this code,
507 tax returns, tax return information and such other information as
508 may be necessary to administer the tax credits and programs
509 authorized and specified by this article and in this section may
510 be exchanged between the Tax Commissioner and the West
511 Virginia Development Office without restriction.

**§5B-2E-8. Forfeiture of unused tax credits; credit recapture;
recapture tax imposed; information required to be
submitted annually to development office; transfer
of tax credits to successors.**

1 (a) The approved company or eligible company shall forfeit
2 the tourism development project tax credit allowed by section

3 seven of this article, or the tourism development expansion tax
4 credit allowed by section seven-a of this article, or the tax credit
5 allowed by section seven-b of this article, as applicable, with
6 respect to any calendar year and shall pay the recapture tax
7 imposed by subsection (b) of this section, if:

8 (1) In any year following the first calendar year the project
9 is open to the public, the project fails to attract at least twenty-
10 five percent of its visitors from among persons who are not
11 residents of the state;

12 (2) In any year following the first year the project is open to
13 the public, the project is not operating and open to the public for
14 at least one hundred days; or

15 (3) The approved company or eligible company, as of the
16 beginning of each calendar year, has an outstanding obligation
17 under the West Virginia state tax and revenue laws; or

18 (4) Any company, approved company or eligible company,
19 to which entitlement to the tax credit authorized under section
20 seven-b of this article has been previously established, fails to
21 meet the requirements specified in section seven-b for an eligible
22 company and for a qualified professional services destination
23 facility, including, but not limited to, jobs maintenance,
24 employee wage and employee health benefits, aggregate gross
25 receipts, and gross receipts subject to the tax imposed under
26 article twenty-seven, chapter eleven of this code.

27 (5) Any company, approved company or eligible company,
28 to which entitlement to the tax credit authorized under section
29 seven-b of this article has been previously established:

30 (A) Is delinquent in payment of any assessment, fee, fine,
31 civil penalty or monetary imposition imposed by the West
32 Virginia Division of Environmental Protection or the United
33 States Environmental Protection Agency, or any agency charged

34 with enforcing federal, state or local environmental or hazardous
35 waste regulations.

36 (B) Is delinquent in compliance with any order, injunction,
37 compliance agreement, agreed order, court order, mandamus or
38 other enforcement or compliance instrumentality of the West
39 Virginia Division of Environmental Protection or United States
40 Environmental Protection Agency or any agency charged with
41 enforcing federal, state or local environmental or hazardous
42 waste regulations.

43 (C) Is out of compliance or not compliant with any citation
44 or order issued by the West Virginia Division of Environmental
45 Protection or the United States Environmental Protection
46 Agency, or any agency charged with enforcing federal, state or
47 local environmental or hazardous waste regulations, requiring
48 that a condition be abated or corrected.

49 (b) In addition to the loss of credit allowed under this article
50 for the calendar year, a credit recapture tax is hereby imposed on
51 any approved company or successor eligible company that
52 forfeits the tourism development project tax credit or the tourism
53 development expansion project credit or the credit authorized
54 under section seven-b of this article, under the provisions of
55 subsection (a) of this section. The credit recapture tax shall apply
56 and the approved company, and successor eligible companies,
57 and any other person or entity that has received the tax credit
58 allowed under this article shall be liable for an amount of
59 recapture tax equal to all previously claimed tourism
60 development project tax credit or tourism development
61 expansion project credit, or the tax credits authorized under
62 section seven-b of this article, and allowed by this article, as
63 applicable, plus interest and penalties applicable in accordance
64 with the Tax Procedure and Administration Act. The recapture
65 tax shall be calculated and paid pursuant to the filing, with the
66 Tax Commissioner of an amended return, and such other forms,

67 schedules and documents as the Tax Commissioner may require,
68 for the prior calendar year, or calendar years, for which credit
69 recapture is required, along with interest, as provided in section
70 seventeen, article ten, chapter eleven of this code: *Provided,*
71 That the approved company, eligible company, person or entity
72 who previously claimed the tourism development project tax
73 credit, or the tourism development expansion project credit, or
74 the tax credits allowed by section seven-b of this article, as
75 applicable, under this article and successor eligible companies,
76 persons or entities are jointly and severally liable for payment of
77 any recapture tax subsequently imposed under this section. For
78 purposes of this recapture tax, the statute of limitations otherwise
79 applicable under the Tax Procedure and Administration Act shall
80 not begin to run until the eighteenth year subsequent to the
81 earlier of: the year when qualified investment is first placed into
82 service or use, or the year when the application for the tax credit
83 authorized under this article was filed with the West Virginia
84 Development Office.

85 (c) Within forty-five days after the end of each calendar year
86 during the term of the agreement, the approved company shall
87 supply the development office with all reports and certifications
88 the development office requires demonstrating to the satisfaction
89 of the development office that the approved company is in
90 compliance with applicable provisions of law. Based upon a
91 review of these materials and other documents that are available,
92 the development office shall then certify to the Tax
93 Commissioner that the approved company is in compliance with
94 this section.

95 (d) The tax credit allowed in this article is transferable,
96 subject to the written consent of the development office, to an
97 eligible successor company that continues to operate the
98 approved project.

§5B-2E-11. Termination.

1 The Development Office may not accept any new project
2 application after December 31, 2019, and all applications
3 submitted prior to January 1, 2020, that have not been previously
4 approved or not approved, shall be deemed not approved and
5 shall be null and void as of January 1, 2020.

CHAPTER 178

(Com. Sub. for S. B. 378 - By Senator Cookman)

[Passed March 5, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-6-11; and to amend and reenact §17C-15-26 of said code, all relating to special speed limitations as to waste service vehicles; directing that no person shall drive a motor vehicle and meet or overtake from either direction a stopped waste service vehicle at a speed in excess of fifteen miles per hour under certain circumstances; defining “waste service vehicle”; setting forth situations in which the special speed limit applies; providing criminal penalties; and permitting waste service vehicles to be equipped with special lights.

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 §17C-6-11; and that §17C-15-26 of said code be amended and reenacted, all to read as follows:

ARTICLE 6. SPEED RESTRICTIONS.**§17C-6-11. Special speed limitations when meeting or overtaking waste service vehicles; penalty.**

1 (a) No person shall drive a motor vehicle and meet or
2 overtake from either direction a stopped waste service vehicle at
3 a speed in excess of fifteen miles per hour.

4 (b) For purposes of this section, “waste service vehicle”
5 means any garbage collection vehicle, including a vehicle
6 collecting recyclables or yard waste, which is used for curbside
7 collection, makes frequent stops and is not fully automated.

8 (c) The speed limitation set forth in subsection (a) of this
9 section applies only under the following circumstances:

10 (1) The waste service vehicle is identifiable as a waste
11 service vehicle based on the vehicle configuration or markings
12 on the vehicle;

13 (2) The waste service vehicle operator is giving a visual
14 signal by means of a stationary sign to warn of the presence of
15 workers or must use flashing lights as permitted in this code to
16 caution other drivers; and

17 (3) The waste service vehicle is not located on a private
18 driveway, controlled access highway, interstate highway,
19 turnpike or road or highway with a center line and more than two
20 lanes.

21 (d) Any person who violates the provisions of subsection (a)
22 of this section is guilty of a misdemeanor and, upon conviction
23 thereof, shall be fined not less than \$100 nor more than \$300. If
24 the person convicted of violating subsection (a) exceeded the
25 speed limit by fifteen miles per hour or more or caused serious
26 injury or death to a service vehicle worker, then the person shall

27 be fined not less than \$300 nor more than \$1,000 or confined in
28 jail for not more than one year, or both confined and fined.

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

1 (a) Any lighted lamp or illuminating device upon a motor
2 vehicle other than head lamps, spot lamps, auxiliary lamps or
3 flashing front-direction signals which projects a beam of light of
4 an intensity greater than three hundred candlepower shall be so
5 directed that no part of the beam will strike the level of the
6 roadway on which the vehicle stands at a distance of more than
7 seventy-five feet from the vehicle.

8 (b) No person may drive or move any vehicle or equipment
9 upon any highway with any lamp or device on the vehicle
10 displaying other than a white or amber light visible from directly
11 in front of the center of the vehicle except as authorized by
12 subsection (d) of this section.

13 (c) Except as authorized in subsections (d) and (g) of this
14 section and authorized in section nineteen of this article, flashing
15 lights are prohibited on motor vehicles: *Provided*, That any
16 vehicle as a means for indicating right or left turn or any vehicle
17 as a means of indicating the same is disabled or otherwise
18 stopped for an emergency may have blinking or flashing lights.

19 (d) Notwithstanding any other provisions of this chapter, the
20 following colors of flashing warning lights are restricted for the
21 use of the type of vehicle designated:

22 (1) Blue flashing warning lights are restricted to police
23 vehicles. Authorization for police vehicles shall be designated by
24 the chief administrative official of each police department.

25 (2) Except for standard vehicle equipment authorized by
26 section nineteen of this article, red flashing warning lights are
27 restricted to the following:

- 28 (A) Ambulances;
- 29 (B) Firefighting vehicles;
- 30 (C) Hazardous material response vehicles;
- 31 (D) Industrial fire brigade vehicles;
- 32 (E) Rescue squad vehicles not operating out of a fire
33 department;
- 34 (F) School buses;
- 35 (G) Class A vehicles, as defined by section one, article ten,
36 chapter seventeen-a of this code, of those firefighters who are
37 authorized by their fire chiefs to have the lights;
- 38 (H) Class A vehicles of members of duly chartered rescue
39 squads not operating out of a fire department;
- 40 (I) Class A vehicles of members of ambulance services or
41 duly chartered rescue squads who are authorized by their
42 respective chiefs to have the lights;
- 43 (J) Class A vehicles of out-of-state residents who are active
44 members of West Virginia fire departments, ambulance services
45 or duly chartered rescue squads who are authorized by their
46 respective chiefs to have the lights;
- 47 (K) West Virginia Department of Agriculture emergency
48 response vehicles;
- 49 (L) Vehicles designated by the Secretary of the Department
50 of Military Affairs and Public Safety for emergency response or
51 emergency management by the Division of Corrections,
52 Regional Jail and Correctional Facility Authority, Division of
53 Juvenile Services and Division of Homeland Security and
54 Emergency Management; and

55 (M) Class A vehicles of emergency response or emergency
56 management personnel as designated by the Secretary of the
57 Department of Military Affairs and Public Safety and the county
58 commission of the county of residence.

59 Red flashing warning lights attached to a Class A vehicle
60 may be operated only when responding to or engaged in
61 handling an emergency requiring the attention of the firefighters,
62 members of the ambulance services or chartered rescue squads.

63 (3) The use of red flashing warning lights is authorized as
64 follows:

65 (A) Authorization for all ambulances shall be designated by
66 the Department of Health and Human Resources and the sheriff
67 of the county of residence.

68 (B) Authorization for all fire department vehicles shall be
69 designated by the fire chief and the State Fire Marshal's Office.

70 (C) Authorization for all hazardous material response
71 vehicles and industrial fire brigades shall be designated by the
72 chief of the fire department and the State Fire Marshal's Office.

73 (D) Authorization for all rescue squad vehicles not operating
74 out of a fire department shall be designated by the squad chief,
75 the sheriff of the county of residence and the Department of
76 Health and Human Resources.

77 (E) Authorization for school buses shall be designated as set
78 out in section twelve, article fourteen of this chapter.

79 (F) Authorization for firefighters to operate Class A vehicles
80 shall be designated by their fire chiefs and the state Fire
81 Marshal's office.

82 (G) Authorization for members of ambulance services or any
83 other emergency medical service personnel to operate Class A

84 vehicles shall be designated by their chief official, the
85 Department of Health and Human Resources and the sheriff of
86 the county of residence.

87 (H) Authorization for members of duly chartered rescue
88 squads not operating out of a fire department to operate Class A
89 vehicles shall be designated by their squad chiefs, the sheriff of
90 the county of residence and the Department of Health and
91 Human Resources.

92 (I) Authorization for out-of-state residents operating Class
93 A vehicles who are active members of a West Virginia fire
94 department, ambulance services or duly chartered rescue squads
95 shall be designated by their respective chiefs.

96 (J) Authorization for West Virginia Department of
97 Agriculture emergency response vehicles shall be designated by
98 the Commissioner of the Department of Agriculture.

99 (K) Authorization for vehicles for emergency response or
100 emergency management by the Division of Corrections,
101 Regional Jail and Correctional Facility Authority, Division of
102 Juvenile Services and Division of Homeland Security and
103 Emergency Management shall be designated by the Secretary of
104 the Department of Military Affairs and Public Safety.

105 (L) Authorization for Class A vehicles of emergency
106 response or emergency management personnel as designated by
107 the Secretary of the Department of Military Affairs and Public
108 Safety and the county commission of the county of residence.

109 (4) Yellow or amber flashing warning lights are restricted to
110 the following:

111 (A) All other emergency vehicles, including tow trucks and
112 wreckers, authorized by this chapter and by section twenty-seven
113 of this article;

114 (B) Postal service vehicles and rural mail carriers, as
115 authorized in section nineteen of this article;

116 (C) Rural newspaper delivery vehicles;

117 (D) Flag car services;

118 (E) Vehicles providing road service to disabled vehicles;

119 (F) Service vehicles of a public service corporation;

120 (G) Snow removal equipment;

121 (H) School buses; and

122 (I) Automotive fire apparatus owned by a municipality or
123 other political subdivision, by a volunteer or part-volunteer fire
124 company or department or by an industrial fire brigade.

125 (5) The use of yellow or amber flashing warning lights shall
126 be authorized as follows:

127 (A) Authorization for tow trucks, wreckers, rural newspaper
128 delivery vehicles, flag car services, vehicles providing road
129 service to disabled vehicles, service vehicles of a public service
130 corporation and postal service vehicles shall be designated by the
131 sheriff of the county of residence.

132 (B) Authorization for snow removal equipment shall be
133 designated by the Commissioner of the Division of Highways.

134 (C) Authorization for school buses shall be designated as set
135 out in section twelve, article fourteen of this chapter.

136 (D) Authorization for automotive fire apparatus shall be
137 designated by the fire chief in conformity with the NFPA 1901
138 Standard for Automotive Fire Apparatus as published by the
139 National Fire Protection Association (NFPA) on July 18, 2003,

140 and adopted by the state Fire Commission by legislative rule (87
141 CSR 1, *et seq.*), except as follows:

142 (i) With the approval of the State Fire Marshal, used
143 automotive fire apparatus may be conformed to the NFPA
144 standard in effect on the date of its manufacture or conformed to
145 a later NFPA standard; and

146 (ii) Automotive fire apparatus may be equipped with
147 blinking or flashing headlamps.

148 (e) Notwithstanding the foregoing provisions of this section,
149 any vehicle belonging to a county board of education, an
150 organization receiving funding from the state or Federal Transit
151 Administration for the purpose of providing general public
152 transportation or hauling solid waste may be equipped with a
153 white flashing strobotron warning light. This strobe light may be
154 installed on the roof of a school bus, a public transportation
155 vehicle or a vehicle hauling solid waste not to exceed one-third
156 the body length forward from the rear of the roof edge. The light
157 shall have a single clear lens emitting light three hundred sixty
158 degrees around its vertical axis and may not extend above the
159 roof more than six and one-half inches. A manual switch and a
160 pilot light must be included to indicate the light is in operation.

161 (f) Notwithstanding the foregoing provisions of this section,
162 any waste service vehicle as defined in section eleven, article six
163 of this chapter may be equipped with yellow or amber flashing
164 warning lights.

165 (g) It is unlawful for flashing warning lights of an
166 unauthorized color to be installed or used on a vehicle other than
167 as specified in this section, except that a police vehicle may be
168 equipped with either or both blue or red warning lights.

CHAPTER 179

**(Com. Sub. for H. B. 4304 - By Delegates Wells,
Guthrie, Skaff, Fleischauer, Skinner, Manypenny, Barill,
R. Smith, Walters, Poore and McCuskey)**

[Passed March 5, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact §17C-7-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-11-5 and §17C-11-7 of said code, all relating to use of a bicycle on a roadway; setting standards for overtaking a bicycle on a roadway; creating a misdemeanor offense for failure to follow requirements for overtaking a bicycle on a roadway; requiring bicycles to generally ride in bicycle lanes or as close as practicable to the right edge of the roadway; providing exceptions to the requirement that bicycles ride in bicycle lanes or as close as practicable to the right edge of the roadway; removing requirement to ride a bicycle on an adjacent path; and allowing a person to operate a bicycle without a bell or other device capable of giving an audible signal.

Be it enacted by the Legislature of West Virginia:

That §17C-7-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-11-5 and §17C-11-7 of said code be amended and reenacted, all to read as follows:

ARTICLE 7. DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, ETC.

§17C-7-3. Overtaking and passing vehicle or bicycle proceeding in same direction — Passing on the left generally; penalty.

1 (a) The following rules govern the overtaking and passing of
2 vehicles proceeding in the same direction subject to these
3 limitations, exceptions, and special rules hereinafter stated:

4 (1) The driver of a vehicle overtaking another vehicle
5 proceeding in the same direction shall give an audible signal and
6 pass to the left of the overtaken vehicle at a safe distance and
7 may not again drive to the right side of the roadway until safely
8 clear of the overtaken vehicle.

9 (2) The driver of a vehicle overtaking a bicycle traveling in
10 the same direction shall pass to the left of the bicycle at a
11 distance of not less than three feet at a careful and reduced
12 speed, and may not again drive to the right side of the roadway
13 until safely clear of the overtaken bicycle.

14 (3) Except when overtaking and passing on the right is
15 permitted, the driver of an overtaken vehicle shall give way to
16 the right in favor of the overtaking vehicle on audible signal and
17 may not increase the speed of his or her vehicle until completely
18 passed by the overtaking vehicle.

19 (b) Any person violating the provisions of this section is
20 guilty of a misdemeanor and, upon conviction thereof, shall be
21 fined not more than \$100; upon a second conviction within one
22 year thereafter, shall be fined not more than \$200; and upon a
23 third or subsequent conviction, shall be fined not more than
24 \$500.

ARTICLE 11. OPERATION OF BICYCLES AND PLAY VEHICLES.

§17C-11-5. Riding on roadways and bicycle paths.

1 (a) Any person operating a bicycle upon a roadway at less
2 than the normal speed of traffic at the time and place and under
3 the conditions then existing shall ride in the lane marked for

4 bicycle use or, if no lane is marked for bicycle use, as close as
5 practicable to the right-hand curb or edge of the roadway except
6 under any of the following situations:

7 (1) When overtaking and passing another bicycle or vehicle
8 proceeding in the same direction;

9 (2) When preparing for a left turn at an intersection or into
10 a private road or driveway; or

11 (3) When reasonably necessary to avoid any condition or
12 potential conflict, including, but not limited to, a fixed or
13 moving object, parked or moving vehicle, bicycle, pedestrian,
14 animal, surface hazard, turn lane, or substandard-width lane,
15 which makes it unsafe to continue along the right-hand curb or
16 edge or within a bicycle lane. For the purposes of this
17 subsection, a "substandard-width lane" is a lane that is too
18 narrow for a bicycle and another vehicle to travel safely side by
19 side within the lane.

20 (b) Any person operating a bicycle upon a one-way roadway
21 with two or more marked traffic lanes may ride as near the
22 left-hand curb or edge of such roadway as practicable.

23 (c) Persons riding bicycles upon a roadway may not ride
24 more than two abreast except on paths or parts of roadways set
25 aside for the exclusive use of bicycles.

§17C-11-7. Lamps and other equipment on bicycles.

1 (a) Every bicycle when in use at nighttime shall be equipped
2 with a lamp on the front which emits a white light visible from
3 a distance of at least five hundred feet to the front and with a red
4 reflector on the rear of a type approved by the department which
5 shall be visible from all distances from fifty feet to three hundred
6 feet to the rear when directly in front of lawful upper beams of

7 head lamps on a motor vehicle. A lamp emitting a red light
8 visible from a distance of five hundred feet to the rear may be
9 used in addition to the red reflector.

10 (b) Every bicycle shall be equipped with a brake that enables
11 the operator to make the braked wheels skid on dry, level and
12 clean pavement.

CHAPTER 180

(S. B. 572 - By Senators Tucker, Fitzsimmons and Edgell)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §46-9-515 of the Code of West Virginia, 1931, as amended, relating to financing statements covering as-extracted collateral or timber to be cut.

Be it enacted by the Legislature of West Virginia:

That §46-9-515 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

§46-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

1 (a) *Five-year effectiveness.* — Except as otherwise provided
2 in subsections (b), (e), (f) and (g) of this section, a filed
3 financing statement is effective for a period of five years after
4 the date of filing.

5 (b) *Public-finance or manufactured-home transaction.* —
6 Except as otherwise provided in subsections (e), (f) and (g) of
7 this section, an initial financing statement filed in connection
8 with a public-finance transaction or manufactured-home
9 transaction is effective for a period of forty years after the date
10 of filing if it indicates that it is filed in connection with a
11 public-finance transaction or manufactured-home transaction.

12 (c) *Lapse and continuation of financing statement.* — The
13 effectiveness of a filed financing statement lapses on the
14 expiration of the period of its effectiveness unless before the
15 lapse a continuation statement is filed pursuant to subsection (d)
16 of this section. Upon lapse, a financing statement ceases to be
17 effective and any security interest or agricultural lien that was
18 perfected by the financing statement becomes unperfected,
19 unless the security interest is perfected otherwise. If the security
20 interest or agricultural lien becomes unperfected upon lapse, it
21 is deemed never to have been perfected as against a purchaser of
22 the collateral for value.

23 (d) *When continuation statement may be filed.* — A
24 continuation statement may be filed only within six months
25 before the expiration of the five-year period specified in
26 subsection (a) of this section or the thirty-year period specified
27 in subsection (b) of this section, whichever is applicable.

28 (e) *Effect of filing continuation statement.* — Except as
29 otherwise provided in section five hundred ten of this article,
30 upon timely filing of a continuation statement, the effectiveness
31 of the initial financing statement continues for a period of five
32 years commencing on the day on which the financing statement
33 would have become ineffective in the absence of the filing. Upon
34 the expiration of the five-year period, the financing statement
35 lapses in the same manner as provided in subsection (c) of this
36 section, unless, before the lapse, another continuation statement
37 is filed pursuant to subsection (d) of this section. Succeeding

38 continuation statements may be filed in the same manner to
39 continue the effectiveness of the initial financing statement.

40 (f) *Transmitting utility financing statement.* — If a debtor is
41 a transmitting utility and a filed initial financing statement so
42 indicates, the financing statement is effective until a termination
43 statement is filed.

44 (g) *Record of mortgage as financing statement.* — A record
45 of a mortgage that is effective as a financing statement filed as
46 a fixture filing or as a financing statement covering as-extracted
47 collateral or timber to be cut under subsection (c), section five
48 hundred two of this article remains effective as a financing
49 statement filed as a fixture filing or as a financing statement
50 covering as-extracted collateral or timber to be cut until the
51 mortgage is released or satisfied of record or its effectiveness
52 otherwise terminates as to the real property.

CHAPTER 181

**(S. B. 3 - By Senators Kirkendoll, Cookman,
Blair, Fitzsimmons, D. Hall, Nohe, Wells, Miller,
McCabe, Tucker and M. Hall)**

[Passed March 7, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §36-12-1, §36-12-2, §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8, §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13, §36-12-14, §36-12-15, §36-12-16 and §36-12-17, all relating to creating Uniform Real Property Transfer on Death Act; authorizing

transfer of real property effective at time of transferor's death; providing for applicability and nonexclusivity of this method of transferring real property; providing that transfer on death deed is revocable and nontestamentary; establishing capacity of transferor; setting forth requirements for transfer on death deed; providing that transfer on death deed exempt from payment of excise tax on privilege of transferring real estate; providing that notice, delivery, acceptance or consideration are not required; providing requirements for revocation of deed; setting forth effect of transfer on death deed during transferor's life and effect of deed at transferor's death; providing disclaimer; providing for liberal construction; providing for uniformity of application and construction; setting forth article's relation to Electronic Signatures in Global and National Commerce Act; and defining terms.

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 §36-12-1, §36-12-2, §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8, §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13, §36-12-14, §36-12-15, §36-12-16 and §36-12-17, all to read as follows:

ARTICLE 12. UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT.

§36-12-1. Short Title.

- 1 This article may be cited as the Uniform Real Property
- 2 Transfer on Death Act.

§36-12-2. Definitions.

- 1 In this article:
- 2 (1) "Beneficiary" means a person who receives property
- 3 under a transfer on death deed.

4 (2) “Contingent beneficiary” means a person designated in
5 a transfer on death deed to receive property only if a different
6 person fails to survive the transferor.

7 (3) “Designated beneficiary” means a person designated to
8 receive property in a transfer on death deed. The term includes
9 contingent beneficiaries.

10 (4) “Joint owner” means an individual who owns property
11 concurrently with one or more other individuals with a right of
12 survivorship.

13 (5) “Person” means an individual, corporation, business
14 trust, estate, trust, partnership, limited liability company,
15 association, joint venture, public corporation, government or
16 governmental subdivision, agency or instrumentality, or any
17 other legal or commercial entity.

18 (6) “Property” means an interest in real property located in
19 this state which is transferable on the death of the owner.

20 (7) “Transfer on death deed” means a deed authorized under
21 this article.

22 (8) “Transferor” means an individual who makes a transfer
23 on death deed.

§36-12-3. Applicability.

1 This article applies to a transfer on death deed made on or
2 after the effective date of this article, by a transferor dying on or
3 after the effective date of this article.

§36-12-4. Nonexclusivity.

1 This article does not affect any method of transferring
2 property otherwise permitted under the law of this state.

§36-12-5. Transfer on death deed authorized.

1 An individual may transfer property to one or more
2 beneficiaries or contingent beneficiaries effective at the
3 transferor's death by a transfer on death deed.

§36-12-6. Transfer on death deed revocable.

1 A transfer on death deed is revocable even if the deed or
2 another instrument contains a contrary provision.

§36-12-7. Transfer on death deed nontestamentary.

1 A transfer on death deed is nontestamentary.

§36-12-8. Capacity of transferor.

1 The capacity required to make or revoke a transfer on death
2 deed is the same as the capacity required to make a will.

§36-12-9. Requirements.

1 A transfer on death deed:

2 (1) Except as otherwise provided in subdivision (2) of this
3 section, must contain the essential elements and formalities of a
4 properly recordable *inter vivos* deed;

5 (2) Must state that the transfer to the designated beneficiary
6 is to occur at the transferor's death; and

7 (3) Must be recorded before the transferor's death in the
8 office of the clerk of the county commission in the county where
9 the property is located: *Provided*, That, notwithstanding section
10 two, article twenty-two, chapter eleven of this code, a transfer on
11 death deed is exempt from the payment of excise tax on the
12 privilege of transferring real estate for the reason that no interest
13 in the property is at the time of recording being passed to the

14 beneficiary and the deed remains revocable until the death of the
15 transferor.

§36-12-10. Notice, delivery, acceptance and consideration not required.

1 A transfer on death deed is effective without:

2 (1) Notice or delivery to or acceptance by the designated
3 beneficiary during the transferor's life; or

4 (2) Consideration.

§36-12-11. Revocation by instrument authorized; revocation by act not permitted.

1 (a) Subject to subsection (b) of this section, an instrument is
2 effective to revoke a recorded transfer on death deed, or any part
3 of it, only if the instrument:

4 (1) Is one of the following:

5 (A) A transfer on death deed that revokes the deed or part of
6 the deed expressly or by inconsistency;

7 (B) An instrument of revocation that expressly revokes the
8 deed or part of the deed; or

9 (C) An *inter vivos* deed that expressly revokes the transfer
10 on death deed or part of the deed; and

11 (2) Is acknowledged by the transferor after the
12 acknowledgment of the deed being revoked and recorded before
13 the transferor's death in the public records in the office of the
14 clerk of the county commission of the county where the deed is
15 recorded.

16 (b) If a transfer on death deed is made by more than one
17 transferor:

18 (1) Revocation by a transferor does not affect the deed as to
19 the interest of another transferor; and

20 (2) A deed of joint owners is revoked only if it is revoked by
21 all of the living joint owners.

22 (c) After a transfer on death deed is recorded it may not be
23 revoked by a revocatory act on the deed.

24 (d) This section does not limit the effect of an *inter vivos*
25 transfer of the property.

§36-12-12. Effect of transfer on death deed during transferor's life.

1 During a transferor's life, a transfer on death deed does not:

2 (1) Affect an interest or right of the transferor or any other
3 owner, including the right to transfer or encumber the property;

4 (2) Affect an interest or right of a transferee, even if the
5 transferee has actual or constructive notice of the deed;

6 (3) Affect an interest or right of a secured or unsecured
7 creditor or future creditor of the transferor even if the creditor
8 has actual or constructive notice of the deed;

9 (4) Affect the transferor's or designated beneficiary's
10 eligibility for any form of public assistance;

11 (5) Create a legal or equitable interest in favor of the
12 designated beneficiary; or

13 (6) Subject the property to claims or process of a creditor of
14 the designated beneficiary.

§36-12-13. Effect of transfer on death deed at transferor's death.

1 (a) Except as otherwise provided in the transfer on death
2 deed in this article, section six, article one, chapter forty-one of

3 this code, section three, article three, chapter forty-one of this
4 code, article three, chapter forty-two of this code, section two,
5 article four, chapter forty-two of this code or article five, chapter
6 forty-two of this code, on the death of the transferor the
7 following rules apply to property that is the subject of a transfer
8 on death deed and owned by the transferor at death:

9 (1) Subject to subdivision (2) of this subsection, the interest
10 in the property is transferred to the designated beneficiary in
11 accordance with the deed.

12 (2) The interest of a designated beneficiary is contingent on
13 the designated beneficiary surviving the transferor. The interest
14 of a designated beneficiary that fails to survive the transferor
15 lapses.

16 (3) Subject to subdivision (4) of this subsection, concurrent
17 interests are transferred to the beneficiaries in equal and
18 undivided shares with no right of survivorship.

19 (4) If the transferor has identified two or more designated
20 beneficiaries to receive concurrent interests in the property, the
21 share of one which lapses or fails for any reason is transferred to
22 the other, or to the others in proportion to the interest of each in
23 the remaining part of the property held concurrently.

24 (b) Subject to article two, chapter thirty-nine and chapter
25 thirty-eight of this code, a beneficiary takes the property subject
26 to all conveyances, encumbrances, assignments, contracts,
27 mortgages, liens and other interests to which the property is
28 subject at the transferor's death. For purposes of this subsection,
29 article two, chapter thirty-nine and chapter thirty-eight of this
30 code, the recording of the transfer on death deed is deemed to
31 have occurred at the transferor's death.

32 (c) If a transferor is a joint owner and is:

33 (1) Survived by one or more other joint owners, the property
34 that is the subject of a transfer on death deed belongs to the
35 surviving joint owner or owners with right of survivorship; or

36 (2) The last surviving joint owner, the transfer on death deed
37 is effective.

38 (d) A transfer on death deed transfers property without
39 covenant or warranty of title even if the deed contains a contrary
40 provision.

§36-12-14. Disclaimer.

1 A beneficiary may disclaim all or part of the beneficiary's
2 interest as provided by article six, chapter forty-two of this code.

§36-12-15. Prior transfer on death liberally construed.

1 (a) Any transfer on death deed properly recorded in an office
2 of the clerk of a county commission before the effective date of
3 this article containing language that shows a clear intent to
4 designate a transfer on death beneficiary shall be liberally
5 construed to do so.

6 (b) Any survivorship clause in a deed properly recorded
7 before the effective date of this article in an office of the clerk of
8 a county commission that attempts to create a right of
9 survivorship tenancy, which survivorship tenancy otherwise
10 fails, but otherwise is an effective deed, and shows a clear intent
11 to designate a beneficiary to receive the property upon death of
12 one or more cotenants by survivorship shall be liberally
13 construed to be an effective transfer on death deed governed by
14 this article.

§36-12-16. Uniformity of application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among the states that enact it.

§36-12-17. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits and supersedes the federal
2 Electronic Signatures in Global and National Commerce Act, 15
3 U. S. C. §7001, *et seq.*, but does not modify, limit or supersede
4 section 101(c) of that act, 15 U. S. C. §7001(c), or authorize
5 electronic delivery of any of the notices described in section
6 103(b) of that act, 15 U. S. C. §7003(b).

CHAPTER 182

**(Com. Sub. for H. B. 4349 - By Delegates Pethtel, Jones,
Canterbury, Kump, Craig, Lynch and Ellem)**

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §5-10-27 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-20 and §7-14D-21 of said code; to amend and reenact §8-22A-22 and §8-22A-23 of said code; to amend and reenact §15-2-33 of said code; to amend and reenact §15-2A-12 of said code; and to amend and reenact §16-5V-25 and §16-5V-26 of said code, all relating to retirement burial and scholarship benefits awarded on behalf of deceased uniformed service officers as it relates to the distribution of marital property under a Qualified Domestic Relations Order.

Be it enacted by the Legislature of West Virginia:

That §5-10-27 of the Code of West Virginia, be amended and reenacted; that §7-14D-20 and §7-14D-21 of said code be amended and

reenacted; that §8-22A-22 and §8-22A-23 of said code be amended and reenacted; that §15-2-33 of said code be amended and reenacted; that §15-2A-12 of said code be amended and reenacted; and that §16-5V-25 and §16-5V-26 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.**

§5-10-27. Preretirement death annuities.

1 (a) (1) Except as otherwise provided in this section, in the
2 event any member who has ten or more years of credited service
3 or any former member with ten or more years of credited service
4 and who is entitled to a deferred annuity, pursuant to section
5 twenty-one of this article, may at any time prior to the effective
6 date of his or her retirement, by written declaration duly
7 executed and filed with the board of trustees, in the same manner
8 as if he or she were then retiring from the employ of a
9 participating public employer, elect option A provided in section
10 twenty-four of this article and nominate a beneficiary whom the
11 board finds to have had an insurable interest in the life of the
12 member. Prior to the effective date of his or her retirement, a
13 member may revoke his or her election of option A and
14 nomination of beneficiary and he or she may again prior to his
15 or her retirement elect option A and nominate a beneficiary as
16 provided in this subsection. Upon the death of a member who
17 has an option A election in force, his or her beneficiary, if living,
18 shall immediately receive an annuity computed in the same

19 manner in all respects as if the same member had retired the day
20 preceding the date of his or her death, notwithstanding that he or
21 she might not have attained age sixty years, and elected the said
22 option A. If at the time of his or her retirement a member has an
23 option A election in force, his or her election of option A and
24 nomination of beneficiary shall thereafter continue in force. As
25 an alternative to annuity option A, a member or former member
26 may elect to have the preretirement death benefit paid as a return
27 of accumulated contributions in a lump sum amount to any
28 beneficiary or beneficiaries he or she chooses.

29 (2) In the event any member or former member, who first
30 became a member of the Public Employees Retirement System
31 after the effective date of amendments made to this section
32 during the 2006 regular legislative session and who has ten or
33 more years of credited service and who is entitled to a deferred
34 annuity, pursuant to section twenty-one of this article: Dies
35 without leaving a surviving spouse; but leaves surviving him or
36 her a child who is financially dependent on the member by virtue
37 of a permanent mental or physical disability upon evidence
38 satisfactory to the board; and has named the disabled child as
39 sole beneficiary, the disabled child shall immediately receive an
40 annuity computed in the same manner in all respects as if the
41 member had: (A) Retired the day preceding the date of his or her
42 death, notwithstanding that he or she might not have attained age
43 sixty or sixty-two years, as the case may be; (B) elected option
44 A provided in section twenty-four of this article; and (C)
45 nominated his or her disabled child as beneficiary. A member or
46 former member with ten or more years of credited service, who
47 does not leave surviving him or her a spouse or a disabled child,
48 may elect to have the preretirement death benefit paid as a return
49 of accumulated contributions in a lump sum amount to any
50 beneficiary or beneficiaries he or she chooses.

51 (b)(1) In the event any member who has ten or more years of
52 credited service, or any former member with ten or more years
53 of credited service and who is entitled to a deferred annuity,
54 pursuant to section twenty-one of this article: Dies; and leaves a
55 surviving spouse, the surviving spouse shall immediately receive
56 an annuity computed in the same manner in all respects as if the
57 member had: (A) Retired the day preceding the date of his or her
58 death, notwithstanding that he or she might not have attained age
59 sixty or sixty-two years, as the case may be; (B) elected option
60 A provided in section twenty-four of this article; and (C)
61 nominated his or her surviving spouse as beneficiary. However,
62 the surviving spouse shall have the right to waive the annuity
63 provided in this section: *Provided*, That he or she executes a
64 valid and notarized waiver on a form provided by the board and
65 that the member or former member attests to the waiver. If the
66 waiver is presented to and accepted by the board, the member or
67 former member, may nominate a beneficiary who has an
68 insurable interest in the member's or former member's life. As
69 an alternative to annuity option A, the member or former
70 member may elect to have the preretirement death benefit paid
71 as a return of accumulated contributions in a lump sum amount
72 to any beneficiary or beneficiaries he or she chooses in the event
73 a waiver, as provided in this section, has been presented to and
74 accepted by the board.

75 (2) Whenever any member or former member who first
76 became a member of the retirement system after the effective
77 date of the amendments to this section made during the 2006
78 regular legislative session and who has ten or more years of
79 credited service and who is entitled to a deferred annuity,
80 pursuant to section twenty-one of this article, dies and leaves a
81 surviving spouse, the surviving spouse shall immediately receive
82 an annuity computed in the same manner in all respects as if the
83 member had: (A) Retired the day preceding the date of his or her

84 death, notwithstanding that he or she might not have attained age
85 sixty or sixty-two years, as the case may be; (B) elected option
86 A provided in section twenty-four of this article; and (C)
87 nominated his or her surviving spouse as beneficiary. However,
88 the surviving spouse shall have the right to waive the annuity
89 provided in this section: *Provided*, That he or she executes a
90 valid and notarized waiver on a form provided by the board and
91 that the member or former member attests to the waiver. If the
92 waiver is presented to and accepted by the board, the member or
93 former member may: (1) Elect to have the preretirement death
94 benefit paid in a lump sum amount, rather than annuity option A
95 provided in section twenty-four of this article, as a return of
96 accumulated contributions to any beneficiary or beneficiaries he
97 or she chooses; or (2) may name his or her surviving child, who
98 is financially dependent on the member by virtue of a permanent
99 mental or physical disability, as his or her sole beneficiary to
100 receive an annuity computed in the same manner in all respects
101 as if the member had: (A) Retired the day preceding the date of
102 his or her death, notwithstanding that he or she might not have
103 attained the age of sixty or sixty-two as the case may be; (B)
104 elected option A provided in section twenty-four of this article;
105 and (C) nominated his or her disabled child as beneficiary.

106 (c) In the event any member who has ten or more years of
107 credited service or any former member with ten or more years of
108 credited service and who is entitled to a deferred annuity,
109 pursuant to section twenty-one of this article: (1) Dies without
110 leaving surviving him or her a spouse; but (2) leaves surviving
111 him or her an infant child or children; and (3) does not have a
112 beneficiary nominated as provided in subsection (a) of this
113 section, the infant child or children are entitled to an annuity to
114 be calculated as follows: The annuity reserve shall be calculated
115 as though the member had retired as of the date of his or her
116 decease and elected a straight life annuity and the amount of the

117 annuity reserve shall be paid in equal monthly installments to the
118 member's infant child or children until the child or children
119 attain age twenty-one or sooner marry or become emancipated;
120 however, in no event shall any child or children receive more
121 than \$250 per month each. The annuity payments shall be
122 computed as of the date of the death of the member and the
123 amount of the annuity shall remain constant during the period of
124 payment. The annual amount of the annuities payable by this
125 section shall not exceed sixty percent of the deceased member's
126 final average salary.

127 (d) In the event any member or former member does not
128 have ten or more years of credited service, no preretirement
129 death annuity may be authorized, owed or awarded under this
130 section, except as provided in subdivision (4), subsection (a),
131 section fifteen of this article as amended during the 2005 regular
132 session of the Legislature.

133 (e) Any person qualified as a surviving dependent child
134 under this section, who is the surviving dependent child of a law-
135 enforcement officer who loses his or her life in the performance
136 of duty, in addition to any other benefits due under this or other
137 sections of this article is entitled to receive a scholarship to be
138 applied to the career development education of that person. This
139 sum, up to but not exceeding \$7,500 per year, shall be paid from
140 the fund to any higher education institution in this state, career-
141 technical education provider in this state or other entity in this
142 state approved by the board, to offset the expenses of tuition,
143 room and board, books, fees or other costs incurred in a course
144 of study at any of those institutions so long as the recipient
145 makes application to the board on an approved form and under
146 rules as provided by the board and maintains scholastic
147 eligibility as defined by the institution or the board. The board
148 may by appropriate rules define age requirements, physical and
149 mental requirements, scholastic eligibility, disbursement

150 methods, institutional qualifications and other requirements as
151 necessary and not inconsistent with this section. Scholarship
152 benefits awarded pursuant to this subsection are not subject to
153 division or payable to an alternate payee by any Qualified
154 Domestic Relations Order.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-20. Additional death benefits and scholarships - Dependent children.

1 (a) In addition to the spouse death benefits in sections
2 eighteen and nineteen of this article, the surviving spouse is
3 entitled to receive and there shall be paid to the spouse \$100
4 monthly for each dependent child.

5 (b) If the surviving spouse dies or if there is no surviving
6 spouse, the fund shall pay monthly to each dependent child a
7 sum equal to one fourth of the surviving spouse's entitlement
8 under either section eighteen or nineteen of this article. If there
9 is neither a surviving spouse nor a dependent child, the fund
10 shall pay in equal monthly installments to the dependent parents
11 of the deceased member during their joint lifetimes a sum equal
12 to the amount which a surviving spouse, without children, would
13 have received: *Provided*, That when there is only one dependent
14 parent surviving, that parent is entitled to receive during his or
15 her lifetime one-half the amount which both parents, if living,
16 would have been entitled to receive: *Provided, however*, That if
17 there is no surviving spouse, dependent child nor dependent
18 parent of the deceased member the accumulated contributions
19 shall be paid to a named beneficiary or beneficiaries: *Provided*

20 *further*, That if there is no surviving spouse, dependent child, nor
21 dependent parent of the deceased member, nor any named
22 beneficiary or beneficiaries then the accumulated contributions
23 shall be paid to the estate of the deceased member.

24 (c) Any person qualifying as a dependent child under this
25 section, in addition to any other benefits due under this or other
26 sections of this article, is entitled to receive a scholarship to be
27 applied to the career development education of that person. This
28 sum, up to but not exceeding \$7,500 per year, shall be paid from
29 the fund to any higher education institution in this state,
30 career-technical education provider in this state or other entity in
31 this state approved by the board, to offset the expenses of tuition,
32 room and board, books, fees or other costs incurred in a course
33 of study at any of these institutions so long as the recipient
34 makes application to the board on an approved form and under
35 such rules as the board may provide, and maintains scholastic
36 eligibility as defined by the institution or the board. The board
37 may propose legislative rules for promulgation in accordance
38 with article three, chapter twenty-nine-a of this code which
39 define age requirements, physical and mental requirements,
40 scholastic eligibility, disbursement methods, institutional
41 qualifications and other requirements as necessary and not
42 inconsistent with this section. Scholarship benefits awarded
43 pursuant to this subsection are not subject to division or payable
44 to an alternate payee by any Qualified Domestic Relations Order.

§7-14D-21. Burial benefit.

1 Any member who dies as a result of any service related
2 illness or injury after the effective date is entitled to a lump sum
3 burial benefit of five thousand dollars. If the member is married,
4 the burial benefit shall be paid to the member's spouse. If the
5 member is not married, the burial benefit shall be paid to the
6 member's estate for the purposes of paying burial expenses,

7 settling the member's final affairs, or both. Any unspent balance
8 shall be distributed as a part of the member's estate. Burial
9 benefits awarded pursuant to this section are not subject to
10 division or payable to an alternate payee by any Qualified
11 Domestic Relations Order.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-22. Additional death benefits and scholarships - Dependent children.

1 (a) Except as provided in subsection (a), section nine of this
2 article, in addition to the spouse death benefits in this article, the
3 surviving spouse is entitled to receive and there shall be paid to
4 the spouse \$100 monthly for each dependent child.

5 (b) If the surviving spouse dies or if there is no surviving
6 spouse, the fund shall pay monthly to each dependent child a
7 sum equal to one hundred percent of the spouse's entitlement
8 under this article divided by the number of dependent children.
9 If there is neither a surviving spouse nor a dependent child, the
10 fund shall pay in equal monthly installments to the dependent
11 parents of the deceased member during their joint lifetimes a
12 sum equal to the amount which a surviving spouse, without
13 children, would have received: *Provided*, That when there is
14 only one dependent parent surviving, that parent is entitled to
15 receive during his or her lifetime one-half the amount which
16 both parents, if living, would have been entitled to receive:
17 *Provided, however*, That if there is no surviving spouse,
18 dependent child or dependent parent of the deceased member,
19 the accumulated contributions shall be paid to a named

20 beneficiary or beneficiaries: *Provided further*, That if there is no
21 surviving spouse, dependent child or dependent parent of the
22 deceased member, or any named beneficiary or beneficiaries,
23 then the accumulated contributions shall be paid to the estate of
24 the deceased member.

25 (c) Any person qualifying as a dependent child under this
26 section, in addition to any other benefits due under this or other
27 sections of this article, is entitled to receive a scholarship to be
28 applied to the career development education of that person. This
29 sum, up to but not exceeding \$7,500 per year, shall be paid from
30 the fund to any higher education institution in this state,
31 career-technical education provider in this state or other entity in
32 this state approved by the board, to offset the expenses of tuition,
33 room and board, books, fees or other costs incurred in a course
34 of study at any of these institutions so long as the recipient
35 makes application to the board on an approved form and under
36 rules provided by the board and maintains scholastic eligibility
37 as defined by the institution or the board. The board may propose
38 legislative rules for promulgation in accordance with article
39 three, chapter twenty-nine-a of this code which define age
40 requirements, physical and mental requirements, scholastic
41 eligibility, disbursement methods, institutional qualifications and
42 other requirements as necessary and not inconsistent with this
43 section. Scholarship benefits awarded pursuant to this subsection
44 are not subject to division or payable to an alternate payee by
45 any Qualified Domestic Relations Order.

§8-22A-23. Burial benefit.

1 Except as provided in subsection (a), section nine of this
2 article, any member who dies as a result of any service-related
3 illness or injury after the effective date is entitled to a lump sum
4 burial benefit of \$5,000. If the member is married, the burial
5 benefit shall be paid to the member's spouse. If the member is

6 not married, the burial benefit shall be paid to the member's
7 estate for the purposes of paying burial expenses, settling the
8 member's final affairs, or both. Burial benefits awarded pursuant
9 to this section are not subject to division or payable to an
10 alternate payee by any Qualified Domestic Relations Order.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-33. Awards and benefits to dependents of member when the member dies in performance of duty; to dependents of a duty disability retiree; dependent child scholarship and amount.

1 (a) The surviving spouse or the dependent child or children
2 or dependent parent or parents of any member who has lost or
3 loses his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of employees while the member
6 was or is engaged in the performance of his or her duties as an
7 employee of the agency, or if a retiree dies from any cause after
8 having been retired pursuant to the provisions of section
9 twenty-nine of this article, the surviving spouse or other
10 dependent is entitled to receive and shall be paid from the fund
11 benefits as follows: To the surviving spouse annually, in equal
12 monthly installments during his or her lifetime the greater of one
13 or the other of two amounts:

14 (1) An amount equal to five and one-half percent of the total
15 salary which was or would have been earned by the deceased
16 member or duty disability retiree during twenty-five years of
17 service based on the average earnings of the member or duty
18 disability retiree while employed by the agency; or

19 (2) The sum of \$6,000.

20 (b) In addition, the surviving spouse is entitled to receive
21 and shall be paid \$100 monthly for each dependent child or
22 children. If the surviving spouse dies or if there is no surviving
23 spouse, there shall be paid monthly to each dependent child or
24 children from the fund a sum equal to twenty-five percent of the
25 surviving spouse's entitlement. If there is no surviving spouse
26 and no dependent child or children, there shall be paid annually
27 in equal monthly installments from the fund to the dependent
28 parents of the deceased member or retirant during their joint
29 lifetimes a sum equal to the amount which a surviving spouse,
30 without children, would have received: *Provided*, That when
31 there is one dependent parent surviving, that parent is entitled to
32 receive during his or her lifetime one-half the amount which
33 both parents, if living, would have been entitled to receive.

34 (c) Any person qualified as a surviving dependent child
35 under this section, in addition to any other benefits due under
36 this or other sections of this article, is entitled to receive a
37 scholarship to be applied to the career development education of
38 that person. This sum, up to but not exceeding \$7,500 per year,
39 shall be paid from the fund to any higher education institution in
40 this state, career-technical education provider in this state or
41 other entity in this state approved by the board, to offset the
42 expenses of tuition, room and board, books, fees or other costs
43 incurred in a course of study at any of those institutions so long
44 as the recipient makes application to the board on an approved
45 form and under rules as provided by the board and maintains
46 scholastic eligibility as defined by the institution or the board.
47 The board may, by appropriate rules, define age requirements,
48 physical and mental requirements, scholastic eligibility,
49 disbursement methods, institutional qualifications and other
50 requirements as necessary and not inconsistent with this section.

51 Scholarship benefits awarded pursuant to this subsection are not
52 subject to division or payable to an alternate payee by any
53 Qualified Domestic Relations Order.

54 (d) A surviving spouse or dependent of an employee meeting
55 the requirements of this section is entitled to receive beneficiary
56 payments on the first day following the date the deceased
57 employee is removed from payroll by the agency. A surviving
58 spouse or dependent of a member who is not currently an
59 employee meeting the requirements of this section is entitled to
60 receive beneficiary payments on the first day following the date
61 of the deceased member's death. A surviving spouse or
62 dependent of a retirant meeting the requirements of this section
63 is entitled to receive beneficiary payments on the first day of the
64 month following the date of the deceased retirant's death. Upon
65 receipt of properly executed forms from the agency and the
66 surviving spouse or dependent, the board shall process the
67 surviving spouse or dependent benefit as soon as
68 administratively feasible.

69 (e) For the purposes of this section, the term "salary" does
70 not include any compensation paid for overtime service.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.

1 (a) The surviving spouse, the dependent child or children or
2 dependent parent or parents of any employee who has lost or
3 shall lose his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of employees while the employee

6 was engaged in the performance of his or her duties as an
7 employee of the agency, or the survivor of a retirant who dies
8 from any cause after having been retired pursuant to the
9 provisions of section nine of this article, is entitled to receive and
10 shall be paid from the fund benefits as follows: To the surviving
11 spouse annually, in equal monthly installments during his or her
12 lifetime, one or the other of two amounts, which shall become
13 payable the first day of the month following the employee's or
14 retirant's death and which shall be the greater of:

15 (1) An amount equal to nine-tenths of the base salary
16 received in the preceding full twelve-month employment period
17 by the deceased employee: *Provided*, That if the employee had
18 not been employed with the agency for twelve full months prior
19 to his or her death, the amount of monthly salary shall be
20 annualized for the purpose of determining the benefit; or

21 (2) The sum of \$10,000.

22 (b) In addition, the surviving spouse is entitled to receive
23 and shall be paid \$150 monthly for each dependent child. If the
24 surviving spouse dies or if there is no surviving spouse, there
25 shall be paid monthly to each dependent child or children from
26 the fund a sum equal to one third of the surviving spouse's
27 entitlement. If there is no surviving spouse and no dependent
28 child or children, there shall be paid annually in equal monthly
29 installments from the fund to the dependent parents of the
30 deceased member during their joint lifetimes a sum equal to the
31 amount which a surviving spouse, without children, would have
32 received: *Provided*, That when there is one dependent parent
33 surviving, that parent is entitled to receive during his or her
34 lifetime one-half the amount which both parents, if living, would
35 have been entitled to receive: *Provided, however*, That if there
36 is no surviving spouse, dependent child or dependent parent of
37 the deceased member, the accumulated contributions shall be

38 paid to a named beneficiary or beneficiaries: *Provided further,*
39 That if there is no surviving spouse, dependent child, dependent
40 parent of the deceased member or any named beneficiary or
41 beneficiaries, then the accumulated contributions shall be paid
42 to the estate of the deceased member.

43 (c) Any person qualifying as a surviving dependent child
44 under this section, in addition to any other benefits due under
45 this or other sections of this article, is entitled to receive a
46 scholarship to be applied to the career development education of
47 that person. This sum, up to but not exceeding \$7,500 per year,
48 shall be paid from the fund to any higher education institution in
49 this state, career-technical education provider in this state or
50 other entity in this state approved by the board to offset the
51 expenses of tuition, room and board, books, fees or other costs
52 incurred in a course of study at any of these institutions as long
53 as the recipient makes application to the board on an approved
54 form and under rules provided by the board and maintains
55 scholastic eligibility as defined by the institution or the board.
56 The board may by appropriate rules define age requirements,
57 physical and mental requirements, scholastic eligibility,
58 disbursement methods, institutional qualifications and other
59 requirements as necessary and not inconsistent with this section.
60 Scholarship benefits awarded pursuant to this subsection are not
61 subject to division or payable to an alternate payee by any
62 Qualified Domestic Relations Order.

63 (d) A surviving spouse or dependent of an employee meeting
64 the requirements of this section is entitled to receive beneficiary
65 payments on the first day of the month following the date the
66 deceased member is removed from payroll by the agency. A
67 surviving spouse or dependent of a member who is not currently
68 an employee meeting the requirements of this section is entitled
69 to receive beneficiary payments on the first day of the month
70 following the date of the deceased member's death. A surviving

71 spouse or dependent of a retirant meeting the requirements of
72 this section is entitled to receive beneficiary payments on the
73 first day of the month following the date of the deceased
74 retirant's death. Upon receipt of properly executed forms from
75 the agency and surviving spouse or dependent, the board shall
76 process the surviving spouse or dependent benefit as soon as
77 administratively feasible.

78 (e) It is the intent of the Legislature that the levels of
79 benefits provided by operation of this section from the effective
80 date of the enactment of this section during the regular session
81 of the Legislature, 2005, be the same levels of benefits as
82 provided by this section as amended and reenacted during the
83 fourth extraordinary session of the Legislature, 2005.
84 Accordingly, the effective date of the operation of this section as
85 amended and reenacted during the fourth extraordinary session
86 of the Legislature, 2005, is expressly made retrospective to April
87 9, 2005.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-25. Additional death benefits and scholarships — Dependent children.

1 (a) In addition to the spouse death benefits in this article, the
2 surviving spouse is entitled to receive and there shall be paid to
3 the spouse \$100 monthly for each dependent child.

4 (b) If the surviving spouse dies or if there is no surviving
5 spouse, the fund shall pay monthly to each dependent child a
6 sum equal to one hundred percent of the spouse's entitlement
7 under this article divided by the number of dependent children.

8 If there is neither a surviving spouse nor a dependent child, the
9 fund shall pay in equal monthly installments to the dependent
10 parents of the deceased member during their joint lifetimes a
11 sum equal to the amount which a surviving spouse, without
12 children, would have received: *Provided*, That when there is
13 only one dependent parent surviving, that parent is entitled to
14 receive during his or her lifetime one-half the amount which
15 both parents, if living, would have been entitled to receive:
16 *Provided, however*, That if there is no surviving spouse,
17 dependent child or dependent parent of the deceased member,
18 the accumulated contributions shall be paid to a named
19 beneficiary or beneficiaries: *Provided further*, That if there is no
20 surviving spouse, dependent child or dependent parent of the
21 deceased member, or any named beneficiary or beneficiaries,
22 then the accumulated contributions shall be paid to the estate of
23 the deceased member.

24 (c) Any person qualifying as a dependent child under this
25 section, in addition to any other benefits due under this or other
26 sections of this article, is entitled to receive a scholarship to be
27 applied to the career development education of that person. This
28 sum, up to but not exceeding \$6,000 per year, shall be paid from
29 the fund to any university or college in this state or to any trade
30 or vocational school or other entity in this state approved by the
31 board to offset the expenses of tuition, room and board, books,
32 fees or other costs incurred in a course of study at any of these
33 institutions so long as the recipient makes application to the
34 board on an approved form and under rules provided by the
35 board and maintains scholastic eligibility as defined by the
36 institution or the board. The board may propose legislative rules
37 for promulgation in accordance with article three, chapter
38 twenty-nine-a of this code which define age requirements,
39 physical and mental requirements, scholastic eligibility,
40 disbursement methods, institutional qualifications and other

41 requirements as necessary and not inconsistent with this section.
42 Scholarship benefits awarded pursuant to this subsection are not
43 subject to division or payable to an alternate payee by any
44 Qualified Domestic Relations Order.

§16-5V-26. Burial benefit.

1 Any member who dies as a result of any service related
2 illness or injury after the effective date is entitled to a lump sum
3 burial benefit of \$5,000. If the member is married, the burial
4 benefit shall be paid to the member's spouse. If the member is
5 not married, the burial benefit shall be paid to the member's
6 estate for the purposes of paying burial expenses, settling the
7 member's final affairs, or both. Burial benefits awarded pursuant
8 to this section are not subject to division or payable to an
9 alternate payee by any Qualified Domestic Relations Order.

CHAPTER 183

**(H. B. 4601 - By Delegates White (By Request),
Boggs and Skaff)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §16-13A-18a of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-4a and §24-2-4b of said code, all relating to fiscal management and regulation of publicly owned utilities; waiving certain cash distribution requirements in the case of a sale between two political subdivisions; eliminating a suspension period for a rate increase established by municipal rate ordinance or enacted by a

public service district that increases rates less than twenty-five percent of gross revenues; providing a process to apply for a waiver of the suspension period for rates established by municipal rate ordinance or enacted by a public service district that increases rates by more than twenty-five percent of gross revenues; and providing a refund procedure for proposed municipal or public service district rate increase in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §16-13A-18a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-4a and §24-2-4b of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.

1 In any case where a public service district owns a water,
2 sewer, stormwater or gas system, and a majority of not less than
3 sixty percent of the members of the public service board thereof
4 deem it for the best interests of the district to sell, lease or rent
5 such water, sewer, stormwater or gas system to any municipality
6 or privately-owned water, sewer, stormwater or gas system, or
7 to any water, sewer, stormwater or gas system owned by an
8 adjacent public service district, the board may so sell, lease or
9 rent such water, sewer, stormwater or gas system upon such
10 terms and conditions as said board, in its discretion, considers in
11 the best interests of the district: *Provided*, That such sale, leasing
12 or rental may be made only upon: (1) The publication of notice
13 of a hearing before the board of the public service district, as a

14 Class I legal advertisement in compliance with the provisions of
15 article three, chapter fifty-nine of this code, in a newspaper
16 published and of general circulation in the county or counties
17 wherein the district is located, such publication to be made not
18 earlier than twenty days and not later than seven days prior to the
19 hearing; (2) approval by the county commission or commissions
20 of the county or counties in which the district operates; and (3)
21 approval by the Public Service Commission of West Virginia.

22 In the event of any such sale, the proceeds thereof, if any,
23 remaining after payment of all outstanding bonds and other
24 obligations of the district, shall be ratably distributed to any
25 persons who have made contributions in aid of construction of
26 such water, sewer, stormwater or gas system, such distribution
27 not to exceed the actual amount of any such contribution,
28 without interest, and any balance of funds thereafter remaining
29 shall be paid to the county commission of the county in which
30 the major portion of such water, sewer, stormwater or gas system
31 is located to be placed in the general funds of such county
32 commission: *Provided*, That no such distribution shall be
33 required in the case of a sale between political subdivisions of
34 the state.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4a. Procedure for changing rates after June 30, 1981.

1 After June 30, 1981, no public utility subject to this chapter
2 except those utilities subject to the provisions of section four-b
3 and section four-d of this article, shall change, suspend or annul
4 any rate, joint rate, charge, rental or classification except after
5 thirty days' notice to the commission and the public, which

6 notice shall plainly state the changes proposed to be made in the
7 schedule then in force and the time when the changed rates or
8 charges shall go into effect; but the commission may enter an
9 order suspending the proposed rate as hereinafter provided. The
10 proposed changes shall be shown by printing new schedules, or
11 shall be plainly indicated upon the schedules in force at the time,
12 and kept open to public inspection: *Provided*, That the
13 commission may, in its discretion, and for good cause shown,
14 allow changes upon less time than the notice herein specified, or
15 may modify the requirements of this section in respect to
16 publishing, posting and filing of tariffs, either by particular
17 instructions or by general order.

18 Whenever there shall be filed with the commission any
19 schedule stating a change in the rates or charges, or joint rates or
20 charges, or stating a new individual or joint rate or charge or
21 joint classification or any new individual or joint regulation or
22 practice affecting any rate or charge, the commission may either
23 upon complaint or upon its own initiative without complaint
24 enter upon a hearing concerning the propriety of such rate,
25 charge, classification, regulation or practice; and, if the
26 commission so orders, it may proceed without answer or other
27 form of pleading by the interested parties, but upon reasonable
28 notice, and, pending such hearing and the decisions thereon, the
29 commission, upon filing with such schedule and delivering to the
30 public utility affected thereby a statement in writing of its
31 reasons for such suspension, may suspend the operation of such
32 schedule and defer the use of such rate, charge, classification,
33 regulation or practice, but not for a longer period than two
34 hundred seventy days beyond the time when such rate, charge,
35 classification, regulation or practice would otherwise go into
36 effect; and after full hearing, whether completed before or after
37 the rate, charge, classification, regulation or practice goes into
38 effect, the commission may make such order in reference to such

39 rate, charge, classification, regulation or practice as would be
40 proper in a proceeding initiated after the rate, charge,
41 classification, regulation or practice had become effective:
42 *Provided*, That in the case of a public utility having two
43 thousand five hundred customers or less and which is not
44 principally owned by any other public utility corporation or
45 public utility holding corporation, the commission may suspend
46 the operation of such schedule and defer the use of such rate,
47 charge, classification, regulation or practice, but not for a longer
48 period than one hundred twenty days beyond the time when such
49 rate, charge, classification, regulation or practice would
50 otherwise go into effect; and in the case of a public utility having
51 more than two thousand five hundred customers, but not more
52 than five thousand customers, and which is not principally
53 owned by any other public utility corporation or public utility
54 holding corporation, the commission may suspend the operation
55 of such schedule and defer the use of such rate, charge,
56 classification, regulation or practice, but not for a longer period
57 than one hundred fifty days beyond the time when such rate,
58 charge, classification, regulation or practice would otherwise go
59 into effect; and in the case of a public utility having more than
60 five thousand customers, but not more than seven thousand five
61 hundred customers, and which is not principally owned by any
62 other public utility corporation or public utility holding
63 corporation, the commission may suspend the operation of such
64 schedule and defer the use of such rate, charge, classification,
65 regulation or practice, but not for a longer period than one
66 hundred eighty days beyond the time when such rate, charge,
67 classification, regulation or practice would otherwise go into
68 effect; and after full hearing, whether completed before or after
69 the rate, charge, classification, regulation or practice goes into
70 effect, the commission may make such order in reference to such
71 rate, charge, classification, regulation or practice as would be
72 proper in a proceeding initiated after the rate, charge,

73 classification, regulation or practice had become effective:
74 *Provided, however,* That, in the case of rates established or
75 proposed that increase by less than twenty-five percent of the
76 gross revenue of the public service district, there shall be no
77 suspension period in the case of rates established by a public
78 service district pursuant to section nine, article thirteen-a,
79 chapter sixteen of this code, and the proposed rates of public
80 service districts shall go into effect upon the date of filing with
81 the commission, subject to refund modification at the conclusion
82 of the commission proceeding. In the case of rates established or
83 proposed that increase by more than twenty-five percent of the
84 gross revenue of the public service district, the district may
85 apply for, and the commission may grant, a waiver of the
86 suspension period and allow rates to be effective upon the date
87 of filing with the commission. The public service district shall
88 provide notice by Class 1 legal advertisement in a newspaper of
89 general circulation in its service territory of the percentage
90 increase in rates at least fourteen days prior to the effective date
91 of the increased rates. Any refund determined to be determined
92 to be due and owing as a result of any difference between any
93 final rates approved by the commission and the rates placed into
94 effect subject to refund shall be refunded by the public service
95 district as a credit against each customer's account for a period
96 of up to six months after entry of the commission's final order.
97 Any remaining balance which is not fully credited by credit
98 within six months after entry of the commission's final order
99 shall be directly refunded to the customer by check: *Provided,*
100 *further,* That if any such hearing and decision thereon is not
101 concluded within the periods of suspension, as above stated,
102 such rate, charge, classification, regulation or practice shall go
103 into effect at the end of such period not subject to refund: *And*
104 *provided further,* That if any such rate, charge, classification,
105 regulation or practice goes into effect because of the failure of
106 the commission to reach a decision, the same shall not preclude

107 the commission from rendering a decision with respect thereto
108 which would disapprove, reduce or modify any such proposed
109 rate, charge, classification, regulation or practice, in whole or in
110 part, but any such disapproval, reduction or modification shall
111 not be deemed to require a refund to the customers of such utility
112 as to any rate, charge, classification, regulation or practice so
113 disapproved, reduced or modified. The fact of any rate, charge,
114 classification, regulation or practice going into effect by reason
115 of the commission's failure to act thereon shall not affect the
116 commission's power and authority to subsequently act with
117 respect to any such application or change in any rate, charge,
118 classification, regulation or practice. Any rate, charge,
119 classification, regulation or practice which shall be approved,
120 disapproved, modified or changed, in whole or in part, by
121 decision of the commission shall remain in effect as so approved,
122 disapproved, modified or changed during the period or pendency
123 of any subsequent hearing thereon or appeal therefrom. Orders
124 of the commission affecting rates, charges, classifications,
125 regulations or practices which have gone into effect
126 automatically at the end of the suspension period are prospective
127 in effect only.

128 At any hearing involving a rate sought to be increased or
129 involving the change of any rate, charge, classification,
130 regulation or practice, the burden of proof to show the justness
131 and reasonableness of the increased rate or proposed increased
132 rate, or the proposed change of rate, charge, classification,
133 regulation or practice shall be upon the public utility making
134 application for such change. The commission shall, whenever
135 practicable and within budgetary constraints, conduct one or
136 more public hearings within the area served by the public utility
137 making application for such increase or change, for the purpose
138 of obtaining comments and evidence on the matter from local
139 ratepayers.

140 Each public utility subject to the provisions of this section
141 shall be required to establish, in a written report which shall be
142 incorporated into each general rate case application, that it has
143 thoroughly investigated and considered the emerging and state-
144 of-the-art concepts in the utility management, rate design and
145 conservation as reported by the commission under subsection
146 (c), section one, article one of this chapter, as alternatives to, or
147 in mitigation of, any rate increase. The utility report shall contain
148 as to each concept considered the reasons for adoption or
149 rejection of each. When in any case pending before the
150 commission all evidence shall have been taken and the hearing
151 completed, the commission shall render a decision in such case.
152 The failure of the commission to render a decision with respect
153 to any such proposed change in any such rate, charge,
154 classification, regulation or practice within the various time
155 periods specified in this section after the application therefor
156 shall constitute neglect of duty on the part of the commission and
157 each member thereof.

158 Where more than twenty members of the public are affected
159 by a proposed change in rates, it shall be a sufficient notice to
160 the public within the meaning of this section if such notice is
161 published as a Class II legal advertisement in compliance with
162 the provisions of article three, chapter fifty-nine of this code, and
163 the publication area for such publication shall be the community
164 where the majority of the resident members of the public
165 affected by such change reside or, in case of nonresidents, have
166 their principal place of business within this state.

167 The commission may order rates into effect subject to
168 refund, plus interest in the discretion of the commission, in cases
169 in which the commission determines that a temporary or interim
170 rate increase is necessary for the utility to avoid financial
171 distress, or in which the costs upon which these rates are based

172 are subject to modification by the commission or another
173 regulatory commission and to refund to the public utility. In such
174 case the commission may require such public utility to enter into
175 a bond in an amount deemed by the commission to be reasonable
176 and conditioned upon the refund to the persons or parties entitled
177 thereto of the amount of the excess if such rates so put into effect
178 are subsequently determined to be higher than those finally fixed
179 for such utility.

180 No utility may make application for a general rate increase
181 while another general rate application is pending before the
182 commission and not finally acted upon, except pursuant to the
183 provisions of the next preceding paragraph of this section. The
184 provisions of this paragraph shall not be construed so as to
185 prohibit any such rate application from being made while a
186 previous application which has been finally acted upon by the
187 commission is pending before or upon appeal to the West
188 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 municipally operated public utilities, except for
3 municipally operated commercial solid waste facilities as
4 defined in section two, article fifteen, chapter twenty-two of this
5 code, and the rates and charges for local exchange services
6 provided by telephone cooperatives are not subject to the rate
7 approval provisions of section four or four-a of this article, but
8 are subject to the limited rate provisions of this section.

9 (b) All rates and charges set by electric cooperatives, natural
10 gas cooperatives and municipally operated public utilities and all

11 rates and charges for local exchange services set by telephone
12 cooperatives shall be just, reasonable, applied without unjust
13 discrimination or preference and based primarily on the costs of
14 providing these services. The rates and charges shall be adopted
15 by the electric, natural gas or telephone cooperative's governing
16 board and in the case of the municipally operated public utility
17 by municipal ordinance to be effective not sooner than forty-five
18 days after adoption: *Provided*, That notice of intent to effect a
19 rate change shall be specified on the monthly billing statement
20 of the customers of the utility for the month next preceding the
21 month in which the rate change is to become effective or the
22 utility shall give its customers, and in the case of a cooperative,
23 its customers, members and stockholders, other reasonable
24 notices as will allow filing of timely objections to the rate
25 change or full participation in municipal rate legislation. The
26 rates and charges or ordinance shall be filed with the
27 commission, together with any information showing the basis of
28 the rates and charges and other information as the commission
29 considers necessary. Any change in the rates and charges with
30 updated information shall be filed with the commission. If a
31 petition, as set out in subdivision (1), (2) or (3), subsection (c) of
32 this section is received and the electric cooperative, natural gas
33 cooperative or telephone cooperative or municipality has failed
34 to file with the commission the rates and charges with
35 information showing the basis of rates and charges and other
36 information as the commission considers necessary, the
37 suspension period limitation of one hundred twenty days and the
38 one hundred-day period limitation for issuance of an order by a
39 hearing examiner, as contained in subsections (d) and (e) of this
40 section, is tolled until the necessary information is filed. The
41 electric cooperative, natural gas cooperative, telephone
42 cooperative or municipality shall set the date when any new rate
43 or charge is to go into effect.

44 (c) The commission shall review and approve or modify the
45 rates upon the filing of a petition within thirty days of the
46 adoption of the ordinance or resolution changing the rates or
47 charges by:

48 (1) Any customer aggrieved by the changed rates or charges
49 who presents to the commission a petition signed by not less
50 than twenty-five percent of the customers served by the
51 municipally operated public utility or twenty-five percent of the
52 membership of the electric, natural gas or telephone cooperative
53 residing within the state;

54 (2) Any customer who is served by a municipally operated
55 public utility and who resides outside the corporate limits and
56 who is affected by the change in the rates or charges and who
57 presents to the commission a petition alleging discrimination
58 between customers within and without the municipal boundaries.
59 The petition shall be accompanied by evidence of
60 discrimination; or

61 (3) Any customer or group of customers who are affected by
62 the change in rates who reside within the municipal boundaries
63 and who present a petition to the commission alleging
64 discrimination between customer or group of customers and
65 other customers of the municipal utility. The petition shall be
66 accompanied by evidence of discrimination.

67 (d)(1) The filing of a petition with the commission signed by
68 not less than twenty-five percent of the customers served by the
69 municipally operated public utility or twenty-five percent of the
70 membership of the electric, natural gas or telephone cooperative
71 residing within the state under subdivision (1), subsection (c) of
72 this section shall suspend the adoption of the rate change
73 contained in the ordinance or resolution for a period of one

74 hundred twenty days from the date the rates or charges would
75 otherwise go into effect or until an order is issued as provided
76 herein.

77 (2) Upon sufficient showing of discrimination by customers
78 outside the municipal boundaries or a customer or a group of
79 customers within the municipal boundaries under a petition filed
80 under subdivision (2) or (3), subsection (c) of this section, the
81 commission shall suspend the adoption of the rate change
82 contained in the ordinance for a period of one hundred twenty
83 days from the date the rates or charges would otherwise go into
84 effect or until an order is issued as provided herein. A municipal
85 rate ordinance enacted pursuant to the provisions of this section
86 and municipal charter or state code that establishes or proposes
87 a rate increase that results in an increase of less than twenty-five
88 percent of the gross revenue of the utility shall be presumed
89 valid and rates shall be allowed to go into effect, subject to
90 refund, upon the date stated in that ordinance. In the case of rates
91 established or proposed that increase by more than twenty-five
92 percent of the gross revenue of the municipally operated public
93 utility, the utility may apply for, and the commission may grant,
94 a waiver of the suspension period and allow rates to be effective
95 upon enactment.

96 (e) The commission shall forthwith appoint a hearing
97 examiner from its staff to review the grievances raised by the
98 petitioners. The hearing examiner shall conduct a public hearing
99 and shall, within one hundred days from the date the rates or
100 charges would otherwise go into effect, unless otherwise tolled
101 as provided in subsection (b) of this section, issue an order
102 approving, disapproving or modifying, in whole or in part, the
103 rates or charges imposed by the electric, natural gas or telephone
104 cooperative or by the municipally operated public utility
105 pursuant to this section.

106 (f) Upon receipt of a petition for review of the rates under
107 the provisions of subsection (c) of this section, the commission
108 may exercise the power granted to it under the provisions of
109 section three of this article, consistent with the applicable rate
110 provisions of section twenty, article ten, chapter eight of this
111 code, section four, article nineteen, chapter eight of this code,
112 and section sixteen, article thirteen, chapter sixteen of this code.
113 The commission may determine the method by which the rates
114 are reviewed and may grant and conduct a de novo hearing on
115 the matter if the customer, electric, natural gas or telephone
116 cooperative or municipality requests a hearing.

117 (g) A municipal utility shall be required to refund revenues
118 collected from rates enacted that are disapproved or modified
119 upon subsequent order of the commission entered in a
120 proceeding under this section. Any refund determined to be due
121 and owing as a result of any difference between the municipal
122 rates placed into effect subject to refund and any final rates
123 approved the commission shall be refunded by the municipal
124 utility as a credit against each customer's account for a period of
125 up to six months after entry of the commission's final order. Any
126 remaining balance which is not fully refunded by credit within
127 six months after entry of the commission's final order shall be
128 directly refunded to the individual customer by check.

129 (h) The commission may, upon petition by a municipality
130 or electric, natural gas or telephone cooperative, allow an interim
131 or emergency rate to take effect, subject to refund or future
132 modification, if it is determined that the interim or emergency
133 rate is necessary to protect the municipality from financial
134 hardship attributable to the purchase of the utility commodity
135 sold, or the commission determines that a temporary or interim
136 rate increase is necessary for the utility to avoid financial
137 distress. In such cases, the commission shall waive the 45-day

138 waiting period provided for in subsection (b) of this section and
139 the one hundred twenty-day suspension period provided for in
140 subsection (d) of this section.

141 (i) Notwithstanding any other provision, the commission has
142 no authority or responsibility with regard to the regulation of
143 rates, income, services or contracts by municipally operated
144 public utilities for services which are transmitted and sold
145 outside of the State of West Virginia.

CHAPTER 184

**(Com. Sub. for S. B. 523 - By Senators Green, D. Hall,
Facemire, Laird, McCabe, Miller, Prezioso, Wells, Plymale,
Carmichael, Jenkins, Yost and Stollings)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2014.]

AN ACT to amend and reenact §9A-1-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-1B-1 of said code; and to amend and reenact §19-1-4 of said code, all relating to the authority of the Secretary of the Department of Veterans' Assistance; authorizing the Secretary of the Department of Veterans' Assistance and the Commissioner of the Department of Agriculture to enter into an agreement to transfer certain property for construction of a veterans skilled nursing facility; removing outdated language; providing additional powers to the Secretary of Department of Veteran's Assistance; authorizing the Secretary to award grants to provide transportation for veterans; and making legislative findings.

Be it enacted by the Legislature of West Virginia:

That §9A-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-1B-1 of said code be amended and reenacted; and that §19-1-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 9A. VETERANS' ASSISTANCE.

ARTICLE 1. DEPARTMENT OF VETERANS' ASSISTANCE.

***§9A-1-10. Powers and duties of secretary.**

1 The secretary is the executive and administrative head of the
2 department and has the power and duty, subject to the provisions
3 of section four of this article, to:

4 (a) Supervise and put into effect the purposes and provisions
5 of this article and the rules for the government of the
6 department;

7 (b) Prescribe methods pertaining to investigations and
8 reinvestigations of all claims and to the rights and interests of all
9 veterans, their widows, widowers, dependents and orphans;

10 (c) Prescribe uniform methods of keeping all records and
11 case records of the veterans, their widows, widowers, dependents
12 and orphans;

13 (d) Sign and execute, in the name of the state by West
14 Virginia Department of Veterans' Assistance, any contract or
15 agreement with the federal government or its agencies, other

* **CLERKS NOTE:** This section was also amended by H. B. 4268
(Chapter 186), which passed prior to this Act.

16 states, subdivisions of this state, corporations, associations,
17 partnerships or individuals;

18 (e) Supervise the fiscal affairs and responsibilities of the
19 department;

20 (f) Organize the department to comply with the requirements
21 of this article and with the standards required by any federal act
22 or any federal agency;

23 (g) Establish any regional or area offices throughout the state
24 that are necessary to promote efficiency and economy in
25 administration;

26 (h) Make reports that comply with the requirements of any
27 federal act or federal agency and the provisions of this article;

28 (i) Cooperate with the federal and state governments for the
29 more effective attainment of the purposes of this article;

30 (j) Keep a complete and accurate record of all proceedings;
31 record and file all contracts and agreements and assume
32 responsibility for the custody and preservation of all papers and
33 documents pertaining to his or her office and the department;

34 (k) Prepare for the Veterans' Council the annual reports to
35 the Governor of the condition, operation and functioning of the
36 department;

37 (l) Exercise any other powers necessary and proper to
38 standardize the work; to expedite the service and business; to
39 assure fair consideration of the rights and interests and claims of
40 veterans, their widows, widowers, dependents and orphans; to
41 provide resources for a program which will promote a greater
42 outreach to veterans and which will advise them of the benefits

43 and services that are available; and to promote the efficiency of
44 the department;

45 (m) Invoke any legal, equitable or special remedies for the
46 enforcement of his or her orders or the provisions of this article;

47 (n) Appoint the officers and heads of divisions of the
48 department, and of regional or area offices, and employ
49 assistants and employees, including case managers and
50 counselors, that are necessary for the efficient operation of the
51 department;

52 (o) Provide resources and assistance in the development of
53 an Internet website which is to be used to inform veterans of
54 programs and services available to them through the department
55 and the state and federal governments;

56 (p) Delegate to all or any of his or her appointees, assistants
57 or employees all powers and duties vested in the secretary,
58 except the power to sign and execute contracts and agreements:
59 *Provided*, That the secretary shall be responsible for the acts of
60 his or her appointees, assistants and employees; and

61 (q) Award grants, in his or her discretion, subject to
62 available appropriations, to provide for the transportation of
63 veterans to veterans' hospitals from the veteran's home or local
64 Veterans' Assistance offices.

65 (r) Enter into an agreement with the Commissioner of the
66 Department of Agriculture to transfer without consideration all
67 or part of the approximately seventeen acres of the Department
68 of Agriculture property in Beckley, West Virginia, located
69 adjacent to the Jackie Withrow Hospital which was formerly
70 known as Pinecrest Hospital, for construction of a veterans
71 skilled nursing facility.

CHAPTER 16. PUBLIC HEALTH.**ARTICLE 1B. SKILLED NURSING FACILITIES FOR
VETERANS OF THE UNITED STATES
ARMED FORCES.****§16-1B-1. Legislative findings.**

1 The Legislature finds that the health and welfare of the
2 veterans of the armed forces who are citizens of our state will be
3 best served by the establishment of one or more skilled nursing
4 facilities exclusively for these veterans. Furthermore, the
5 Legislature finds that nearly two hundred thousand veterans in
6 this state have distinguished themselves with the highest level of
7 participation per capita of any state in the wars fought by this
8 nation. Further, an aging veterans' population which suffers
9 from wartime disabilities and illnesses are, or will be, in need of
10 skilled nursing care.

11 The Legislature further finds that construction of an
12 additional 120-bed veterans skilled nursing facility in southern
13 West Virginia is needed, to be located on Department of
14 Agriculture property in Beckley, West Virginia, adjacent to the
15 Jackie Withrow Hospital which was formerly known as Pinecrest
16 Hospital. The West Virginia veterans skilled nursing facility
17 located in Clarksburg is currently at its maximum capacity and
18 has a large waiting list for admission. With a veteran population
19 that has now reached over two hundred twenty thousand, there
20 is an overwhelming need for additional nursing home beds in
21 other areas of our state to accommodate our veterans as they
22 become unable to take care of themselves.

CHAPTER 19. AGRICULTURE.**ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

§19-1-4. Duties of commissioner.

1 The Commissioner of Agriculture shall perform the
2 following duties:

3 (a) Devise means of advancing the agricultural interests of
4 the state and, in the performance of such duty, he or she shall
5 have authority to call upon any state department, or officer of the
6 state or county, to cooperate in promoting the agricultural
7 interests of the state. It shall be the duty of any such department,
8 or officer, upon request of the commissioner to render the
9 assistance desired;

10 (b) Promote and encourage the organization of such societies
11 and associations as have for their object the improvement and
12 development of the state's agricultural, horticultural and kindred
13 interests, especially in production, processing for market and
14 distribution;

15 (c) Conduct cooperative work with the United States
16 Department of Agriculture in inspecting and determining the
17 grade and condition of farm produce at collecting centers,
18 receiving centers and shipping points;

19 (d) Induce the investment of capital in, and immigration into,
20 this state by the dissemination of information relative to the soil,
21 climate, health, natural resources, market opportunities and
22 advantages of the state;

23 (e) Investigate and report upon the kinds, conditions and
24 extent of the mineral products of the state and their value;

25 (f) Take charge of the museum of the Department of
26 Agriculture, collect, preserve and exhibit therein specimens of

27 agricultural, horticultural and kindred products, products of the
28 forests, minerals, flora and fauna of the state;

29 (g) Publish and distribute, from time to time, such reports
30 and bulletins concerning agriculture, horticulture and kindred
31 subjects as may be of value to the farmers of the state and, as
32 conditions may demand, publish a handbook giving the
33 resources of the several counties of the state, the varieties of soil
34 and products, both mineral and vegetable, and the adaptability of
35 the different sections of the state to the different branches of
36 agriculture, horticulture and kindred interests;

37 (h) Submit a biennial report to the Governor and Legislature
38 containing such information as to the operations of the
39 department as may be helpful to the agricultural interests of the
40 state, together with an itemized statement of all receipts and
41 disbursements during the biennial period covered thereby and
42 giving the name of every person employed during such period,
43 the time employed and the amount paid each employee;

44 (i) Perform such other duties and exercise such other powers
45 as are provided in this chapter and by general law;

46 (j) Enter into an agreement with the Secretary of the
47 Department of Veterans' Assistance to transfer without
48 consideration all or part of the approximately seventeen acres of
49 Department of Agriculture property in Beckley, West Virginia,
50 located adjacent to the Jackie Withrow Hospital which was
51 formerly known as Pinecrest Hospital, for construction of a
52 veterans skilled nursing facility; and

53 (k) Propose rules, including regulatory standards, for
54 legislative approval in accordance with the provisions of article
55 three, chapter twenty-nine-a of this code for the purpose of
56 carrying out the requirements of this chapter.

CHAPTER 185

**(Com. Sub. for H. B. 4350 - By Delegates Fleischauer,
Ferro, Longstreth, Iaquina, Barill, Paxton, Rowan,
Eldridge, L. Phillips, Reynolds and Jones)**

[Passed February 26, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 7, 2014.]

AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-1G-10, relating to providing for the awarding of a West Virginia veterans service decoration, and a West Virginia Service Cross and ribbon to certain qualifying West Virginia veterans; and providing 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 section, designated §15-1G-10, to read as follows:

ARTICLE 1G. SERVICE MEDALS.

§15-1G-10. West Virginia veterans service decoration; West Virginia Service Cross.

1 (a) In addition to any other medals or awards authorized
2 under the provisions of this article, the following medals are
3 authorized:

4 (1) A West Virginia veterans service decoration may be
5 awarded to any resident of West Virginia who served in any of
6 the five federally recognized military services for a period at a
7 time during which there was armed conflict.

8 (2) A West Virginia Service Cross and ribbon bar, along
9 with a certificate signed by the Governor and State Adjutant
10 General, may be awarded to any veteran who meets the criteria
11 set forth in subdivision (1) of this subsection, and who also was
12 awarded a federal achievement medal, commendation medal,
13 meritorious service medal or a medal for valor by one of the five
14 federally recognized military services.

15 (b) West Virginia National Guard members may also be
16 authorized to receive and wear the medals and ribbons
17 authorized under the provisions of this section in an order of
18 precedence determined by the Adjutant General.

19 (c) The Adjutant General may propose rules pursuant to
20 article three, chapter twenty-nine-a of this code to implement the
21 provisions of this section.

CHAPTER 186

**(Com. Sub. for H. B. 4268 - By Delegates Iaquinta,
Boggs, Fleischauer, Longstreth, Perry, Morgan, Wells,
Poore, D. Evans and Lane)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to repeal §9A-1-13, §9A-1-14 and §9A-1-15 of the Code of West Virginia, 1931, as amended; and to amend and reenact §9A-1-2, §9A-1-4, §9A-1-5, §9A-1-6, §9A-1-8, §9A-1-9, §9A-1-10, §9A-1-11 and §9A-1-12 of said code, all relating to the Department of Veterans' Assistance; removing outdated language; providing additional powers to the Secretary of Department of Veteran's Assistance; modifying the duties of the Veterans'

Council; authorizing the Secretary to award grants to provide transportation for veterans; and authorizing the Secretary of the Department of Veterans' Assistance to enter into agreement with the Commissioner of the Department of Agriculture to transfer certain property for construction of a veterans skilled nursing facility.

Be it enacted by the Legislature of West Virginia:

That §9A-1-13, §9A-1-14 and §9A-1-15 of the Code of West Virginia, 1931, as amended, be repealed; and that §9A-1-2, §9A-1-4, §9A-1-5, §9A-1-6, §9A-1-8, §9A-1-9, §9A-1-10, §9A-1-11 and §9A-1-12 of said code be amended and reenacted, all to read as follows:

CHAPTER 9A. VETERANS' ASSISTANCE.

ARTICLE 1. DEPARTMENT OF VETERANS' ASSISTANCE.

§9A-1-2. Veterans' Council; administration of department.

1 (a) There is continued the "Veterans' Council" consisting of
 2 nine members who must be citizens and residents of this state
 3 and who have served in and been honorably discharged or
 4 separated under honorable conditions from the Armed Forces of
 5 the United States and whose service was within a time of war as
 6 defined by the laws of the United States.

7 (b) Where feasible, two members of the council shall be
 8 veterans of either World War II or the Korean Conflict, at least
 9 two members of the council shall be veterans of the Vietnam era,
 10 at least one member shall be a veteran of the first Gulf War and
 11 at least one member shall be a veteran of the Afghanistan or
 12 Iraqi Conflicts. The members of the veterans' council shall be
 13 selected with special reference to their ability and fitness to
 14 effectuate the purposes of this article. If an eligible veteran is not
 15 available or cannot be selected, a veteran who is a citizen and

16 resident of this state, who served in and was honorably
17 discharged or separated under honorable conditions from the
18 Armed Forces of the United States and who served during any
19 time of war or peace may be selected.

20 (c) The secretary and such officers, assistants and employees
21 as the secretary considers advisable, shall administer the West
22 Virginia Department of Veterans' Assistance.

**§9A-1-4. Duties and functions of Veterans' Council; appointment
of secretary; honoring academic achievement at
military academies.**

1 (a) It is the duty and function of The Veterans' Council to
2 advise the secretary on the general administrative policies of the
3 department, to select, at their first meeting in each fiscal year
4 commencing on July 1, a chairperson to serve one year, to advise
5 the secretary on rules as may be necessary, to advise the
6 Governor and the Legislature with respect to legislation affecting
7 the interests of veterans, their widows, widowers, dependents
8 and orphans and to make annual reports to the Governor
9 respecting the service of the department. The secretary has the
10 same eligibility and qualifications prescribed for members of the
11 Veterans' Council. The secretary ex officio shall maintain all
12 records of the Veterans' Council.

13 (b) The Veterans' Council may annually honor each West
14 Virginian graduating from the U. S. Military Academy, the U. S.
15 Naval Academy, the U. S. Air Force Academy and the U. S.
16 Coast Guard Academy with the highest grade point average by
17 bestowing upon him or her the West Augusta Award. The award
18 shall be in a design and form established by the council and
19 include the famous Revolutionary War phrase from which the
20 award's name is derived: "Once again our brethren from West
21 Augusta have answered the call to duty." The council shall
22 coordinate the manner of recognition of the recipient at
23 graduation ceremonies with each academy.

§9A-1-5. Compensation to and expenses of Secretary and Veterans' Council members; meetings of Veterans' Council.

1 (a) The secretary shall receive an annual salary as provided
2 in section two-a, article seven, chapter six of this code and
3 necessary traveling expenses incident to the performance of his
4 or her duties.

5 (b) The members of the Veterans' Council shall receive no
6 salary, but each member shall receive the same compensation
7 and expense reimbursement as is paid to members of the
8 Legislature for their interim duties as recommended by the
9 Citizens Legislative Compensation Commission and authorized
10 by law for each day or portion thereof engaged in the discharge
11 of official duties. The requisition for such expenses and traveling
12 expenses shall be accompanied by a sworn and itemized
13 statement, which shall be filed with the Auditor and permanently
14 preserved as a public record.

15 (c) The Veterans' Council shall meet on the call of its
16 chairman, except as otherwise provided.

17 (d) The Veterans' Council shall meet not more than once
18 every two months at such times as may be determined by and
19 upon the call of the chairman for a period of not more than two
20 days, unless there should be an emergency requiring a special
21 meeting or for a longer period and so declared and called by the
22 Governor or by the chairman with the approval of the Governor.

23 (e) A majority of the members of the Veterans' Council in
24 office shall constitute a quorum for the conduct of official
25 business.

§9A-1-6. Oaths.

1 The members of the Veterans' Council, the secretary and the
2 officers of the department shall take and subscribe to the oath

3 prescribed by article four, section five of the state Constitution
4 before entering on their duties. Their oaths shall be filed with the
5 Secretary of State.

§9A-1-8. Offices.

1 (a) The offices of the secretary shall be located at the state
2 capitol or other place provided in the capital city. The secretary
3 shall keep his or her offices open at all reasonable times for the
4 transaction of business.

5 (b) The offices and meeting place of the Veterans' Council
6 shall be in the offices of the secretary: *Provided*, That the
7 Veterans' Council with the approval of the Governor may hold
8 meetings at other places but not outside of this state, except in
9 the District of Columbia.

§9A-1-9. Duties of department.

1 The department of veterans' assistance shall:

2 (1) Assist veterans, their widows, widowers, dependents and
3 orphans within the state, in properly presenting their claims
4 before the United States Veterans' Administration, its
5 administrator, or any federal agency, the State of West Virginia,
6 or any of the several states of the United States, when the claims
7 arise out of service with the armed forces of the United States as
8 defined in section one of this article;

9 (2) Contact all veterans' organizations in this state through
10 their duly elected or appointive officers to effectuate the
11 purposes of this article and aid in the efficiency of the operations
12 of the department;

13 (3) Render all possible and proper advice, assistance and
14 counsel to veterans, their families, and their widows, dependents
15 and orphans, within the state, and furnish them information on

16 compensation, allowances, pensions, insurance, rehabilitation,
17 hospitalization, education, vocational training, or refresher or
18 retraining courses in education or training, employment, loans or
19 aid for the purchase, acquisition or construction of homes, farms,
20 farm equipment and business property, preference in the
21 purchase of property and preference in employment, as provided
22 or may be provided by any federal act, any federal agency, this
23 state or other states;

24 (4) Make careful inquiry into all claims presented for
25 payment out of the State Treasury from any appropriation made
26 for the benefit of veterans, their widows, widowers, dependents
27 and orphans.

***§9A-1-10. Powers and duties of secretary.**

1 The secretary is the executive and administrative head of the
2 department and has the power and duty, subject to the provisions
3 of section four of this article, to:

4 (a) Supervise and put into effect the purposes and provisions
5 of this article and the rules for the government of the
6 department;

7 (b) Prescribe methods pertaining to investigations and
8 reinvestigations of all claims and to the rights and interests of all
9 veterans, their widows, widowers, dependents and orphans;

10 (c) Prescribe uniform methods of keeping all records and
11 case records of the veterans, their widows, widowers, dependents
12 and orphans;

13 (d) Sign and execute, in the name of the state by West
14 Virginia Department of Veterans' Assistance, any contract or

* **CLERK'S NOTE:** This section was also amended by S. B. 523
(Chapter 184), which passed subsequent to this Act.

15 agreement with the federal government or its agencies, other
16 states, subdivisions of this state, corporations, associations,
17 partnerships or individuals;

18 (e) Supervise the fiscal affairs and responsibilities of the
19 department;

20 (f) Organize the department to comply with the requirements
21 of this article and with the standards required by any federal act
22 or any federal agency;

23 (g) Establish any regional or area offices throughout the state
24 that are necessary to promote efficiency and economy in
25 administration;

26 (h) Make reports that comply with the requirements of any
27 federal act or federal agency and the provisions of this article;

28 (i) Cooperate with the federal and state governments for the
29 more effective attainment of the purposes of this article;

30 (j) Keep a complete and accurate record of all proceedings;
31 record and file all contracts and agreements and assume
32 responsibility for the custody and preservation of all papers and
33 documents pertaining to his or her office and the department;

34 (k) Prepare for the Veterans' Council the annual reports to
35 the Governor of the condition, operation and functioning of the
36 department;

37 (l) Exercise any other powers necessary and proper to
38 standardize the work; to expedite the service and business; to
39 assure fair consideration of the rights and interests and claims of
40 veterans, their widows, widowers, dependents and orphans; to
41 provide resources for a program which will promote a greater
42 outreach to veterans and which will advise them of the benefits

43 and services that are available; and to promote the efficiency of
44 the department;

45 (m) Invoke any legal, equitable or special remedies for the
46 enforcement of his or her orders or the provisions of this article;

47 (n) Appoint the officers and heads of divisions of the
48 department, and of regional or area offices, and employ
49 assistants and employees, including case managers and
50 counselors, that are necessary for the efficient operation of the
51 department;

52 (o) Provide resources and assistance in the development of
53 an Internet website which is to be used to inform veterans of
54 programs and services available to them through the department
55 and the state and federal governments;

56 (p) Delegate to all or any of his or her appointees, assistants
57 or employees all powers and duties vested in the secretary,
58 except the power to sign and execute contracts and agreements:
59 *Provided*, That the secretary shall be responsible for the acts of
60 his or her appointees, assistants and employees;

61 (q) Award grants, in his or her discretion, subject to
62 available appropriations, to provide for the transportation of
63 veterans to veterans' hospitals from the veteran's home or local
64 Veterans' Assistance offices; and

65 (r) Enter into an agreement with the Commissioner of the
66 Department of Agriculture to transfer without consideration all
67 or part of the approximately seventeen acres of the Department
68 of Agriculture property in Beckley, West Virginia, located
69 adjacent to the Jackie Withrow Hospital which was formerly
70 known as Pinecrest Hospital, for construction of a veterans
71 skilled nursing facility.

§9A-1-11. Establishment of veterans facilities support fund; authorized expenditures.

1 (a) There is continued in the State Treasury a special revenue
2 fund to be designated and known as the Veterans Facilities
3 Support Fund which shall be administered by the secretary.

4 (b) All interest or other returns earned on the investment of
5 the moneys in the fund shall be credited to the fund.

6 (c) Funds paid into the account shall be derived from the
7 following sources: (1) Any gift, grant, bequest, endowed fund or
8 donation which may be received by any veterans facility created
9 by statute from any governmental entity or unit or any person,
10 firm, foundation or corporation; and (2) All interest or other
11 return on investment accruing to the fund.

12 (d) Moneys in the fund are to be used for the operational
13 costs of any veterans facility created by statute, the acquisition,
14 design, construction, equipping, furnishing, including, without
15 limitation, the payment of debt service on bonds issued to
16 finance the foregoing and/or as otherwise designated or specified
17 by the donor.

18 (e) Any balance, including accrued interest or other earnings,
19 in this special fund at the end of any fiscal year shall not revert
20 to the General Revenue Fund but shall remain in the fund.

21 (f) Funds from the Veterans Facility Support Fund for
22 operational costs of any veterans' facility as defined in this
23 section will be distributed by appropriation of the Legislature.

24 (g) Funds from the Veterans Facility Support Fund for the
25 acquisition, design, construction, equipping, furnishing,
26 including, without limitation, the payment of debt service on
27 bonds issued to finance the veterans nursing home shall be
28 transferred to the Veterans Nursing Home Building Fund upon
29 written request of the secretary.

§9A-1-12. Legal assistance.

1 The Attorney General of the state and his or her assistants,
 2 and the prosecuting attorneys of the various counties, shall
 3 render to the Veterans' Council or secretary, such legal services
 4 as may be required in the discharge of the provisions of this
 5 article.

CHAPTER 187

**(Com. Sub. for S. B. 373 - By Senators Unger,
 Kessler (Mr. President), Palumbo, Plymale, Laird,
 Yost, Miller, Prezioso, Fitzimmons, Wells, Cann, Chafin,
 Tucker, Stollings, Cookman and Snyder)**

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §16-1-2 and §16-1-9a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §16-1-9c, §16-1-9d and §16-1-9e; to amend and reenact §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of said code; to amend said code by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-25; to amend said code by adding thereto a new article, designated §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12; and to amend said code by adding thereto a new article, designated §24-2G-1 and §24-2G-2, all

relating to the protection of water resources and public health generally; defining terms generally; providing for rulemaking generally; providing for civil and criminal penalties generally; providing for the regulation of the public water systems by the Commissioner of the Bureau for Public Health; providing for entry into and evaluations of water systems; authorizing commissioner to seek injunctive relief; requiring source water protection plans; specifying contents of plan; requiring assessment and monitoring of plans; requiring Bureau for Public Health to coordinate the conduct of a long-term medical study; continuing wellhead and source water protection grant program; continuing grant fund to provide water source protection; revising the Water Resources Protection and Management Act; modifying registration requirements; requiring reports to the Secretary of the Department of Environmental Protection; requiring reports by secretary to legislative entities; requiring continuation of matching funds for stream-gauging network; modifying duties of legislative commission; requiring water resources survey and registry; requiring information from drilling contractors for water systems; adopting state water resources management plan; requiring reports from certain water users; establishing the Aboveground Storage Tank Act; requiring the secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; requiring secretary to develop regulatory program for the tanks; providing minimum factors to be included in program; requiring annual inspection and certification of the tanks; requiring evidence of financial security; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of inventory of tanks to local water systems and governments; requiring the posting of signs at the tanks; creating an administrative fund; creating the Protect Our Water Fund; authorizing public access to certain information; authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; allowing appeals to Environmental Quality Board; prohibiting

duplicative enforcement; requiring secretary to report to legislative entities; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing certain exemptions; creating the Public Water Supply Protection Act; requiring inventories of sources of certain contaminants in the zones of critical concern of certain public water systems; requiring registration and permits; authorizing inspections, monitoring and testing by secretary; requiring individual National Pollutant Discharge Elimination System permits in certain circumstances; authorizing secretary to require National Pollutant Discharge Elimination System permits in certain circumstances; creating public water system supply study commission; membership of study commission; scope of study; establishing reporting requirements; requiring the establishment of advance warning, testing and monitoring at certain water utilities; requiring certain information be filed with the Public Water Commission; and requiring utility to report back to Legislature if technology is infeasible.

Be it enacted by the Legislature of West Virginia:

That §16-1-2 and §16-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto three new sections, designated §16-1-9c, §16-1-9d and §16-1-9e; that §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-25; that said code be amended by adding thereto a new article, designated §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and

§22-31-12; and that said code be amended by adding thereto a new article, designated §24-2G-1 and §24-2G-2, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-2. Definitions.

1 As used in this article:

2 (1) “Basic public health services” means those services that
3 are necessary to protect the health of the public. The three areas
4 of basic public health services are communicable and reportable
5 disease prevention and control, community health promotion and
6 environmental health protection;

7 (2) “Bureau” means the Bureau for Public Health in the
8 department;

9 (3) “Combined local board of health” means one form of
10 organization for a local board of health and means a board of
11 health serving any two or more counties or any county or
12 counties and one or more municipalities within or partially
13 within the county or counties;

14 (4) “Commissioner” means the commissioner of the bureau,
15 who is the state health officer;

16 (5) “County board of health” means one form of
17 organization for a local board of health and means a local board
18 of health serving a single county;

19 (6) “Department” means the West Virginia Department of
20 Health and Human Resources;

21 (7) “Director” or “director of health” means the state health
22 officer. Administratively within the department, the bureau

23 through its commissioner carries out the public health functions
24 of the department, unless otherwise assigned by the secretary;

25 (8) “Essential public health services” means the core public
26 health activities necessary to promote health and prevent disease,
27 injury and disability for the citizens of the state. The services
28 include:

29 (A) Monitoring health status to identify community health
30 problems;

31 (B) Diagnosing and investigating health problems and health
32 hazards in the community;

33 (C) Informing, educating and empowering people about
34 health issues;

35 (D) Mobilizing community partnerships to identify and solve
36 health problems;

37 (E) Developing policies and plans that support individual
38 and community health efforts;

39 (F) Enforcing laws and rules that protect health and ensure
40 safety;

41 (G) Uniting people with needed personal health services and
42 assuring the provision of health care when it is otherwise not
43 available;

44 (H) Promoting a competent public health and personal health
45 care workforce;

46 (I) Evaluating the effectiveness, accessibility and quality of
47 personal and population-based health services; and

48 (J) Researching for new insights and innovative solutions to
49 health problems;

50 (9) "Licensing boards" means those boards charged with
51 regulating an occupation, business or profession and on which
52 the commissioner serves as a member;

53 (10) "Local board of health", "local board" or "board"
54 means a board of health serving one or more counties or one or
55 more municipalities or a combination thereof;

56 (11) "Local health department" means the staff of the local
57 board of health;

58 (12) "Local health officer" means the physician with a
59 current West Virginia license to practice medicine who
60 supervises and directs the activities, services, staff and facilities
61 of the local health department and is appointed by the local
62 board of health with approval by the commissioner;

63 (13) "Municipal board of health" means one form of
64 organization for a local board of health and means a board of
65 health serving a single municipality;

66 (14) "Performance-based standards" means generally
67 accepted, objective standards such as rules or guidelines against
68 which public health performance can be measured;

69 (15) "Potential source of significant contamination" means
70 a facility or activity that stores, uses or produces substances or
71 compounds with potential for significant contaminating impact
72 if released into the source water of a public water supply;

73 (16) "Program plan" or "plan of operation" means the annual
74 plan for each local board of health that must be submitted to the
75 commissioner for approval;

76 (17) "Public groundwater supply source" means a primary
77 source of water supply for a public water system which is
78 directly drawn from a well, underground stream, underground

79 reservoir, underground mine or other primary source of water
80 supplies which is found underneath the surface of the state;

81 (18) "Public surface water supply source" means a primary
82 source of water supply for a public water system which is
83 directly drawn from rivers, streams, lakes, ponds, impoundments
84 or other primary sources of water supplies which are found on
85 the surface of the state;

86 (19) "Public surface water influenced groundwater supply
87 source" means a source of water supply for a public water
88 system which is directly drawn from an underground well,
89 underground river or stream, underground reservoir or
90 underground mine, and the quantity and quality of the water in
91 that underground supply source is heavily influenced, directly or
92 indirectly, by the quantity and quality of surface water in the
93 immediate area;

94 (20) "Public water system" means:

95 (A) Any water supply or system which regularly supplies or
96 offers to supply water for human consumption through pipes or
97 other constructed conveyances, if serving at least an average of
98 twenty-five individuals per day for at least sixty days per year,
99 or which has at least fifteen service connections, and shall
100 include:

101 (i) Any collection, treatment, storage and distribution
102 facilities under the control of the owner or operator of the system
103 and used primarily in connection with the system; and

104 (ii) Any collection or pretreatment storage facilities not
105 under such control which are used primarily in connection with
106 the system;

107 (B) A public water system does not include a system which
108 meets all of the following conditions:

109 (i) Consists only of distribution and storage facilities and
110 does not have any collection and treatment facilities;

111 (ii) Obtains all of its water from, but is not owned or
112 operated by, a public water system which otherwise meets the
113 definition;

114 (iii) Does not sell water to any person; and

115 (iv) Is not a carrier conveying passengers in interstate
116 commerce;

117 (21) "Public water utility" means a public water system
118 which is regulated by the West Virginia Public Service
119 Commission pursuant to the provisions of chapter twenty-four of
120 this code;

121 (22) "Secretary" means the secretary of the department.

122 (23) "Service area" means the territorial jurisdiction of a
123 local board of health;

124 (24) "State Advisory Council on Public Health" means the
125 advisory body charged by this article with providing advice to
126 the commissioner with respect to the provision of adequate
127 public health services for all areas in the state;

128 (25) "State Board of Health" means the secretary,
129 notwithstanding any other provision of this code to the contrary,
130 whenever and wherever in this code there is a reference to the
131 State Board of Health;

132 (26) "Zone of critical concern" for a public surface water
133 supply is a corridor along streams within a watershed that
134 warrant more detailed scrutiny due to its proximity to the surface
135 water intake and the intake's susceptibility to potential
136 contaminants within that corridor. The zone of critical concern
137 is determined using a mathematical model that accounts for

138 stream flows, gradient and area topography. The length of the
139 zone of critical concern is based on a five-hour time-of-travel of
140 water in the streams to the water intake, plus an additional one-
141 fourth mile below the water intake. The width of the zone of
142 critical concern is one thousand feet measured horizontally from
143 each bank of the principal stream and five hundred feet
144 measured horizontally from each bank of the tributaries draining
145 into the principal stream.

§16-1-9a. Regulation of public water systems.

1 (a) The commissioner shall regulate public water systems as
2 prescribed in this section.

3 (b) The commissioner shall establish by legislative rule, in
4 accordance with article three, chapter twenty-nine-a of this code:

5 (1) The maximum contaminant levels to which all public
6 water systems shall conform in order to prevent adverse effects
7 on the health of individuals;

8 (2) Treatment techniques that reduce the contaminant or
9 contaminants to a level which will not adversely affect the health
10 of the consumer;

11 (3) Provisions to protect and prevent contamination of
12 wellheads and well fields used by public water supplies so that
13 contaminants do not reach a level that would adversely affect the
14 health of the consumer;

15 (4) Minimum requirements for:

16 (A) Sampling and testing;

17 (B) System operation;

18 (C) Public notification by a public water system on being
19 granted a variance or exemption or upon failure to comply with

20 specific requirements of this section and regulations
21 promulgated under this section;

22 (D) Recordkeeping;

23 (E) Laboratory certification; and

24 (F) Procedures and conditions for granting variances and
25 exemptions to public water systems from state public water
26 systems' regulations;

27 (5) Requirements covering the production and distribution
28 of bottled drinking water;

29 (6) Requirements governing the taste, odor, appearance and
30 other consumer acceptability parameters of drinking water; and

31 (7) Any other requirement the commissioner finds necessary
32 to effectuate the provisions of this article.

33 (c) The commissioner or his or her authorized
34 representatives or designees may enter any part of a public water
35 system, whether or not the system is in violation of a legal
36 requirement, for the purpose of inspecting, sampling or testing
37 and shall be furnished records or information reasonably
38 required for a complete inspection.

39 (d) The commissioner, his or her authorized representative
40 or designee may conduct an evaluation necessary to assure the
41 public water system meets federal safe drinking water
42 requirements. The public water system shall provide a written
43 response to the commissioner within thirty days of receipt of the
44 evaluation by the public water system, addressing corrective
45 actions to be taken as a result of the evaluation.

46 (e)(1) Any individual or entity who violates any provision of
47 this article, or any of the rules or orders issued pursuant to this
48 article, is liable for a civil penalty not less than \$1,000 nor more

49 than \$5,000. Each day's violation shall constitute a separate
50 offense.

51 (2) For a willful violation of a provision of this article, or of
52 any of the rules or orders issued under this article, an individual
53 or entity shall be subject to a civil penalty of not more than
54 \$10,000 and each day's violation shall be grounds for a separate
55 penalty.

56 (3) Civil penalties are payable to the commissioner. All
57 moneys collected under this section shall be deposited into a
58 restricted account known as the Safe Drinking Water Fund. All
59 moneys deposited into the fund shall be used by the
60 commissioner to provide technical assistance to public water
61 systems.

62 (f) The commissioner, or his or her authorized
63 representative, may also seek injunctive relief in the circuit court
64 of the county in which all or part of the public water system is
65 located for threatened or continuing violations.

**§16-1-9c. Required update or completion of source water
protection plans.**

1 (a) On or before July 1, 2016, each existing public water
2 utility which draws and treats water from a surface water supply
3 source or a surface water influenced groundwater supply source
4 shall submit to the commissioner an updated or completed
5 source water protection plan for each of its public water system
6 plants with such intakes to protect its public water supplies from
7 contamination. Every effort shall be made to inform and engage
8 the public, local governments, local emergency planners, local
9 health departments and affected residents at all levels of the
10 development of the protection plan.

11 (b) The completed or updated plan for each affected plant,
12 at a minimum, shall include the following:

13 (1) A contingency plan that documents each public water
14 utility's planned response to contamination of its public surface
15 water supply source or its public surface water influenced
16 groundwater supply source;

17 (2) An examination and analysis of the public water system's
18 ability to isolate or divert contaminated waters from its surface
19 water intake or groundwater supply, and the amount of raw
20 water storage capacity for the public water system's plant;

21 (3) An examination and analysis of the public water system's
22 existing ability to switch to an alternative water source or intake
23 in the event of contamination of its primary water source;

24 (4) An analysis and examination of the public water system's
25 existing ability to close its water intake in the event the system
26 is advised that its primary water source has become
27 contaminated due to a spill or release into a stream, and the
28 duration of time it can keep that water intake closed without
29 creating a public health emergency;

30 (5) The following operational information for each plant
31 receiving water supplies from a surface water source:

32 (A) The average number of hours the plant operates each
33 day, and the maximum and minimum number of hours of
34 operation in one day at that plant during the past year; and

35 (B) The average quantities of water treated and produced by
36 the plant per day, and the maximum and minimum quantities of
37 water treated and produced at that plant in one day during the
38 past year;

39 (6) An analysis and examination of the public water system's
40 existing available storage capacity on its system, how its
41 available storage capacity compares to the public water system's
42 normal daily usage and whether the public water system's

43 existing available storage capacity can be effectively utilized to
44 minimize the threat of contamination to its system;

45 (7) The calculated level of unaccounted for water
46 experienced by the public water system for each surface water
47 intake, determined by comparing the measured quantities of
48 water which are actually received and used by customers served
49 by that water plant to the total quantities of water treated at the
50 water plant over the past year. If the calculated ratio of those two
51 figures is less than eighty-five percent, the public water system
52 is to describe all of the measures it is actively taking to reduce
53 the level of water loss experienced on its system;

54 (8) A list of the potential sources of significant
55 contamination contained within the zone of critical concern as
56 provided by the Department of Environmental Protection, the
57 Bureau for Public Health and the Division of Homeland Security
58 and Emergency Management. The exact location of the
59 contaminants within the zone of critical concern is not subject to
60 public disclosure in response to a Freedom of Information Act
61 request under article one, chapter twenty-nine-b of this code.
62 However, the location, characteristics and approximate
63 quantities of potential sources of significant contamination
64 within the zone of critical concern shall be made known to one
65 or more designees of the public water utility, and shall be
66 maintained in a confidential manner by the public water utility.
67 In the event of a chemical spill, release or related emergency,
68 information pertaining to any spill or release of contaminant
69 shall be immediately disseminated to any emergency responders
70 responding to the site of a spill or release, and the general public
71 shall be promptly notified in the event of a chemical spill,
72 release or related emergency.

73 (9) If the public water utility's water supply plant is served
74 by a single-source intake to a surface water source of supply or
75 a surface water influenced source of supply, the submitted plan

76 shall also include an examination and analysis of the technical
77 and economic feasibility of each of the following options to
78 provide continued safe and reliable public water service in the
79 event its primary source of supply is detrimentally affected by
80 contamination, release, spill event or other reason:

81 (A) Constructing or establishing a secondary or backup
82 intake which would draw water supplies from a substantially
83 different location or water source;

84 (B) Constructing additional raw water storage capacity
85 and/or treated water storage capacity, to provide at least two
86 days of system storage, based on the plant's maximum level of
87 production experienced within the past year;

88 (C) Creating or constructing interconnections between the
89 public water system with other plants on the public water utility
90 system or another public water system, to allow the public water
91 utility to receive its water from a different source of supply
92 during a period its primary water supply becomes unavailable or
93 unreliable due to contamination, release, spill event or other
94 circumstance;

95 (D) Any other alternative which is available to the public
96 water utility to secure safe and reliable alternative supplies
97 during a period its primary source of supply is unavailable or
98 negatively impacted for an extended period; and

99 (E) If one or more alternatives set forth in paragraphs (A)
100 through (D) of this subdivision is determined to be
101 technologically or economically feasible, the public water utility
102 shall submit an analysis of the comparative costs, risks and
103 benefits of implementing each of the described alternatives;

104 (10) A management plan that identifies specific activities
105 that will be pursued by the public water utility, in cooperation
106 and in concert with the Bureau for Public Health, local health

107 departments, local emergency responders, local emergency
108 planning committee, and other state, county or local agencies
109 and organizations to protect its source water supply from
110 contamination, including, but not limited to, notification to and
111 coordination with state and local government agencies whenever
112 the use of its water supply is inadvisable or impaired, to conduct
113 periodic surveys of the system, the adoption of best management
114 practices, the purchase of property or development rights,
115 conducting public education or the adoption of other
116 management techniques recommended by the commissioner or
117 included in the source water protection plan;

118 (11) A communications plan that documents the manner in
119 which the public water utility, working in concert with state and
120 local emergency response agencies, shall notify the local health
121 agencies and the public of the initial spill or contamination event
122 and provide updated information related to any contamination or
123 impairment of the source water supply or the system's drinking
124 water supply, with an initial notification to the public to occur in
125 any event no later than thirty minutes after the public water
126 system becomes aware of the spill, release or potential
127 contamination of the public water system;

128 (12) A complete and comprehensive list of the potential
129 sources of significant contamination contained within the zone
130 of critical concern, based upon information which is directly
131 provided or can otherwise be requested and obtained from the
132 Department of Environmental Protection, the Bureau for Public
133 Health, the Division of Homeland Security and Emergency
134 Management and other resources; and

135 (13) An examination of the technical and economic
136 feasibility of implementing an early warning monitoring system.

137 (c) Any public water utility's public water system with a
138 primary surface water source of supply or a surface water
139 influenced groundwater source of supply that comes into

140 existence on or after the effective date of this article shall submit
141 prior to the commencement of its operations a source water
142 protection plan satisfying the requirements of subsection (b) of
143 this section.

144 (d) The commissioner shall review a plan submitted pursuant
145 to this section and provide a copy to the Secretary of the
146 Department of Environmental Protection. Thereafter, within one
147 hundred eighty days of receiving a plan for approval, the
148 commissioner may approve, reject or modify the plan as may be
149 necessary and reasonable to satisfy the purposes of this article.
150 The commissioner shall consult with the local public health
151 officer and conduct at least one public hearing when reviewing
152 the plan. Failure by a public water system to comply with a plan
153 approved pursuant to this section is a violation of this article.

154 (e) The commissioner may request a public water utility to
155 conduct one or more studies to determine the actual risk and
156 consequences related to any potential source of significant
157 contamination identified by the plan, or as otherwise made
158 known to the commissioner.

159 (f) Any public water utility required to file a complete or
160 updated plan in accordance with the provisions of this section
161 shall submit an updated source water protection plan at least
162 every three years or when there is a substantial change in the
163 potential sources of significant contamination within the
164 identified zone of critical concern.

165 (g) Any public water utility required to file a complete or
166 updated plan in accordance with the provisions of this section
167 shall review any source water protection plan it may currently
168 have on file with the bureau and update it to ensure it conforms
169 with the requirements of subsection (b) of this section on or
170 before July 1, 2016.

171 (h) The commissioner's authority in reviewing and
172 monitoring compliance with a source water protection plan may
173 be transferred by the bureau to a nationally accredited local
174 board of public health.

§16-1-9d. Wellhead and Source Water Protection Grant Program.

1 (a) The commissioner shall continue the Wellhead and
2 Source Water Protection Grant Program.

3 (b) The fund heretofore created to provide funds for the
4 Wellhead and Source Water Protection Grant Program is
5 continued in the State Treasury and shall be known as the
6 Wellhead and Source Water Protection Grant Fund. The fund
7 shall be administered by the commissioner and shall consist of
8 all moneys made available for the program from any source,
9 including, but not limited to, all fees, civil penalties and assessed
10 costs, all gifts, grants, bequests or transfers from any source, any
11 moneys that may be appropriated and designated for the program
12 by the Legislature and all interest or other return earned from
13 investment of the fund. Expenditures from the fund shall be for
14 the purposes set forth in this article to provide water source
15 protection pursuant to the program and are not authorized from
16 collections but are to be made only in accordance with
17 appropriation by the Legislature and in accordance with the
18 provisions of article three, chapter twelve of this code and upon
19 the fulfillment of the provisions set forth in article two, chapter
20 eleven-b of this code: *Provided*, That for the fiscal years ending
21 June 30, 2014, and 2015, expenditures are authorized from
22 collections rather than pursuant to an explicit appropriation by
23 the Legislature. Any balance, including accrued interest and
24 other returns, remaining in the fund at the end of each fiscal year
25 shall not revert to the General Revenue Fund but shall remain in
26 the fund and be expended as provided by this section.

27 (c) In prospectively awarding any grants under the Wellhead
28 and Source Water Protection Grant Program, the commissioner

29 shall prioritize those public water systems where there is the
30 highest probability of contamination of the water source based
31 on the source water assessment report or the source water
32 protection plans which were previously performed. Priority shall
33 also be extended to publicly owned public water systems over
34 privately owned public water systems.

35 (d) The commissioner, or his or her designee, shall apply for
36 and diligently pursue all available federal funds to help offset the
37 cost of completing source water protection plans by the
38 deadlines established in section nine-c of this article.

39 (e) The commissioner may receive any gift, federal grant,
40 other grant, donation or bequest and receive income and other
41 funds or appropriations to contribute to the Wellhead and Source
42 Water Protection Grant Program.

§16-1-9e. Long-term medical study.

1 The Bureau for Public Health shall endeavor to engage the
2 Centers for Disease Control and other federal agencies for the
3 purpose of creating, organizing and implementing a medical
4 study to assess any long-term health effects resulting from the
5 chemical spill that occurred on January 9, 2014, and which
6 exposed the public to chemicals, including 4-
7 methylcyclohexane.

8 The commissioner shall conduct such study pursuant to the
9 authority granted to the commissioner pursuant to section six of
10 this article: *Provided*, That in the event the commissioner
11 determines that, in order to adequately perform such study,
12 additional authority is required, the commissioner shall provide
13 a report of such additional authority requested to the Governor
14 and the Joint Committee on Government and Finance.

15 The commissioner shall cause to be collected and preserved
16 information from health providers who treated patients
17 presenting with symptoms diagnosed as having been caused or

18 exacerbated as a result of exposure related to the January 9,
19 2014, chemical spill. The commissioner shall analyze such data
20 and other information deemed relevant by the commissioner and
21 provide a report of the commissioner's findings regarding
22 potential long-term health effects of the January 9, 2014,
23 chemical spill to the Joint Committee on Health by January 1,
24 2015, including the results of its efforts to engage federal
25 cooperation and assistance for a long-term comprehensive study
26 on the costs of conducting such study on behalf of the state.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 26. WATER RESOURCES PROTECTION AND MANAGEMENT ACT.

§22-26-2. Definitions.

1 For purposes of this article:

2 (1) "Baseline average" means the average amount of water
3 withdrawn by a large-quantity user over a representative
4 historical time period as defined by the secretary.

5 (2) "Beneficial use" means uses that include, but are not
6 limited to, public or private water supplies, agriculture, tourism,
7 commercial, industrial, coal, oil and gas and other mineral
8 extraction, preservation of fish and wildlife habitat, maintenance
9 of waste assimilation, recreation, navigation and preservation of
10 cultural values.

11 (3) "Commercial well" means a well that serves small
12 businesses and facilities in which water is the prime ingredient
13 of the service rendered, including water wells drilled to support
14 horizontal well operations.

15 (4) "Community water system" means a public water system
16 that pipes water for human consumption to at least fifteen
17 service connections used by year-round residents or one that
18 regularly serves at least twenty-five residents.

19 (5) "Consumptive withdrawal" means any withdrawal of
20 water which returns less water to the water body than is
21 withdrawn.

22 (6) "Department" means the West Virginia Department of
23 Environmental Protection.

24 (7) "Farm use" means irrigation of any land used for general
25 farming, forage, aquaculture, pasture, orchards, nurseries, the
26 provision of water supply for farm animals, poultry farming or
27 any other activity conducted in the course of a farming
28 operation.

29 (8) "Industrial well" means a well used exclusively for
30 nonpotable purposes, including industrial processing, fire
31 protection, washing, packing or manufacturing of a product
32 excluding food and beverages, or other nonpotable uses.

33 (9) "Interbasin transfer" means the permanent removal of
34 water from the watershed from which it is withdrawn.

35 (10) "Large-quantity user" means any person who withdraws
36 over three hundred thousand gallons of water in any thirty-day
37 period from the state's waters and any person who bottles water
38 for resale regardless of quantity withdrawn. "Large-quantity
39 user" excludes farm use, including watering livestock or poultry
40 on a farm, though farms may voluntarily report water
41 withdrawals to assist with the accuracy of the survey.

42 (11) "Maximum potential" means the maximum designed
43 capacity of a facility to withdraw water under its physical and
44 operational design.

45 (12) "Noncommunity nontransient water system" means a
46 public water system that serves at least twenty-five of the same
47 persons over six months per year.

48 (13) "Nonconsumptive withdrawal" means any withdrawal
49 of water which is not a consumptive withdrawal as defined in
50 this section.

51 (14) "Person", "persons" or "people" means an individual,
52 public and private business or industry, public or private water
53 service and governmental entity.

54 (15) "Secretary" means the Secretary of the Department of
55 Environmental Protection or his or her designee.

56 (16) "Transient water system" means a public water system
57 that serves at least twenty-five transient people at least sixty days
58 a year.

59 (17) "Test well" means a well that is used to obtain
60 information on groundwater quantity, quality, aquifer
61 characteristics and availability of production water supply for
62 manufacturing, commercial and industrial facilities.

63 (18) "Water resources", "water" or "waters" means any and
64 all water on or beneath the surface of the ground, whether
65 percolating, standing, diffused or flowing, wholly or partially
66 within this state, or bordering this state and within its jurisdiction
67 and includes, without limiting the generality of the foregoing,
68 natural or artificial lakes, rivers, streams, creeks, branches,
69 brooks, ponds, impounding reservoirs, springs, wells,
70 watercourses and wetlands: *Provided*, That farm ponds,
71 industrial settling basins and ponds and waste treatment facilities
72 are excluded from the waters of the state.

73 (19) "Watershed" means a hydrologic unit utilized by the
74 United States Department of Interior's Geological Survey,
75 adopted in 1974, as a framework for detailed water and related
76 land-resources planning.

77 (20) "Withdrawal" means the removal or capture of water
78 from water resources of the state regardless of whether it is

79 consumptive or nonconsumptive: *Provided*, That water
80 encountered during coal, oil, gas, water well drilling and initial
81 testing of water wells, or other mineral extraction and diverted,
82 but not used for any purpose and not a factor in low-flow
83 conditions for any surface water or groundwater, is not deemed
84 a withdrawal.

**§22-26-3. Waters claimed by state; water resources protection
survey; registration requirements; agency
cooperation; information gathering.**

1 (a) The waters of the State of West Virginia are claimed as
2 valuable public natural resources held by the state for the use and
3 benefit of its citizens. The state shall manage and protect its
4 waters effectively for present and future use and enjoyment and
5 for the protection of the environment. Therefore, it is necessary
6 for the state to determine the nature and extent of its water
7 resources, the quantity of water being withdrawn or otherwise
8 used and the nature of the withdrawals or other uses: *Provided*,
9 That no provisions of this article may be construed to amend or
10 limit any other rights and remedies created by statute or common
11 law in existence on the date of the enactment of this article.

12 (b) The secretary shall conduct an ongoing water resources
13 survey of consumptive and nonconsumptive surface water and
14 groundwater withdrawals by large-quantity users in this state.
15 The secretary shall determine the form and format of the
16 information submitted, including the use of electronic
17 submissions. The secretary shall establish and maintain a
18 statewide registration program to monitor large-quantity users of
19 water resources.

20 (c) Large-quantity users, except those who purchase water
21 from a public or private water utility or other service that is
22 reporting its total withdrawal, shall register with the department
23 and provide all requested survey information regarding
24 withdrawals of the water resources. Multiple withdrawals from

25 state water resources that are made or controlled by a single
26 person and used at one facility or location shall be considered a
27 single withdrawal of water. Water withdrawals for self-supplied
28 farm use and private households will be estimated. Water
29 utilities regulated by the Public Service Commission pursuant to
30 article two, chapter twenty-four of this code are exempted from
31 providing information on interbasin transfers to the extent those
32 transfers are necessary to provide water utility services within
33 the state.

34 (d) Except as provided in subsection (f) of this section,
35 large-quantity users who withdraw water from a West Virginia
36 water resource shall comply with the survey and registration
37 requirements of this article. Registration shall be maintained
38 annually by every large-quantity user on forms and in a manner
39 prescribed by the secretary.

40 (e) The secretary shall maintain a listing of all large-
41 quantity users and each user's baseline average water
42 withdrawal.

43 (f) The secretary shall make a good faith effort to obtain
44 survey and registration information from persons who are
45 withdrawing water from in-state water resources, but who are
46 located outside the state borders.

47 (g) All state agencies and local governmental entities that
48 have a regulatory, research, planning or other function relating
49 to water resources, including, but not limited to, the State
50 Geological and Economic Survey, the Division of Natural
51 Resources, the Public Service Commission, the Bureau for
52 Public Health, the Commissioner of the Department of
53 Agriculture, the Division of Homeland Security and Emergency
54 Management, Marshall University, West Virginia University and
55 regional, county and municipal planning authorities may enter
56 into interagency agreements with the secretary and shall
57 cooperate by: (i) Providing information relating to the water

58 resources of the state; (ii) providing any necessary assistance to
59 the secretary in effectuating the purposes of this article; and (iii)
60 assisting in the development of a state water resources
61 management plan. The secretary shall determine the form and
62 format of the information submitted by these agencies.

63 (h) Persons required to participate in the survey and
64 registration shall provide any reasonably available information
65 on stream flow conditions that impact withdrawal rates.

66 (i) Persons required to participate in the survey and
67 registration shall provide the most accurate information available
68 on water withdrawal during seasonal conditions and future
69 potential maximum withdrawals or other information that the
70 secretary determines is necessary for the completion of the
71 survey or registration: *Provided*, That a coal-fired electric
72 generating facility shall also report the nominal design capacity
73 of the facility, which is the quantity of water withdrawn by the
74 facility's intake pumps necessary to operate the facility during
75 a calendar day.

76 (j) The secretary shall, to the extent reliable water
77 withdrawal data is reasonably available from sources other than
78 persons required to provide data and participate in the survey
79 and registration, utilize that data to fulfill the requirements of
80 this section. If the data is not reasonably available to the
81 secretary, persons required to participate in the survey and
82 registration are required to provide the data. Altering locations
83 of intakes and discharge points that result in an impact to the
84 withdrawal of the water resources shall also be reported.

85 (k) The secretary shall report annually to the Joint
86 Legislative Oversight Commission on State Water Resources on
87 the survey results. The secretary shall also make a progress
88 report annually on the implementation of the State Water
89 Resources Management Plan and any significant changes that

90 may have occurred since the State Water Resources Management
91 Plan was submitted in 2013.

92 (l) In addition to any requirements for completion of the
93 survey established by the secretary, the survey must accurately
94 reflect both actual and maximum potential water withdrawal.
95 Actual withdrawal shall be established through metering,
96 measuring or alternative accepted scientific methods to obtain a
97 reasonable estimate or indirect calculation of actual use.

98 (m) The secretary shall make recommendations to the Joint
99 Legislative Oversight Commission on Water Resources created
100 in section five of this article relating to the implementation of a
101 water quantity management strategy for the state or regions of
102 the state where the quantity of water resources are found to be
103 currently stressed or likely to be stressed due to emerging
104 beneficial or other uses, ecological conditions or other factors
105 requiring the development of a strategy for management of these
106 water resources.

107 (n) The secretary may propose rules pursuant to article three,
108 chapter twenty-nine-a of this code as necessary to implement the
109 survey registration or plan requirements of this article.

110 (o) The secretary is authorized to enter into cooperative
111 agreements with local, state and federal agencies and private
112 policy or research groups to obtain federal matching funds,
113 conduct research and analyze survey and registration data and
114 other agreements as may be necessary to carry out his or her
115 duties under this article.

116 (p) The department, the Division of Natural Resources, the
117 Division of Highways and the Conservation Agency
118 (cooperating state agencies) shall continue providing matching
119 funds for the United States Geological Survey's (USGS)
120 stream-gauging network to the maximum extent practicable.
121 Should a cooperating state agency become unable to maintain its

122 contribution level, it should notify the USGS and the
123 commission of its inability to continue funding for the
124 subsequent federal fiscal year by July 1 in order to allow for the
125 possible identification of alternative funding resources.

§22-26-5. Joint Legislative Oversight Commission on State Water Resources.

1 (a) The President of the Senate and the Speaker of the House
2 of Delegates shall each designate five members of their
3 respective houses, at least one of whom shall be a member of the
4 minority party, to serve on a joint legislative oversight
5 commission charged with immediate and ongoing oversight of
6 the water resources survey, registration and development of a
7 state water resources management plan. This commission shall
8 be known as the Joint Legislative Oversight Commission on
9 State Water Resources and shall regularly investigate and
10 monitor all matters relating to water resources, including the
11 survey and plan.

12 (b) The expenses of the commission, including the cost of
13 conducting the survey and monitoring any subsequent strategy
14 and those incurred in the employment of legal, technical,
15 investigative, clerical, stenographic, advisory and other
16 personnel, are to be approved by the Joint Committee on
17 Government and Finance and paid from legislative
18 appropriations.

§22-26-6. Mandatory survey and registration compliance.

1 (a) The water resources survey and subsequent registry will
2 provide critical information for protection of the state's water
3 resources and, thus, mandatory compliance with the survey and
4 registry is necessary.

5 (b) All large-quantity users who withdraw water from a West
6 Virginia water resource shall complete the survey and register

7 use with the department. Any person who fails to complete the
8 survey or register, provides false or misleading information on
9 the survey or registration, or fails to provide other information
10 as required by this article may be subject to a civil administrative
11 penalty not to exceed \$5,000 to be collected by the secretary
12 consistent with the secretary's authority pursuant to this chapter.
13 Every thirty days after the initial imposition of the civil
14 administrative penalty, another penalty may be assessed if the
15 information is not provided. The secretary shall provide written
16 notice of failure to comply with this section thirty days prior to
17 assessing the first administrative penalty.

§22-26-7. Secretary authorized to log wells; collect data.

1 (a) In order to obtain important information about the state's
2 surface and groundwater, the secretary is authorized to collect
3 scientific data on surface and groundwater and to enter into
4 agreements with local and state agencies, the federal government
5 and private entities to obtain this information.

6 (b) Any person who installs a community water system,
7 noncommunity nontransient water system, transient water
8 system, commercial well, industrial or test well shall notify the
9 secretary of his or her intent to drill a water well no less than ten
10 days prior to commencement of drilling. The ten-day notice is
11 the responsibility of the owner, but may be given by the drilling
12 contractor.

13 (c) The secretary has the authority to gather data, including
14 driller and geologist logs, run electric and other remote-sensing
15 logs and devices and perform physical characteristics tests on
16 nonresidential and multifamily water wells.

17 (d) The drilling contractor shall submit to the secretary a
18 copy of the well completion forms submitted to the Bureau for
19 Public Health for a community water system, noncommunity
20 nontransient water system, transient water system, commercial

21 well, industrial or test well. The drilling contractor shall also
22 provide the well GPS location and depth to groundwater on the
23 well report submitted to the secretary.

24 (e) Any person who fails to notify the secretary prior to
25 drilling a well or impedes collection of information by the
26 secretary under this section is in violation of the Water
27 Resources Protection and Management Act and is subject to the
28 civil administrative penalty authorized by section six of this
29 article.

30 (f) Any well contracted for construction by the secretary for
31 groundwater or geological testing must be constructed at a
32 minimum to well design standards as promulgated by the Bureau
33 for Public Health. Any wells contracted for construction by the
34 secretary for groundwater or geological testing that would at a
35 later date be converted to a public use water well must be
36 constructed to comport to state public water design standards.

**§22-26-8. State Water Resources Management Plan; powers and
duty of secretary.**

1 (a) The secretary shall oversee the development of a State
2 Water Resources Management Plan to be completed no later
3 than November 30, 2013. The plan shall be reviewed and revised
4 as needed after its initial adoption. The plan shall be developed
5 with the cooperation and involvement of local and state agencies
6 with regulatory, research or other functions relating to water
7 resources including, but not limited to, those agencies and
8 institutions of higher education set forth in section three of this
9 article and a representative of large-quantity users. The State
10 Water Resources Management Plan shall be developed utilizing
11 the information obtained pursuant to said section and any other
12 relevant information available to the secretary.

13 (b) The secretary shall develop definitions for use in the
14 State Water Resources Management Plan for terms that are

15 defined differently by various state and federal governmental
16 entities as well as other terms necessary for implementation of
17 this article.

18 (c) The secretary shall continue to develop and obtain the
19 following:

20 (1) An inventory of the surface water resources of each
21 region of this state, including an identification of the boundaries
22 of significant watersheds and an estimate of the safe yield of
23 sources for consumptive and nonconsumptive uses during
24 periods of normal conditions and drought.

25 (2) A listing of each consumptive or nonconsumptive
26 withdrawal by a large-quantity user, including the amount of
27 water used, location of the water resources, the nature of the use,
28 location of each intake and discharge point by longitude and
29 latitude where available and, if the use involves more than one
30 watershed or basin, the watersheds or basins involved and the
31 amount transferred.

32 (3) A plan for the development of the infrastructure
33 necessary to identify the groundwater resources of each region
34 of this state, including an identification of aquifers and
35 groundwater basins and an assessment of their safe yield, prime
36 recharge areas, recharge capacity, consumptive limits and
37 relationship to stream base flows.

38 (4) After consulting with the appropriate state and federal
39 agencies, assess and project the existing and future
40 nonconsumptive use needs of the water resources required to
41 serve areas with important or unique natural, scenic,
42 environmental or recreational values of national, regional, local
43 or statewide significance, including national and state parks;
44 designated wild, scenic and recreational rivers; national and state
45 wildlife refuges; and the habitats of federal and state endangered
46 or threatened species.

47 (5) Assessment and projection of existing and future
48 consumptive use demands.

49 (6) Identification of potential problems with water
50 availability or conflicts among water uses and users including,
51 but not limited to, the following:

52 (A) A discussion of any area of concern regarding historical
53 or current conditions that indicate a low-flow condition or where
54 a drought or flood has occurred or is likely to occur that
55 threatens the beneficial use of the surface water or groundwater
56 in the area; and

57 (B) Current or potential in-stream or off-stream uses that
58 contribute to or are likely to exacerbate natural low-flow
59 conditions to the detriment of the water resources.

60 (7) Establish criteria for designation of critical water
61 planning areas comprising any significant hydrologic unit where
62 existing or future demands exceed or threaten to exceed the safe
63 yield of available water resources.

64 (8) An assessment of the current and future capabilities of
65 public water supply agencies and private water supply
66 companies to provide an adequate quantity and quality of water
67 to their service areas.

68 (9) An assessment of floodplain and stormwater
69 management problems.

70 (10) Efforts to improve data collection, reporting and water
71 monitoring where prior reports have found deficiencies.

72 (11) A process for identifying projects and practices that are
73 being, or have been, implemented by water users that reduce the
74 amount of consumptive use, improve efficiency in water use,
75 provide for reuse and recycling of water, increase the supply or
76 storage of water or preserve or increase groundwater recharge

77 and a recommended process for providing appropriate positive
78 recognition of those projects or practices in actions, programs,
79 policies, projects or management activities.

80 (12) An assessment of both structural and nonstructural
81 alternatives to address identified water availability problems,
82 adverse impacts on water uses or conflicts between water users,
83 including potential actions to develop additional or alternative
84 supplies, conservation measures and management techniques.

85 (13) A review and evaluation of statutes, rules, policies and
86 institutional arrangements for the development, conservation,
87 distribution and emergency management of water resources.

88 (14) A review and evaluation of water resources
89 management alternatives and recommended programs, policies,
90 institutional arrangements, projects and other provisions to meet
91 the water resources needs of each region and of this state.

92 (15) Proposed methods of implementing various
93 recommended actions, programs, policies, projects or
94 management activities.

95 (d) The State Water Resources Management Plan shall
96 consider:

97 (1) The interconnections and relationships between
98 groundwater and surface water as components of a single
99 hydrologic resource.

100 (2) Regional or watershed water resources needs, objectives
101 and priorities.

102 (3) Federal, state and interstate water resource policies,
103 plans, objectives and priorities, including those identified in
104 statutes, rules, regulations, compacts, interstate agreements or
105 comprehensive plans adopted by federal and state agencies and
106 compact basin commissions.

107 (4) The needs and priorities reflected in comprehensive plans
108 and zoning ordinances adopted by a county or municipal
109 government.

110 (5) The water quantity and quality necessary to support
111 reasonable and beneficial uses.

112 (6) A balancing and encouragement of multiple uses of water
113 resources, recognizing that all water resources of this state are
114 capable of serving multiple uses and human needs, including
115 multiple uses of water resources for reasonable and beneficial
116 uses.

117 (7) The distinctions between short-term and long-term
118 conditions, impacts, needs and solutions to ensure appropriate
119 and cost-effective responses to water resources issues.

120 (8) Application of the principle of equal and uniform
121 treatment of all water users that are similarly situated without
122 regard to established political boundaries.

123 (e) Each November, the secretary shall report to the Joint
124 Legislative Oversight Commission on State Water Resources on
125 the implementation of the State Water Resources Management
126 Plan.

127 (f) The State Water Resources Management Plan is adopted.
128 Persons identified as large-quantity users prior to the effective
129 date of this subsection shall report actual monthly water
130 withdrawals, or monthly water withdrawals by a method
131 approved by the secretary, for the previous calendar year by
132 March 31 of each succeeding year. Persons identified as
133 large-quantity users on or after the effective date of this
134 subsection shall submit their initial annual report no later than
135 March 31, 2016, and subsequent annual reports by March 31 of
136 each year thereafter.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.**§22-30-1. Short title.**

- 1 This article may be known and cited as the Aboveground
- 2 Storage Tank Act.

§22-30-2. Legislative findings.

- 1 (a) The West Virginia Legislature finds the public policy of
- 2 the State of West Virginia is to protect and conserve the water
- 3 resources for the state and its citizens. The state's water
- 4 resources are vital natural resources that are essential to
- 5 maintain, preserve and promote human health, quality of life and
- 6 economic vitality of the state.

- 7 (b) The West Virginia Legislature further finds the public
- 8 policy of the state is for clean, uncontaminated water to be made
- 9 available for its citizens who are dependent on clean water as a
- 10 basic need for survival, and who rely on the assurances from
- 11 public water systems and the government that the water is safe
- 12 to consume.

- 13 (c) The West Virginia Legislature further finds it in the
- 14 public policy of the state that clean, uncontaminated water be
- 15 available to its businesses and industries that rely on water for
- 16 their economic survival, and the well-being of their employees.
- 17 These include hospitals and the medical industry, schools and
- 18 educational institutions, the food and hospitality industries, the
- 19 tourism industry, manufacturing, coal, natural gas and other
- 20 industries. Businesses and industries searching for places to
- 21 locate or relocate consider the quality of life for their employees
- 22 as well as the quality of the raw materials such as clean water.

- 23 (d) The Legislature further finds that large quantities of
- 24 fluids are stored in aboveground storage tanks within the state
- 25 and that emergency situations involving these fluids can and will

26 arise that may present a hazard to human health, safety, the water
27 resources, the environment and the economy of the state. The
28 Legislature further recognizes that some of these fluids have
29 been stored in aboveground storage tanks in a regulated manner
30 insufficient to protect human health, safety, water resources, the
31 environment and the economy of the state.

§22-30-3. Definitions.

1 For purposes of this article:

2 (1) "Aboveground storage tank" or "tank" means a device
3 made to contain an accumulation of more than one thousand
4 three hundred twenty gallons of fluids that are liquids at standard
5 temperature and pressure, which is constructed primarily of
6 noncarbon materials, including wood, concrete, steel, plastic or
7 fiberglass reinforced plastic, which provide structural support,
8 more than ninety percent capacity of which is above the surface
9 of the ground, but does not include any process vessel. The term
10 includes stationary devices which are permanently affixed, and
11 mobile devices which remain in one location on a continuous
12 basis for sixty or more days, and includes all ancillary
13 aboveground pipes and dispensing systems up to the first point
14 of isolation and all ancillary underground pipes and dispensing
15 systems connected to the aboveground containers to the first
16 point of isolation. Notwithstanding any other provision of this
17 code to the contrary, shipping containers, including railroad
18 freight cars, subject to federal regulation under the Federal
19 Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended,
20 including but not limited to federal regulations promulgated
21 thereunder at 49 CFR 172, 173 or 174, or subject to other federal
22 law governing the transportation of hazardous materials are not
23 subject to any provision of this article or of article thirty-one of
24 this chapter. Notwithstanding any other provision of this code to
25 the contrary, barges or boats subject to federal regulation under
26 the United States Coast Guard, United States Department of

27 Homeland Security, including, but not limited to, federal
28 regulations promulgated at 33 CFR 1, et seq, or subject to other
29 federal law governing the transportation of hazardous materials
30 are not subject to any provision of this article or of article
31 thirty-one of this chapter. Notwithstanding any other provision
32 of this code to the contrary, swimming pools are not subject to
33 any provision of this article or article thirty-one of this chapter.

34 (2) "Department" means the West Virginia Department of
35 Environmental Protection.

36 (3) "Nonoperational storage tank" means an empty
37 aboveground storage tank in which fluids will not be deposited
38 or from which fluids will not be dispensed on or after the
39 effective date of this article.

40 (4) "Operator" means any person in control of, or having
41 responsibility for, the daily operation of an aboveground storage
42 tank.

43 (5) "Owner" means a person who holds title to, controls or
44 owns an interest in an aboveground storage tank, including
45 owners of tanks immediately preceding the discontinuation of a
46 tank's use. "Owner" does not mean a person who holds an
47 interest in a tank for financial security, unless the holder has
48 taken possession of and operated the tank.

49 (6) "Person", "persons" or "people" means any individual,
50 trust, firm, owner, operator, corporation or other legal entity,
51 including the United States government, an interstate
52 commission or other body, the state or any agency, board,
53 bureau, office, department or political subdivision of the state,
54 but does not include the Department of Environmental
55 Protection.

56 (7) "Process vessel" means tanks, containers or other vessels
57 utilized in a facility in the manufacturing process through which

58 there is a steady, variable, recurring or intermittent flow of
59 materials. This does not include tanks used for storage of
60 materials prior to their introduction into the production process
61 or for the storage of finished products or by-products of the
62 production process.

63 (8) "Public groundwater supply source" means a primary
64 source of water supply for a public water system which is
65 directly drawn from a well, underground stream, underground
66 reservoir, underground mine or other primary source of water
67 supplies which is found underneath the surface of the state.

68 (9) "Public surface water supply source" means a primary
69 source of water supply for a public water system which is
70 directly drawn from rivers, streams, lakes, ponds, impoundments
71 or other primary sources of water supplies which are found on
72 the surface of the state.

73 (10) "Public surface water influenced groundwater supply
74 source" means a source of water supply from a public water
75 system which is directly drawn from an underground well,
76 underground river or stream, underground reservoir or
77 underground mine, and the quantity or quality of the water in
78 that underground supply source is heavily influenced, directly or
79 indirectly, by the quantity and quality of surface water in the
80 immediate area.

81 (11) "Public water system" means:

82 (A) Any water supply or system which regularly supplies or
83 offers to supply water for human consumption through pipes or
84 other constructed conveyances, if serving at least an average of
85 twenty-five individuals per day for at least sixty days per year,
86 or which has at least fifteen service connections, and shall
87 include:

88 (i) Any collection, treatment, storage and distribution
89 facilities under the control of the owner or operator of the system
90 and used primarily in connection with the system; and

91 (ii) Any collection or pretreatment storage facilities not
92 under such control which are used primarily in connection with
93 the system.

94 (B) A public water system does not include a system which
95 meets all of the following conditions:

96 (i) Consists only of distribution and storage facilities and
97 does not have any collection and treatment facilities;

98 (ii) Obtains all of its water from, but is not owned or
99 operated by, a public water system which otherwise meets the
100 definition;

101 (iii) Does not sell water to any person; and

102 (iv) Is not a carrier conveying passengers in interstate
103 commerce.

104 (12) "Release" means any spilling, leaking, emitting,
105 discharging, escaping, leaching or disposing of fluids from an
106 aboveground storage tank into groundwater, surface water or
107 subsurface soils. The term shall also include spilling, leaking,
108 emitting, discharging, escaping, leaching or disposing of fluids
109 from an aboveground storage tank into a containment structure
110 or facility that poses an immediate threat of contamination of the
111 soils, subsurface soils, surface water or groundwater: *Provided,*
112 That the overflow or spillage of up to twenty gallons of fluid
113 during the loading or unloading of liquids shall not be required
114 to be reported if the overflow or spillage is wholly contained
115 within a containment structure or facility, it is promptly cleaned
116 up and no portion of the overflow or spillage escapes onto the
117 ground or into adjacent surface water.

118 (13) "Secondary containment" means a safeguard applied to
119 one or more tanks that prevents the discharge into the waters of
120 the state of the entire capacity of the largest single tank and
121 sufficient freeboard to contain precipitation. In order to qualify
122 as secondary containment, the barrier and containment field must
123 be sufficiently impervious to contain fluids in the event of a
124 release, and may include double-walled tanks, dikes,
125 containment curbs, pits or drainage trench enclosures that safely
126 confine the release from a tank in a facility catchment basin or
127 holding pond. (14) "Secretary" means the Secretary of the
128 Department of Environmental Protection, or his or her designee.

129 (15) "Source water protection area" for a public groundwater
130 supply source is the area within an aquifer that supplies water to
131 a public water supply well within a five-year time-of-travel, and
132 is determined by the mathematical calculation of the locations
133 from which a drop of water placed at the edge of the protection
134 area would theoretically take five years to reach the well.

135 (16) "Zone of critical concern" for a public surface water
136 supply is a corridor along streams within a watershed that
137 warrants more detailed scrutiny due to its proximity to the
138 surface water intake and the intake's susceptibility to potential
139 contaminants within that corridor. The zone of critical concern
140 is determined using a mathematical model that accounts for
141 stream flows, gradient and area topography. The length of the
142 zone of critical concern is based on a five-hour time-of-travel of
143 water in the streams to the water intake, plus an additional one-
144 fourth mile below the water intake. The width of the zone of
145 critical concern is one thousand feet measured horizontally from
146 each bank of the principal stream and five hundred feet
147 measured horizontally from each bank of the tributaries draining
148 into the principal stream.

§22-30-4. Inventory and registration of existing aboveground storage tanks.

1 (a) To assure protection of the water resources of the state,
2 the secretary shall compile an inventory of all aboveground
3 storage tanks in existence in this state, regardless of whether it
4 is an operational or nonoperational storage tank on the effective
5 date of this article. The secretary shall prescribe an inventory and
6 registration form for this purpose within thirty days of the
7 effective date of the enactment of this article.

8 (b) At a minimum the inventory form shall identify the
9 ownership of the tank, tank location, date of installation if
10 known, type of construction, capacity and age of the tank, the
11 type and volume of fluid stored therein, and the identity of and
12 distance to the nearest groundwater public water supply intake
13 and/or nearest surface water downstream public water supply
14 intake. (c) If the inventoried tank is regulated under any existing
15 state or federal regulatory program, the owner of the tank shall
16 be required to provide the identifying number of any license,
17 registration or permit issued for the tank, and identify the
18 regulatory standards and requirements the tank is required to
19 meet.

20 (d) Any aboveground storage tank placed into service on or
21 after the effective date of this section, but prior to the
22 establishment of a permit program, shall complete and submit an
23 inventory form with the secretary.

24 (e) Upon receipt of an inventory form, the secretary shall
25 determine whether the storage tank is required to meet the
26 minimum design, construction, inspection, secondary
27 containment, leak reporting and performance standards
28 equivalent to or greater than the standards and requirements
29 established under an existing license or permit issued for the
30 individual storage tank, storage tank farm or site on which the
31 storage tank is located.

32 (f) The secretary may charge a reasonable fee to cover the
33 cost of maintaining and overseeing the inventory and registration

34 program. The fee may be set by emergency and legislative rules
35 proposed for promulgation in accordance with the provisions of
36 article three, chapter twenty-nine-a of this code.

37 (g) On and after October 1, 2014, it shall be unlawful for any
38 owner or operator to operate or use an aboveground storage tank
39 subject to this article which has not been properly registered or
40 for which any applicable registration fee has not been paid.

**§22-30-5. Aboveground Storage Tank Regulatory Program;
promulgation of appropriate aboveground tank
standards; permitting procedures and waiver
requirements; rulemaking requirements.**

1 (a) The secretary shall promulgate for review and
2 consideration by the West Virginia Legislature legislative rules
3 during the 2015 Regular Session of the West Virginia
4 Legislature, on all matters related to this article.

5 (b) To assure further protection of the water resources of the
6 state, the secretary shall develop a regulatory program for new
7 and existing aboveground storage tanks incorporating nationally
8 recognized tank standards such as those standards developed by
9 the American Petroleum Institute (API), the Steel Tank Institute
10 (STI) or comparable authorities, and taking into account the size,
11 location and contents of the tanks. At a minimum, the program
12 shall include the following:

13 (1) A requirement to submit a verified application for a
14 permit containing information as may be prescribed by the
15 secretary;

16 (2) Performance standards for design, construction,
17 installation, maintenance, corrosion detection and maintenance,
18 release detection and prevention and secondary containment to
19 ensure the structural integrity of the storage tank and the
20 secondary containment;

21 (3) Requirements for maintaining a leak detection system,
22 inventory control systems together with tank testing or a
23 comparable system or method designed to identify releases from
24 aboveground storage tanks in a manner consistent with the
25 protection of human health, safety, water resources and the
26 environment;

27 (4) Requirements for maintaining records of any monitoring
28 or leak detection system, corrosion prevention, inventory control
29 system or tank testing system;

30 (5) Requirements for early detection of releases and
31 immediate reporting of releases;

32 (6) Requirements for developing a corrective action plan to
33 expeditiously respond to any releases;

34 (7) Requirements for the closure of aboveground storage
35 tanks and remediation to prevent future releases of fluids or
36 materials to the state's water resources;

37 (8) Requirements for certification of installation, removal,
38 retrofit, corrosion and other testing and inspection of
39 aboveground storage tanks, leak detection systems and
40 secondary containment by a qualified registered professional
41 engineer regulated and licensed by the State Board of
42 Registration for Professional Engineers, or by an individual
43 certified to perform tank inspections by the American Petroleum
44 Institute, or by a person holding certification under another
45 program approved by the secretary;

46 (9) Requirements for life-cycle management of aboveground
47 storage tanks that include mitigation and corrosion prevention
48 plans that include, but are not limited to:

49 (A) A life-cycle maintenance schedule for the use of
50 protective coatings and or other repair, rehabilitation, and

51 maintenance methods used for the preservation of aboveground
52 storage tanks;

53 (B) A process for ensuring that corrosion prevention and
54 mitigation is carried out according to corrosion prevention
55 industry standards adopted by the secretary for aboveground
56 storage tanks that includes the use of industry trained and
57 certified:

58 (i) Protective coatings personnel to carry out surface
59 preparation operations and coating application on any type of
60 substrate and or surface, but especially concrete and steel;

61 (ii) Cathodic protection experts for all aspects of corrosion
62 prevention projects requiring knowledge of the design,
63 installation, monitoring or maintenance of a cathodic protection
64 system; and

65 (iii) Inspectors to ensure best practices and standards are
66 adhered to on a corrosion prevention and mitigation project;

67 (C) A plan to prevent environmental degradation that could
68 occur as a result of carrying out corrosion prevention and
69 mitigation including, but not limited to, the careful handling and
70 containment of hazardous materials, not including the
71 contaminant within, removed from the interior and or exterior of
72 an aboveground storage tank; and

73 (D) Use of industry experts for consultation and direct to
74 determine whether to approve a corrosion prevention and
75 mitigation plan, or any part therein, the secretary shall consult,
76 and interact directly with, corrosion industry experts specializing
77 in the training and certification of personnel to carry out
78 corrosion prevention and mitigation methods.

79 (10) The assessment of permit application and registration
80 fees as determined by the secretary;

81 (11) Permit issuance only after the application and any other
82 supporting documents have been submitted, reviewed and
83 approved by the secretary, and that permits may be issued with
84 certain conditions or contingencies;

85 (12) A requirement that any aboveground storage tank
86 maintenance work shall commence within six months from the
87 date the permit was issued and must be completed within one
88 year of commencement. If the work has not started or is not
89 completed during the stated time periods, the permit shall expire
90 and a new permit shall be required unless a written extension is
91 granted by the secretary. An extension may be granted only if the
92 applicant can demonstrate that the delay was not deliberate and
93 that the delay will not present harm to human health, safety,
94 water resources or the environment;

95 (13) A procedure for the administrative resolution of
96 violations including the assessment of administrative civil
97 penalties;

98 (14) A procedure for any person adversely affected by a
99 decision or order of the secretary relating to the aboveground
100 storage tank program to appeal to the Environmental Quality
101 Board, pursuant to the provisions of article one, chapter
102 twenty-two-b of this code;

103 (15) In coordination and cooperation with the Bureau for
104 Public Health and the Division of Homeland Security and
105 Emergency Management, create a process and procedure for
106 identifying any aboveground storage tanks which are located
107 within a defined zone of critical concern for a public water
108 system's surface water intake or within a defined source water
109 protection area for a public water system's groundwater intake,
110 and determining whether additional permit requirements and
111 inspections should be imposed on that tank or facility by
112 requiring the issuance of any new permit pursuant to this article,
113 or by amending any existing permit which may pertain to that

114 tank or facility, under this chapter, or by any other article of this
115 chapter;

116 (16) Requirements for maintaining written or electronic
117 records that log at least the following information for each
118 aboveground storage tank: Tank numbers, additives, verifiable
119 content levels, deliveries, amounts and quantities, dispensing,
120 repairs and maintenance; and including the requirement that such
121 logs be signed by the owner or a designated responsible
122 supervisor, and be available for inspection upon request of the
123 secretary; and

124 (17) Compliance with a nationally recognized tank standard
125 as solely determined by the department shall be deemed
126 compliance with the requirements that are developed in
127 accordance with subsection (9) of this section.

§22-30-6. Annual inspection and certification.

1 (a) Every owner or operator of an aboveground storage tank
2 regulated herein shall have an annual inspection of each tank
3 performed by a qualified registered professional engineer or a
4 qualified person working under the direct supervision of a
5 registered professional engineer, regulated and licensed by the
6 State Board of Registration for Professional Engineers, or by an
7 individual certified to perform tank inspections by the American
8 Petroleum Institute, or by a person holding certification under
9 another program approved by the secretary. Every owner or
10 operator shall submit, on a form prescribed by the secretary, a
11 certification from the engineer that each tank, associated
12 equipment, leak detection system and secondary containment
13 structure meets the minimum standards established by this article
14 or by the secretary by rule.

15 (b) The certification form shall be submitted to the secretary
16 on or before January 1, 2015, and each year thereafter.

§22-30-7. Financial responsibility.

1 The secretary shall promulgate rules requiring owners and
2 operators to provide evidence of adequate financial resources to
3 undertake reasonable corrective action for releases of fluid from
4 aboveground storage tanks. The means of demonstrating
5 adequate financial responsibility may include, but not be limited
6 to, providing evidence of current insurance, guarantee, surety
7 bond, letter of credit, proof of assets, trust fund or qualification
8 as a self insurer.

§22-30-8. Corrective action.

1 (a) Prior to the effective date of the emergency and
2 legislative rules promulgated pursuant to the authority granted
3 under this article, the secretary is authorized to:

4 (1) Require the owner or operator to develop a preliminary
5 corrective action plan taking into consideration the types of
6 fluids and types of tanks on the premises;

7 (2) Require the owner or operator of an aboveground storage
8 tank to undertake prompt corrective action to protect human
9 health, safety, water resources or the environment from
10 contamination caused by a release; or

11 (3) Undertake immediate corrective action with respect to
12 any release or threatened release of fluid from an aboveground
13 storage tank when, in the judgment of the secretary, the action is
14 necessary to protect human health, safety, water resources or the
15 environment from contamination caused by a release.

16 (b) The corrective action undertaken or required by this
17 section shall be what may be necessary to protect human health,
18 water resources and the environment from contamination caused
19 by a release, including the ordered cessation or closure of a
20 source of contamination and the ordered remediation of a

21 contaminated site. The secretary shall use funds in the Protect
22 Our Water Fund established pursuant to this article for payment
23 of costs incurred for corrective action taken by the secretary in
24 accordance with this article. In undertaking corrective actions
25 under this section and in issuing orders requiring owners or
26 operators to undertake the actions, the secretary shall give
27 priority to releases or threatened releases of fluid from
28 aboveground storage tanks that pose the greatest threat to human
29 health, water resources or the environment.

30 (c) Following the effective date of rules promulgated
31 pursuant to this article, all actions or orders of the secretary shall
32 be in conformity with those rules. Following the effective date
33 of the rules, the secretary may undertake corrective action with
34 respect to any release or threatened release of fluid from an
35 aboveground storage tank only if, in the judgment of the
36 secretary, the action is necessary to protect human health, safety,
37 water resources or the environment from contamination, and one
38 or more of the following situations exists:

39 (1) If no person can be found within thirty days, or a shorter
40 period as may be necessary to protect human health, safety,
41 water resources and the environment, who is an owner or
42 operator of the aboveground storage tank at issue and who is
43 capable of carrying out the corrective action properly;

44 (2) A situation exists that requires immediate action by the
45 secretary under this section to protect human health, safety,
46 water resources or the environment;

47 (3) The cost of corrective action to be expended on an
48 aboveground storage tank exceeds the amount of resources that
49 the owner or operator can reasonably be expected to possess
50 based on the information required to be submitted pursuant to
51 this article and, considering the fluid being stored in the
52 aboveground storage tank in question, expenditures from the

53 Protect Our Water Fund are necessary to assure an effective
54 corrective action; or

55 (4) The owner or operator of the tank has failed or refused to
56 comply with an order of the secretary under this article or of the
57 Environmental Quality Board under article one, chapter
58 twenty-two-b of this code to comply with appropriate corrective
59 action measures ordered by the secretary or the Environmental
60 Quality Board.

61 (d) The secretary may draw upon the Protect Our Water
62 Fund in order to take action under subdivision (1) or (2),
63 subsection (c) of this section if the secretary has made diligent
64 good-faith efforts to determine the identity of the owner or
65 operator responsible for the release or threatened release and:

66 (1) The secretary is unable to determine the identity of the
67 owner or operator in a manner consistent with the need to take
68 timely corrective action; or

69 (2) The owner or operator determined by the secretary to be
70 responsible for the release or threatened release has been
71 informed in writing of the secretary's determination and has
72 been requested by the secretary to take appropriate corrective
73 action but is unable or unwilling to take proper action in a timely
74 manner.

75 (e) The written notice to the owner or operator must inform
76 the owner or operator that if it is subsequently found liable for
77 releases pursuant to this section, the owner or operator will be
78 required to reimburse the Protect Our Water Fund for the costs
79 of the investigation, information gathering and corrective action
80 taken by the secretary.

81 (f) If the secretary determines that immediate response to an
82 imminent threat to human health, safety, water resources or the
83 environment is necessary to avoid substantial injury or damage

84 thereto, corrective action may be taken pursuant to this section
85 without the prior written notice required by subdivision (2),
86 subsection (d) of this section. In that case, the secretary must
87 give subsequent written notice to the owner or operator within
88 fifteen days after the action is taken describing the circumstances
89 that required the action to be taken and setting forth the matters
90 identified in subsection (e) of this section.

§22-30-9. Spill prevention response plan.

1 (a) Within one hundred eighty days of the effective date of
2 this article, each owner or operator of an aboveground storage
3 tank shall submit a spill prevention response plan for each
4 aboveground storage tank. Owners and operators of aboveground
5 storage tanks shall file updated plans required to be submitted by
6 this section no less frequently than every three years. Each plan
7 shall be site-specific, consistent with the requirements of this
8 article, and developed in consultation with Bureau for Public
9 Health, county and municipal emergency management agencies.
10 The spill prevention response plan shall at a minimum:

11 (1) Identify and describe the activity that occurs at the site
12 and identify applicable hazard and process information,
13 including a specific listing and inventory of all types of fluids
14 stored, amount of fluids stored and wastes generated that are
15 stored in aboveground storage tanks at the facility. The plan shall
16 include the material safety data sheets (MSDS) required by the
17 Occupational Safety and Health Administration for all fluids in
18 use or stored in aboveground storage tanks at the facility. The
19 material safety data sheets must include the health hazard
20 number identified by the National Fire Protection Association.
21 The plan shall also include drawings of the aboveground storage
22 tank facility, including the locations of all drainage pipes and
23 water outlets;

24 (2) Identify all facility-related positions with duties and
25 responsibilities for developing, implementing and maintaining

26 the facility's plan. The plan shall describe in detail the chain of
27 command at the aboveground storage tank facility and list all
28 facility emergency coordinators and all known emergency
29 response contractors;

30 (3) Provide a preventive maintenance program that includes
31 monitoring and inspection procedures, including identification
32 of stress points, employee training programs and security
33 systems. The plan shall include a description of potential sources
34 and areas where spills and leaks may occur by drawings and plot
35 plans and shall identify specific spill prevention measures for
36 those identified areas;

37 (4) Detail the specific response that the aboveground storage
38 tank facility and contract emergency personnel shall take upon
39 the occurrence of any release of fluids from an aboveground
40 storage tank at the facility;

41 (5) Provide contact information obtained by the owner or
42 operator of the aboveground storage tanks from the county and
43 municipal emergency management agencies and the nearest
44 downstream public water supply intake, and designate the person
45 or persons to be notified in the event of a release from an
46 aboveground storage tank; and

47 (6) Provide the secretary with all other requested
48 information.

49 (b) Each owner of an aboveground storage tank with an
50 approved spill prevention response plan shall submit to the
51 secretary a revised plan or addendum to the plan in accordance
52 with the requirements of this article if any of the following
53 occur:

54 (1) There is a substantial modification in design,
55 construction, operation or maintenance of any aboveground
56 storage tank or associated equipment, or there are other

57 circumstances that increase the potential for fires, explosions or
58 releases of fluids;

59 (2) There is a substantial modification in emergency
60 equipment at the facility;

61 (3) There are substantial changes in emergency response
62 protocols at the aboveground storage tank facility;

63 (4) The plan fails in an emergency;

64 (5) The removal or the addition of any aboveground storage
65 tank; or

66 (6) Other circumstances occur about which the secretary
67 requests an update.

68 (c) The secretary shall approve the spill prevention response
69 plan or reject the plan and require modifications as may be
70 necessary and reasonable to assure the protection of the source
71 water of a public water system from a release of fluids from an
72 aboveground storage tank. If rejected, the owner of the
73 aboveground storage tank shall submit a revised plan to the
74 secretary for approval within thirty days of receipt of notification
75 of the secretary's decision. Failure to comply with a plan
76 approved by the secretary pursuant to this section is a violation
77 of this article.

78 (d) Nothing contained in this section relieves the owner or
79 operator of an aboveground storage tank from his or her
80 obligation to report any release immediately to the department's
81 emergency notification telephone number.

§22-30-10. Notice to local governments and water companies.

1 The owner or operator of an aboveground storage tank
2 facility shall provide as required by the secretary public notice
3 to any public water system where the facility is located within

4 the system's identified groundwater supply's source water
5 protection area or within the system's surface water supply's
6 zone of critical protection, to the local municipality, if any, and
7 to the county in which the facility is located. The notice shall
8 provide a detailed inventory of the type and quantity of fluid
9 stored in aboveground storage tanks at the facility and the
10 material safety data sheets (MSDS) associated with the fluid in
11 storage. The owner or operator shall also provide as required by
12 the secretary a copy of the spill prevention response plan and any
13 updates thereto, which have been approved by the secretary
14 pursuant to this act, to the applicable public water systems and
15 county and municipal emergency management agencies.

§22-30-11. Required signage.

1 Every aboveground storage tank shall display the signage, if
2 any, required by the Occupational Safety and Health
3 Administration; the tank registration number, when issued by the
4 secretary; and the emergency contact number for the owner or
5 operator of the tank and the emergency contact number for the
6 Department of Environmental Protection's Spill Reporting
7 Hotline. For the purposes of this section, the requirements for
8 prominently posted signage shall be specified in the rules
9 proposed for promulgation by the secretary pursuant to this
10 article and article three, chapter twenty-nine-a of this code.

§22-30-12. Aboveground Storage Tank Administrative Fund.

1 (a) The secretary shall collect annual registration fees from
2 owners or operators of each aboveground storage tank in an
3 amount to be promulgated in the legislative rules authorized by
4 this article to be used by the secretary to defray the costs of
5 administering this article. All registration and permit fees and the
6 net proceeds of all fines, penalties and forfeitures collected under
7 this article, including accrued interest, shall be paid into a special
8 revenue account, hereby created within the State Treasury,
9 designated the Aboveground Storage Tank Administrative Fund.

10 (b) At the end of each fiscal year, any unexpended balance,
11 including accrued interest, on deposit in the Aboveground
12 Storage Tank Administrative Fund shall not be transferred to the
13 General Revenue Fund, but shall remain in the Aboveground
14 Storage Tank Administrative Fund for expenditure pursuant to
15 this section.

§22-30-13. Protect Our Water Fund.

1 (a) Each owner or operator of an aboveground storage tank
2 located in this state shall pay an annual fee to establish a fund to
3 assure adequate response to leaking aboveground storage tanks.
4 The amount of fees assessed pursuant to this section shall be set
5 forth by rule. The fees must be sufficient to cover the regulatory
6 oversight and services to be provided by designated agencies,
7 including necessary technical and administrative personnel. The
8 proceeds of the assessment shall be paid into a special revenue
9 account, hereby created within the State Treasury, designated the
10 Protect Our Water Fund. The fund shall be administered by the
11 secretary. Expenditures from the fund shall be solely to respond
12 to leaking aboveground storage tanks, and are not authorized
13 from collections but are to be made only in accordance with
14 appropriation by the Legislature and in accordance with the
15 provisions of article three, chapter twelve of this code and upon
16 the fulfillment of the provisions set forth in article two, chapter
17 eleven-b of this code: *Provided*, That for the fiscal years ending
18 June 30, 2014 and 2015, expenditures are authorized from
19 collections rather than pursuant to an explicit appropriation by
20 the Legislature. At the end of each fiscal year, any unexpended
21 balance, including accrued interest, on deposit in the Protect Our
22 Water Fund shall not be transferred to the General Revenue
23 Fund, but shall remain in the Protect Our Water Fund for
24 expenditure pursuant to this section.

25 (b) Each owner or operator of an aboveground storage tank
26 subject to a fee assessment under subsection (a) of this section

27 shall pay a fee based on the number of aboveground storage
28 tanks he or she owns or operates, as applicable. The secretary
29 shall vary the fees annually to a level necessary to produce a
30 sufficient fund at the beginning of each calendar year.

31 (c) At the end of each fiscal year, any unexpended balance,
32 including accrued interest, on deposit in the Protect Our Water
33 Fund shall not be transferred to the General Revenue fund, but
34 shall remain in the Protect Our Water Fund.

35 (d) The secretary may enter into agreements and contracts
36 and to expend the moneys in the fund for the following purposes:

37 (1) Responding to aboveground storage tank releases when,
38 based on readily available information, the secretary determines
39 that immediate action is necessary to prevent or mitigate
40 significant risk of harm to human health, safety, water resources
41 or the environment from contamination caused by a release of
42 fluid from aboveground storage tanks in situations for which no
43 federal funds are immediately available for the response, cleanup
44 or containment: *Provided*, That the secretary shall apply for and
45 diligently pursue all available federal funds at the earliest
46 possible time;

47 (2) Reimbursing any nonresponsible parties for reasonable
48 cleanup costs incurred with the authorization of the secretary in
49 responding to an aboveground storage tank release; or

50 (3) Reimbursing any nonresponsible parties for reasonable
51 costs incurred with the authorization of the secretary responding
52 to perceived, potential or threatened releases from aboveground
53 storage tanks.

54 (e) The secretary, through a cooperative agreement with
55 another state regulatory agency, in this or another state, may use
56 the fund to compensate the cooperating agency for expenses the

57 cooperating agency incurs in carrying out regulatory
58 responsibilities that agency may have pursuant to this article.

§22-30-14. Public access to information.

1 (a) The public shall have access to all documents and
2 information submitted to the agency, subject to the limitations
3 contained in the state Freedom of Information Act, article one,
4 chapter twenty-nine-b of this code. Records, reports or
5 information obtained from any persons under this article may be
6 disclosed to other officers, employees or authorized
7 representatives of this state or federal agency implementing the
8 provisions of this article or any other applicable law related to
9 releases of fluid from aboveground storage tanks that impact the
10 state's water resources.

11 (b) A list of the potential sources of significant
12 contamination contained within the zone of critical concern as
13 provided by the Department of Environmental Protection, the
14 Bureau for Public Health and the Division of Homeland Security
15 and Emergency Management may be disclosed. The exact
16 location of the contaminants within the zone of critical concern
17 is not subject to public disclosure in response to a Freedom of
18 Information Act request under article one, chapter twenty-nine-b
19 of this code. However, the location, characteristics and
20 approximate quantities of potential sources of significant
21 contamination within the zone of critical concern shall be made
22 known to one or more designees of the public water utility, and
23 shall be maintained in a confidential manner by the public water
24 utility. In the event of a chemical spill, release or related
25 emergency, information pertaining to any spill or release of
26 contaminant shall be immediately disseminated to any
27 emergency responders responding to the site of a spill or release,
28 and the general public shall be promptly notified in the event of
29 a chemical spill, release or related emergency.

§22-30-15. Inspections, monitoring and testing.

1 (a) For the purposes of developing or assisting in the
2 development of any rule, conducting any study, taking any
3 corrective action or enforcing any provision of this article, any
4 owner or operator of an aboveground storage tank shall, upon
5 request of the secretary:

6 (1) Furnish information relating to the aboveground storage
7 tanks, their associated equipment and contents;

8 (2) Conduct reasonable monitoring or testing;

9 (3) Permit the secretary, at all reasonable times, to inspect
10 and copy records relating to aboveground storage tanks; and

11 (4) Permit the secretary to have access to the aboveground
12 storage tanks for corrective action.

13 (b) For the purposes of developing or assisting in the
14 development of any rule, conducting any study, taking corrective
15 action or enforcing any provision of this article, the secretary
16 may:

17 (1) Enter at any time any establishment or other place where
18 an aboveground storage tank is located;

19 (2) Inspect and obtain samples of any fluid contained in an
20 aboveground storage tank from any person;

21 (3) Conduct monitoring or testing of the aboveground
22 storage tanks, associated equipment, contents or surrounding
23 soils, surface water or groundwater; and

24 (4) Take corrective action as specified in this article.

25 (c) Each inspection shall be commenced and completed with
26 reasonable promptness.

27 (d) To ensure protection of the water resources of the state
28 and compliance with any provision of this article or rule
29 promulgated thereunder, the secretary shall inspect at least
30 annually any aboveground storage tank facility located within
31 the zone of critical concern of a public water system with a
32 public surface water supply source or a public surface water
33 influenced groundwater supply source.

§22-30-16. Administrative orders; injunctive relief.

1 (a) When the secretary determines, on the basis of any
2 information, that a person is in violation of any requirement of
3 this article or the rules promulgated thereunder, the secretary
4 may issue an order stating with reasonable specificity the nature
5 of the violation and requiring compliance within a reasonable
6 specified time period, or the secretary may commence a civil
7 action in the circuit court of the county in which the violation
8 occurred or in the circuit court of Kanawha County for
9 appropriate relief, including a temporary or permanent
10 injunction. The secretary may, except as provided in subsection
11 (b) of this section, stay any order he or she issues upon
12 application, until the order is reviewed by the Environmental
13 Quality Board.

14 (b) In addition to the powers and authority granted to the
15 secretary by this chapter to enter into consent agreements,
16 settlements, and otherwise enforce this chapter, the secretary
17 shall propose rules for legislative approval to establish a
18 mechanism for the administrative resolution of violations set
19 forth in this article through consent order or agreement as an
20 alternative to instituting a civil action.

§22-30-17. Civil and criminal penalties.

1 (a) Any person who fails to comply with an order of the
2 secretary issued under subsection (a), section sixteen of this
3 article within the time specified in the order is liable for a civil

4 penalty of not more than \$25,000 for each day of continued
5 noncompliance.

6 (b) Any owner or operator of an aboveground storage tank
7 who knowingly fails to register or obtain a permit required by
8 this article for an aboveground storage tank or submits false
9 information pursuant to this article is liable for a civil penalty
10 not to exceed \$10,000 for each aboveground storage tank that is
11 not registered or permitted or for which false information is
12 submitted.

13 (c) Any owner or operator of an aboveground storage tank
14 who fails to comply with any requirement of this article or any
15 standard promulgated by the secretary pursuant to this article is
16 subject to a civil penalty not to exceed \$10,000 for each day of
17 violation.

18 (d) Any person who knowingly and intentionally violates
19 any provision of this article shall be guilty of a misdemeanor,
20 and, upon conviction thereof, shall be confined in a regional jail
21 for a period of time not exceeding one year, and be fined an
22 amount not to exceed \$25,000.

23 (e) Any person convicted of a second or subsequent willful
24 violation of subsection (d) of this section or knowingly and
25 willfully violates any provision of any permit, rule or order
26 issued under or subject to the provisions of this article is guilty
27 of a felony and, upon conviction, shall be imprisoned in a
28 correctional facility not less than one nor more than three years,
29 or fined not more than \$50,000 for each day of violation, or both
30 fined and imprisoned.

31 (f) Any person may be prosecuted and convicted under the
32 provisions of this section notwithstanding that none of the
33 administrative remedies provided in this article have been
34 pursued or invoked against said person and notwithstanding that
35 civil action for the imposition and collection of a civil penalty or

36 an application for an injunction under the provisions of this
37 article has not been filed against such person.

38 (g) Where a person holding a permit is carrying out a
39 program of pollution abatement or remedial action in compliance
40 with the conditions and terms of the permit, the person is not
41 subject to criminal prosecution for pollution recognized and
42 authorized by the permit.

43 (h) Civil penalties are payable to the secretary. All moneys
44 collected under this section for civil fines collected under this
45 article shall be deposited into a restricted account known as the
46 Protect Our Water Fund. All money deposited into this account
47 shall be used by the secretary solely to respond to leaking
48 aboveground storage tanks.

§22-30-18. Appeal to Environmental Quality Board.

1 Any person aggrieved or adversely affected by an order of
2 the secretary made and entered in accordance with the provisions
3 of this article may appeal to the Environmental Quality Board,
4 pursuant to the provisions of article one, chapter twenty-two-b
5 of this code.

§22-30-19. Duplicative enforcement prohibited.

1 No enforcement proceeding brought pursuant to this article
2 may be duplicated by an enforcement proceeding subsequently
3 commenced under some other article of this code with respect to
4 the same transaction or event, unless the subsequent proceeding
5 involves the violation of a permit or permitting requirement of
6 other article.

§22-30-20. Reporting and accountability.

1 (a) Every year, the secretary shall submit a report to the Joint
2 Legislative Oversight Commission on State Water Resources
3 and the Joint Committee on Government and Finance which

4 assesses the effectiveness of this article and provides other
5 information as may be requested by the commission to allow it
6 to assess the effectiveness of this article, including, without
7 limitation, the secretary's observations concerning all aspects of
8 compliance with this article and any legislative rules
9 promulgated pursuant hereto, the regulatory process, and any
10 pertinent changes to federal rules or regulations.

11 (b) The secretary shall keep accurate accounts of all receipts
12 and disbursements related to the administration of the
13 Aboveground Storage Tank Administrative Fund and shall make
14 a detailed annual report to the Joint Legislative Oversight
15 Commission on State Water Resources and the Joint Committee
16 on Government and Finance addressing the administration of the
17 fund.

18 (c) The secretary shall keep accurate accounts of all receipts
19 and disbursements related to the administration of the Protect
20 Our Water Fund and shall make a specific annual report to the
21 Joint Legislative Oversight Commission on State Water
22 Resources and the Joint Committee on Government and Finance
23 addressing the administration of the fund.

§22-30-21. Interagency cooperation.

1 (a) In implementation of this article, the secretary shall
2 coordinate with the Department of Health and Human
3 Resources, the West Virginia Public Service Commission, the
4 Division of Homeland Security and Emergency Management
5 and local health departments to ensure the successful planning
6 and implementation of this act, including consideration of the
7 role of those agencies in providing services to owners and
8 operators of aboveground storage tanks and public water
9 systems.

10 (b) The secretary shall also coordinate with state and local
11 emergency response agencies to prepare and issue appropriate

12 emergency response plans to facilitate a coordinated emergency
13 response and incident command and communication between the
14 owner or operator of the aboveground storage tank, the state and
15 local emergency response agencies and the affected public water
16 system.

17 (c) The secretary shall also coordinate with the State Fire
18 Marshal in addressing the periodic inspection of local fire
19 departments to include a requirement for inspectors to examine
20 and identify the status of National Incident Management System
21 fire department personnel training.

§22-30-22. Imminent and substantial danger.

1 (a) Notwithstanding any other provision of this chapter to the
2 contrary, upon receipt of evidence that an aboveground storage
3 tank may present an imminent and substantial danger to human
4 health, water resources or the environment, the secretary may
5 bring suit on behalf of the State of West Virginia in the Circuit
6 Court of Kanawha County against any owner or operator of an
7 aboveground storage tank who has contributed or who is
8 contributing to imminent and substantial danger to public health,
9 safety, water resources or the environment to order the person to
10 take action as may be necessary to abate the situation and protect
11 human health, safety, water resources and the environment from
12 contamination caused by a release of fluid from an aboveground
13 storage tank.

14 (b) Upon receipt of information that there is any
15 aboveground storage tank that presents an imminent and
16 substantial danger to human health, safety, water resources or the
17 environment, the secretary shall provide immediate notice to the
18 appropriate state and local government agencies and any affected
19 public water system. In addition, the secretary shall require
20 notice of any danger to be promptly posted at the aboveground
21 storage tank facility containing the aboveground storage tank at
22 issue.

§22-30-23. Promulgation of rules.

1 The secretary shall promulgate emergency and legislative
2 rules as necessary to implement the provisions of this article in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code.

§22-30-24. Powers and duties of secretary.

1 (a) In addition to the powers and duties prescribed in this
2 chapter or otherwise provided by law, the secretary has the
3 exclusive authority to perform all acts necessary to implement
4 this article.

5 (b) The secretary may receive and expend money from the
6 federal government or any other sources to implement this
7 article.

8 (c) The secretary may revoke any registration, authorization
9 or permit for a violation of this article or the rules promulgated
10 hereunder.

11 (d) The secretary may issue orders, assess civil penalties,
12 institute enforcement proceedings and prosecute violations of
13 this article as necessary.

14 (e) The secretary, in accordance with this article, may order
15 corrective action to be undertaken, take corrective action or
16 authorize a third party to take corrective action.

17 (f) The secretary may recover the costs of taking corrective
18 action, including costs associated with authorizing third parties
19 to perform corrective action. Costs may not include routine
20 inspection and administrative activities not associated with a
21 release.

§22-30-25. Scope of article; waiving additional permitting requirements for certain categories of aboveground

storage tanks; establishing a process for granting waivers for additional categories of ground storage tanks, by legislative rule, upon verification that the category of tanks are regulated under comparable or more rigorous protective state or federal standards.

1 (a) While all aboveground storage tanks shall be required to
2 participate in the inventory and registration process set forth in
3 section four of this article, the following categories of containers
4 and tanks shall not be required to be permitted under section five
5 of this article, either because they do not represent a substantial
6 threat of contamination, or they are currently regulated under
7 standards which meet or exceed the protective standards and
8 requirements set forth in this article:

9 (1) An aboveground storage tank containing drinking water,
10 filtered surface water, demineralized water, noncontact cooling
11 water or water stored for fire or emergency purposes;

12 (2) Any natural gas or propane tanks regulated under NFPA
13 58-30A or NFPA 58-30B;

14 (3) Septic tanks and home aeration systems;

15 (4) A pipeline facility, including gathering lines, regulated
16 under the Natural Gas Pipeline Safety Act of 1968 or the
17 Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate
18 pipeline facility regulated by the West Virginia Public Service
19 Commission or otherwise regulated under any state law
20 comparable to the provisions of either the Natural Gas Pipeline
21 Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act
22 of 1979;

23 (5) Equipment or machinery containing substances for
24 operational purposes, including integral hydraulic lift tanks,

25 lubricating oil reservoirs for pumps and motors, electrical
26 equipment and heating and cooling equipment;

27 (6) A mobile tank, truck or rail car that is located on a site
28 for less than sixty consecutive calendar days;

29 (7) Liquid traps or associated gathering lines related to oil or
30 gas production and gathering operations;

31 (8) A surface impoundment, pit, pond or lagoon;

32 (9) Aboveground storage tanks for which spill prevention,
33 control, and countermeasure plans are required by the
34 Environmental Protection Agency (EPA) under 40 CFR Part 112
35 (oil pollution prevention), unless located within a zone of critical
36 protection.

37 (b) The Department of Environmental Protection may
38 designate, by legislative rule, additional categories of
39 aboveground storage tanks for which an individual aboveground
40 storage tank permit may be waived, after confirming that the
41 tank is regulated under an existing state or federal regulatory
42 permit or enforceable standard which includes, but is not limited
43 to, the following:

44 (1) Secondary containment with an impermeable base, which
45 is sufficient to fully contain the contents of the tank or the
46 contents of the largest tank in the group of tanks in the event of
47 a leak from spilling out onto the ground or adjacent surface
48 water;

49 (2) Spill prevention, leak detection and control and
50 inspection requirements which meet or exceed the standards
51 established by the article or by rules promulgated thereunder;

52 (3) Regular inspections and routine integrity testing
53 requirements which are equally protective to the requirements

54 established pursuant to this article or any rules promulgated
55 thereunder; and

56 (4) Emergency response and notification requirements which
57 are at least as prompt and comprehensive as the emergency
58 response and notification requirements established by this article
59 or any rules promulgated thereunder.

60 (c) In lieu of requiring a separate permit issued under this
61 section, the secretary may adopt rules that would allow the
62 requirements of this article to be incorporated into, and enforced
63 through, the state-only portion of a National Pollutant Discharge
64 Elimination System (NPDES) permit or a permit under article
65 six or six-a of this chapter.

66 (d) If the aboveground storage tank or tanks' location is to
67 be regulated pursuant to a general NPDES permit or an
68 individual NPDES permit, the secondary containment, spill
69 prevention, leak detection and control requirements, inspection
70 requirements, reporting requirements and routine integrity
71 testing requirements for that tank or tanks are to be specifically
72 set forth as enforceable permit conditions and requirements.

ARTICLE 31. THE PUBLIC WATER SUPPLY PROTECTION ACT.

§22-31-1. Short title.

1 This article may be known and cited as the Public Water
2 Supply Protection Act.

§22-31-2. Legislative findings.

1 (a) The West Virginia Legislature finds that it is in the
2 public policy of the State of West Virginia to protect and
3 conserve the water resources which are relied upon by the state
4 and its citizens. The state's water resources are vital natural

5 resources that are essential to maintain, preserve and promote
6 human health, quality of life and economic vitality of the state.

7 (b) The West Virginia Legislature further finds that it is the
8 public policy of the state that clean, uncontaminated water be
9 available for its citizens who are dependent on clean water as a
10 basic need for survival, and who rely on the assurances from
11 public water systems and the government that the water is safe
12 to consume.

13 (c) The West Virginia Legislature further finds that it is the
14 public policy of the state that clean, uncontaminated water be
15 available to its businesses and industries that rely on water for
16 their economic survival, and the well-being of their employees.
17 These include hospitals and the medical industry, schools and
18 educational institutions, the food and hospitality industries, the
19 tourism industry, manufacturing, coal, natural gas and other
20 industries. Businesses and industries searching for places to
21 locate or relocate consider the quality of life for their employees
22 as well as the quality of the raw materials such as clean water.

23 (d) The Legislature further finds that large quantities of
24 fluids are stored in aboveground storage tanks, below ground
25 storage tanks, in impoundments and other locations which pose
26 a threat of potential contamination to surface waters and
27 groundwaters which are relied upon as primary sources of public
28 water supplies in the state. Emergency situations involving these
29 fluids can and will arise that may present a hazard to human
30 health, safety, the water resources, the environment and the
31 economy of the state.

32 (e) It is important that the public water systems, the
33 responding emergency providers and regulatory inspectors and
34 personnel require complete and accurate information regarding
35 the volume, identity, characteristics and qualities of each
36 potential source of significant contamination to efficiently and

37 accurately anticipate and respond to any associated threat to the
38 public posed by a leak or spill event.

39 (f) The Legislature also finds it reasonable and appropriate
40 to impose additional regulatory oversight and reporting
41 requirements for potential contaminants which are in close
42 proximity to a public water intake, due to the sudden and
43 devastating impact that potential contaminants in that zone pose
44 to a public water system's critical source of supply.

§22-31-3. Definitions.

1 For the purposes of this article:

2 (1) "Potential source of significant contamination" means a
3 facility or activity that stores, uses or produces compounds with
4 potential for significant contaminating impact if released into the
5 source water of a public water supply.

6 (2) "Public water system" means:

7 (A) Any water supply or system which regularly supplies or
8 offers to supply water for human consumption through pipes or
9 other constructed conveyances, if serving at least an average of
10 twenty-five individuals per day for at least sixty days per year,
11 or which has at least fifteen service connections, and shall
12 include:

13 (i) Any collection, treatment, storage and distribution
14 facilities under the control of the owner or operator of the system
15 and used primarily in connection with the system; and

16 (ii) Any collection or pretreatment storage facilities not
17 under such control which are used primarily in connection with
18 the system.

19 (B) A public water system does not include a system which
20 meets all of the following conditions:

21 (i) Consists only of distribution and storage facilities and
22 does not have any collection and treatment facilities;

23 (ii) Obtains all of its water from, but is not owned or
24 operated by, a public water system which otherwise meets the
25 definition;

26 (iii) Does not sell water to any person; and

27 (iv) Is not a carrier conveying passengers in interstate
28 commerce.

29 (4) "Public groundwater supply source" means a primary
30 source of water supply for a public water system which is
31 directly drawn from a well, underground stream, underground
32 reservoir, underground mine or other primary source of water
33 supplies which is found underneath the surface of the state.

34 (5) "Public surface water supply source" means a primary
35 source of water supply for a public water system which is
36 directly drawn from rivers, streams, lakes, ponds, impoundments
37 or other primary sources of water supplies which are found on
38 the surface of the state.

39 (6) "Public surface water influenced groundwater supply
40 source" means a source of water supply from a public water
41 system which is directly drawn from an underground well,
42 underground river or stream, underground reservoir or
43 underground mine, and the quantity and quality of the water in
44 that underground supply source is heavily influenced, directly or
45 indirectly, by the quantity and quality of surface water in the
46 immediate area.

47 (7) "Zone of critical concern" for a public surface water
48 supply is a corridor along streams within a watershed that
49 warrant more detailed scrutiny due to its proximity to the surface
50 water intake and the intake's susceptibility to potential

51 contaminants within that corridor. The zone of critical concern
52 is determined using a mathematical model that accounts for
53 stream flows, gradient and area topography. The length of the
54 zone of critical concern is based on a five-hour time of travel of
55 water in the streams to the water intake, plus an additional one-
56 fourth mile below the water intake. The width of the zone of
57 critical concern is one thousand feet measured horizontally from
58 each bank of the principal stream and five hundred feet
59 measured horizontally from each bank of the tributaries draining
60 into the principal stream.

**§22-31-4. Inventory of potential sources of significant
contamination in a zone of critical concern;
registration; permitting; notice.**

1 (a) To assure protection of the water resources of the state,
2 the secretary, working in collaboration with the Bureau for
3 Public Health and the Division of Homeland Security and
4 Emergency Management, shall compile an inventory of all
5 potential sources of significant contamination contained within
6 a public water system's zone of critical concern for all public
7 water systems whose source of supply is obtained from a surface
8 water supply source or a surface water influenced groundwater
9 supply source.

10 (b) If the secretary shall determine that a designated
11 potential significant source of contamination is not currently
12 permitted and subject to regulation by the secretary under one or
13 more articles of this chapter, and the secretary determines that
14 the public interest in protecting the public drinking waters of the
15 state warrant additional regulation and inspection of the site to
16 protect the public interests, the secretary may require the owner
17 and operator of that facility to register and obtain a permit for its
18 location pursuant to the provisions of this article.

19 (c) Within sixty days of the date receiving notice from the
20 secretary of the facility's obligation to register pursuant to this

21 article, the owner or operator shall register the location pursuant
22 to the provisions of this section.

23 (d) The secretary shall prescribe a registration form for this
24 purpose within thirty days of the effective date of the enactment
25 of this article. Any potential significant sources of contamination
26 within a public water system's defined zone of critical concern
27 which are required to register with the Department of
28 Environmental Protection pursuant to this section shall do so
29 within sixty days from the receiving notice of their obligation to
30 register.

31 (e) Any potential source of significant contamination placed
32 into service on and after the effective date of this section, but
33 prior to the establishment of a permit program, may be required
34 to register by the secretary at any time.

35 (f) The secretary may charge a reasonable fee to cover the
36 cost of the registration and permitting program. The fee may be
37 set by emergency and legislative rules proposed for
38 promulgation in accordance with the provisions of article three,
39 chapter twenty-nine-a of this code.

§22-31-5. Promulgation of rules.

1 The secretary shall promulgate emergency and legislative
2 rules as necessary to implement the provisions of this article in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code.

§22-31-6. Powers and duties of secretary.

1 (a) In addition to the powers and duties prescribed in this
2 chapter or otherwise provided by law, the secretary has the
3 exclusive authority to perform all acts necessary to implement
4 this article.

5 (b) The secretary is authorized to utilize his or her authority
6 under the West Virginia Water Pollution Control Act to require
7 appropriate permitting and any other conditions or limitations to
8 assure protection of water intakes in zones of critical concern.

9 (c) The secretary may receive and expend money from the
10 federal government or any other sources to implement this
11 article.

12 (d) The secretary may revoke any registration, authorization
13 or permit for a violation of this article or the rules promulgated
14 hereunder.

15 (e) The secretary may issue orders, assess civil penalties,
16 institute enforcement proceedings and prosecute violations of
17 this article as necessary.

18 (f) The secretary, in accordance with this article, may order
19 corrective action to be undertaken, take corrective action or
20 authorize a third party to take corrective action.

21 (g) The secretary may recover the costs of taking corrective
22 action, including costs associated with authorizing third parties
23 to perform corrective action. Costs may not include routine
24 inspection and administrative activities not associated with a
25 release.

§22-31-7. Public access to information.

1 (a) Subject to the exemptions listed in section four, article
2 one, chapter twenty-nine-b of this code, the public shall have
3 access to all documents and information submitted to the agency
4 in accordance with this section pursuant to the state Freedom of
5 Information Act. Records, reports or information obtained from
6 any persons under this article may be disclosed to other officers,
7 employees or authorized representatives of this state or the
8 United States Environmental Protection Agency or of this state

9 if the officers, employees or authorized representatives are
10 implementing the provisions of this article or any other
11 applicable law related to releases of contaminants tanks that
12 impact the state's water resources.

13 (b) In submitting data under this article, a person required to
14 provide the data may designate the data that he or she believes
15 is entitled to protection under this section and may submit the
16 designated data separately from other data submitted under this
17 article. A designation under this subsection shall be made in
18 writing and in a manner as the secretary may prescribe.

19 (c) The Department of Environmental Protection shall
20 provide a copy of the compiled list of contaminants in each zone
21 of critical concern to the affected public water system, the
22 Bureau for Public Health, the Department of Environmental
23 Protection and the Division of Homeland Security and
24 Emergency Management. This will enable those entities to
25 possess a compiled list of the types, quantities, characteristics
26 and locations of all of the known potential contaminants within
27 the zone of critical concern for each public water supply. If any
28 of the submitted information is requested to be kept confidential
29 and good cause is found to grant the request, for reasons of
30 security or other legitimate public interest concern, the protected
31 information shall be redacted from public view and kept
32 confidential, and it shall not be subject to public release in
33 response to a Freedom of Information Act request made under
34 chapter twenty-nine-b of this code.

§22-31-8. Inspections, monitoring and testing.

1 (a) For the purposes of developing or assisting in the
2 development of any rule, conducting any study, taking any
3 corrective action or enforcing any provision of this article, any
4 owner or operator of designated site of potential contamination
5 within a zone of critical concern shall, upon request of the
6 secretary:

7 (1) Furnish information relating to the site and potential
8 contaminants on the site, their aboveground and underground
9 storage tanks, their associated equipment and contents;

10 (2) Conduct reasonable monitoring or testing;

11 (3) Permit the secretary, at all reasonable times, to inspect
12 and copy records relating to the facilities and equipment used to
13 store or contain the potential contaminants; and

14 (4) Permit the secretary to have access to the site for
15 corrective action.

16 (b) For the purposes of developing or assisting in the
17 development of any rule, conducting any study, taking corrective
18 action or enforcing any provision of this article, the secretary
19 may:

20 (1) Enter at any time any establishment or other place where
21 on the site or where the potential contaminant is located;

22 (2) Inspect and obtain samples of any fluid contained or
23 stored on the site from any person;

24 (3) Conduct monitoring or testing of the site and any
25 associated aboveground storage tanks, underground storage
26 tanks, associated equipment, contents or surrounding soils,
27 surface, water or groundwater; and

28 (4) Take corrective action as specified in this article.

29 (c) Each inspection shall be commenced and completed with
30 reasonable promptness.

31 (d) To ensure protection of the water resources of the state
32 and compliance with any provision of this article or rule
33 promulgated thereunder, the secretary shall inspect at least
34 annually any designated site of potential contamination which is

35 located within the zone of critical concern for a public water
36 system's surface water intake.

37 (e) Due to the potential impact of contaminants within a
38 zone of critical concern on public drinking water supplies,
39 whenever there is an apparent spill of a chemical or substance
40 within a zone of critical concern for a public water system, the
41 Director of the Bureau for Public Health, and his or her
42 representatives or designees, shall have the same right to enter,
43 inspect and conduct sampling and monitoring at any site that is
44 extended by this article to the Department of Environmental
45 Protection.

**§22-31-9. Prohibition of general NPDES permits within a zone of
critical concern for sites with aboveground storage
tanks; and authorizing the Division of
Environmental Protection to require individual
NPDES permit for any other site when deemed
appropriate.**

1 Because of the potential public health impact of pollution to
2 downstream public water intakes in a watershed basin designated
3 in an area of critical concern, on and after September 1, 2014,
4 any permittee which presently holds a National Pollutant
5 Discharge Elimination System (NPDES) general permit pursuant
6 to the West Virginia Water Pollution Control Act which has an
7 aboveground storage tank as defined by article thirty of this
8 chapter on a site which is located within any public water
9 system's zone of critical concern must apply for and hold an
10 individual permit under that act. The secretary shall also have the
11 authority to require other holders of a general NPDES permit to
12 obtain an individual NPDES permit, when deemed appropriate
13 to protect the public water supply. Any general NPDES permit
14 held currently under that act shall remain in effect until the
15 individual NPDES permit is either issued or denied.

§22-31-10. Civil and criminal penalties.

1 (a) Any person who fails to comply with an order of the
2 secretary issued pursuant to this article in the time specified in
3 the order is liable for a civil penalty of not more than \$25,000 for
4 each day of continued noncompliance.

5 (b) Any owner or operator of a site designated as a potential
6 source of significant contamination within a zone of critical
7 concern above a public water intake who knowingly fails to
8 register or obtain a permit for an aboveground storage tank or
9 submits false information pursuant to this article is liable for a
10 civil penalty not to exceed \$10,000 for each aboveground storage
11 tank that is not registered or permitted or for which false
12 information is submitted.

13 (c) Any owner or operator of a site designated as a potential
14 source of significant contamination within a zone of critical
15 concern above a public water intake who fails to comply with
16 any requirement of this article or any standard promulgated by
17 the secretary pursuant to this article is subject to a civil penalty
18 not to exceed \$10,000 for each day of violation.

19 (d) Any person who knowingly and intentionally violates
20 any provision of this article shall be guilty of a misdemeanor
21 and, upon conviction thereof, shall be confined in a regional jail
22 for a period of time not exceeding one year and be fined an
23 amount not to exceed \$25,000.

24 (e) Any person convicted of a second or subsequent willful
25 violation of subsection (b) or (c) of this section or knowingly and
26 willfully violates any provision of any permit, rule or order
27 issued under or subject to the provisions of this article is guilty
28 of a felony and, upon conviction, shall be imprisoned in a
29 correctional facility not less than one nor more than three years,
30 or fined not more than \$50,000 for each day of violation, or both
31 fined and imprisoned.

32 (f) Any person may be prosecuted and convicted under the
33 provisions of this section notwithstanding that none of the
34 administrative remedies provided in this article have been
35 pursued or invoked against said person and notwithstanding that
36 civil action for the imposition and collection of a civil penalty or
37 an application for an injunction under the provisions of this
38 article has not been filed against such person.

39 (g) Where a person holding a permit is carrying out a
40 program of pollution abatement or remedial action in compliance
41 with the conditions and terms of the permit, the person is not
42 subject to criminal prosecution for pollution recognized and
43 authorized by the permit.

§22-31-11. Appeal to Environmental Quality Board.

1 A person aggrieved or adversely affected by an order of the
2 secretary made and entered in accordance with the provisions of
3 this article may appeal to the Environmental Quality Board,
4 pursuant to the provisions of article one, chapter twenty-two-b
5 of this code.

§22-31-12. Public Water System Supply Study Commission.

1 (a) There is hereby established the Public Water System
2 Supply Study Commission which is created for the purpose of
3 studying and reporting back to the Joint Committee on
4 Government and Finance on the following subject matters:

5 (1) A review and assessment of the effectiveness and the
6 quality of information contained in updated source water
7 protection plans required for certain public water systems by the
8 provisions of section nine-c, article one, chapter sixteen of this
9 code;

10 (2) A review and assessment of the effectiveness of
11 legislation enacted during the 2014 Regular Session of the West

12 Virginia Legislature, as it pertains to assisting public water
13 systems in identifying and reacting or responding to identified
14 potential sources of significant contamination, and increasing
15 public awareness and public participation in the emergency
16 planning and response process;

17 (3) The extent of available financing and funding
18 alternatives which are available to existing public water systems
19 to pursue projects which are designed to create alternate sources
20 of supply or increased stability of supply in the event of a spill,
21 release or contamination event which impairs the water system's
22 primary source of supply;

23 (4) A review and consideration of the recommendations of
24 the U. S. Chemical Safety and Hazard and Investigation Board
25 after its investigation of the Bayer CropScience incident of 2008;
26 and

27 (5) Any recommendations or suggestions the study
28 commission may offer to improve the infrastructure of existing
29 public water systems, to provide safe and reliable sources of
30 supplies, and to pursue other measures designed to protect the
31 integrity of public water service.

32 (b) The study commission shall consist of the following
33 twelve members, who shall be appointed and comprised as
34 follows:

35 (1) Four members appointed by the Governor, one of whom
36 shall be a professional engineer experienced in the design and
37 construction of public water systems; one of whom shall be a
38 hydrologist or other expert experienced in determining the flow
39 characteristics of rivers and streams; one of whom shall be an
40 environmental toxicologist or other public health expert who is
41 familiar with the impact of contaminants on the human body;
42 and one citizen representative;

43 (2) One representative designated by the Rural Water
44 Association;

- 45 (3) One representative designated by the Municipal League;
- 46 (4) The Secretary of the Department of Environmental
47 Protection or his or her designee;
- 48 (5) The Commissioner of the Bureau for Public Health or his
49 or her designee;
- 50 (6) The Director of the Division of Homeland Security and
51 Emergency Management or his or her designee;
- 52 (7) The Chairman of the Public Service Commission or his
53 or her designee;
- 54 (8) One nonvoting member appointed by the President of the
55 Senate; and
- 56 (9) One nonvoting member appointed by the Speaker of the
57 House of Delegates.
- 58 (c) Reports by the commission shall be submitted to the Joint
59 Committee on Government and Finance on or before December
60 15 of each year, beginning December 15, 2014.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2G. PUBLIC WATER UTILITIES MONITORING REQUIREMENTS.

§24-2G-1. Public water utilities required to install monitor for contaminants.

1 All public water utilities that provide water to more than one
2 hundred thousand customers, including public service districts
3 providing water service and municipally owned and operated
4 utilities, subject to the requirements and limitations of this
5 article, shall implement a regular monitoring system as specified
6 to the same technical capabilities for detection as utilized by the
7 Ohio River Valley Water Sanitation Commission.

§24-2G-2. Requirements.

1 (a) Each public water utility, public service district or
2 municipal water system, as set forth in section one of this article,
3 shall provide testing for contamination of its water supply by the
4 following contaminants:

5 (1) Salts or ions;

6 (2) Metals, including heavy metals;

7 (3) Polar organic compounds;

8 (4) Nonpolar organic compounds;

9 (5) Volatile compounds, oils and other hydrocarbons;

10 (6) Pesticides; and

11 (7) Biotoxins.

12 (b) Each public water utility is empowered to determine at
13 its discretion which of the contaminants listed in subsection (a)
14 of this section are most likely to contaminate its water supply,
15 and shall provide a monitoring system which shall detect the
16 three of the listed contaminants deemed most likely to affect that
17 water system: *Provided*, That each public water utility shall file
18 its list with the commission: *Provided, however*, That any public
19 water system serving over one hundred thousand customers from
20 any one treatment plant is requested to test for all listed
21 contaminants at each treatment plant: *Provided further*, That if
22 technology to adequately detect contaminants as required by this
23 section proves to be not feasible to implement, the public water
24 utility shall report by January 1, 2015, such to the Joint
25 Committee on Government and Finance with the reasons why
26 such technology is not feasible to obtain or use, and suggest
27 alternatives.

CHAPTER 188

(Com. Sub. for S. B. 395 - By Senator)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-8b; and to amend said code by adding thereto a new section, designated §61-4-9, all relating generally to the operation and oversight of certain benefit programs; granting certain subpoena power to the Investigations and Fraud Management Division within the Department of Health and Human Resources to investigate welfare fraud; authorizing the Investigations and Fraud Management Division to request search warrants, swear to complaints and seek relevant orders from circuit court in certain situations; providing access to out-of-state documents in certain circumstances; prohibiting disclosure of persons under investigation by the Investigations and Fraud Management Division; defining terms; creating misdemeanor and felony offenses for certain unlawful use of certain benefits or benefit access devices; stating certain presumptions and calculations permissible in prosecution of these offenses; providing an alternative to confinement for individuals convicted of the offenses associated with unlawful use of certain benefits; and precluding certain prosecution under multiple sections for conduct arising out of the same transaction or occurrence.

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 §9-5-8b; and that said code be amended by adding thereto a new section, designated §61-4-9, all to read as follows:

CHAPTER 9. HUMAN SERVICES.**ARTICLE 5. MISCELLANEOUS PROVISIONS.****§9-5-8b. Authority of Investigations and Fraud Management
Division to subpoena witnesses and documents.**

1 (a) When the Investigations and Fraud Management Division
2 of the Office of the Inspector General, which is charged with
3 investigating welfare fraud and intra-agency employee
4 misconduct, has credible information that indicates a person has
5 engaged in an act or activity related to Department of Health and
6 Human Resources programs, benefits or intra-agency employee
7 misconduct which is subject to prosecution, it may conduct an
8 investigation to determine if the act has been committed. To the
9 extent necessary to the investigation, the secretary or an
10 employee of the Office of the Inspector General designated by
11 the secretary may administer oaths or affirmations and issue
12 subpoenas for witnesses and documents relevant to the
13 investigation, including information concerning the existence,
14 description, nature, custody, condition and location of any book,
15 record, documents or other tangible thing and the identity and
16 location of persons having knowledge of relevant facts or any
17 matter reasonably calculated to lead to the discovery of
18 admissible evidence.

19 When the Investigations and Fraud Management Division
20 has probable cause to believe that a person has engaged in an act
21 or activity which is subject to prosecution relating to Department
22 of Health and Human Resources programs, benefits or intra-
23 agency employee misconduct, the secretary or an employee of
24 the Office of the Inspector General designated by the secretary
25 may request search warrants and present and swear or affirm
26 criminal complaints.

27 (b) If documents necessary to an investigation of the
28 Investigations and Fraud Management Division appear to be

29 located outside the state, the documents shall be made available
30 by the person or entity within the jurisdiction of the state having
31 control over such documents either at a convenient location
32 within the state or, upon payment of necessary expenses to the
33 division for transportation and inspection, at the place outside
34 the state where these documents are maintained.

35 (c) Upon failure of a person to comply with a subpoena or a
36 subpoena for the production of evidence or failure of a person to
37 give testimony without lawful excuse and upon reasonable notice
38 to all persons affected thereby, the Investigations and Fraud
39 Management Division may apply to the circuit court of the
40 county in which compliance is sought for appropriate orders to
41 compel obedience with the provisions of this section.

42 (d) The Investigations and Fraud Management Division may
43 not make public the name or identity of a person whose acts or
44 conduct is investigated pursuant to this section or the facts
45 disclosed in an investigation except as the same may be used in
46 any legal action or enforcement proceeding brought pursuant to
47 this code or federal law.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 4. FORGERY AND CRIMES AGAINST THE CURRENCY.

§61-4-9. Unauthorized use, transfer, acquisition, alteration or possession of certain benefits.

1 (a) For the purposes of this section:

2 (1) "Benefits" means any payment, allotments, money,
3 goods or other things of value granted pursuant to a benefit
4 program;

5 (2) "Benefit access device" means any card, plate, account
6 number or other means of access that can be used, alone or in

7 conjunction with another access device, to obtain payments,
8 allotments, benefits, money, goods or other things of value that
9 can be used to initiate a transfer of funds;

10 (3) "Benefit program" includes the Federal Food Stamp Act,
11 Supplemental Nutritional Assistance Program, Temporary
12 Assistance to Needy Families or other similar state or federal
13 financial assistance program; and

14 (4) "Terms of the benefit program" includes all statutes,
15 rules, regulations or other requirements of that specific benefit
16 program for use of the benefits.

17 (b) Any person who knowingly uses, transfers, acquires,
18 alters or possesses benefits or one or more benefit access device
19 contrary to the terms of the benefit program shall:

20 (1) If the benefits are of a value of less than \$1,000, be guilty
21 of a misdemeanor and, upon conviction thereof, shall for a first
22 offense be fined not more than \$1,000 or confined in a regional
23 jail for not more than one year, or both fined and confined, and
24 for a second and any subsequent offense shall be fined not more
25 than \$1,000 or confined in a regional jail for not less than thirty
26 days and not more than one year;

27 (2) If the benefits are of a value of \$1,000 or more, but less
28 than \$5,000, be guilty of a felony and, upon conviction, shall for
29 a first offense be fined not more than \$10,000 or imprisoned in
30 a state correctional facility for not more than three years, or both
31 fined and imprisoned, and for a second and any subsequent
32 offense shall be fined not more than \$10,000 or imprisoned for
33 not less than six months nor more than five years, or both fined
34 and imprisoned; and

35 (3) If the benefits are of a value of \$5,000 or more, be guilty
36 of a felony and, upon conviction, fined not more than \$250,000
37 or imprisoned in a state correctional facility for not more than
38 ten years, or both fined and imprisoned.

39 (c) Any person who presents, or causes to be presented,
40 benefits or one or more benefit access device for payment,
41 allotments, money, goods or other things of value knowing the
42 same to have been received, transferred or used in any manner
43 in violation of the terms of the benefit program is:

44 (1) If the benefits are of a value of less than \$1,000, guilty of
45 a misdemeanor and, upon conviction, shall for a first offense be
46 fined not more than \$1,000 or confined in a regional jail for not
47 more than one year, or both fined and confined, and for a second
48 and any subsequent conviction shall be fined not more than
49 \$1,000 or confined in a regional jail for not less than thirty days
50 and not more than one year;

51 (2) If the benefits are of a value of \$1,000 or more, guilty of
52 a felony and, upon conviction, shall for a first offense be fined
53 not more than \$20,000 or imprisoned in a state correctional
54 facility for not more than five years, or both fined and
55 imprisoned, and for a second and any subsequent conviction
56 shall be fined not more than \$20,000 or imprisoned in a state
57 correctional facility for not less than one year nor more than five
58 years, or both fined and imprisoned.

59 (d) Notwithstanding the penalties contained in this section,
60 in the case of any individual convicted of an offense under this
61 section, the court may permit the individual to perform work
62 approved by the court, in lieu of confinement, for the purpose of
63 providing restitution for losses incurred by the United States and
64 the state agency as a result of the offense for which the
65 individual was convicted. If the court permits the individual to
66 perform work and the individual agrees, the court shall withhold
67 the imposition of the sentence on the condition that the
68 individual perform the assigned work. Upon the successful
69 completion of the assigned work the court shall waive any
70 confinement from the sentence.

71 (e) For purposes of this section, possession of two or more
72 benefit access devices without authorization is prima facie
73 evidence that an individual has knowledge the possession of the
74 benefit access devices is a violation of the terms of the benefit
75 program.

76 (f) In determining the value in this section, it is permissible
77 to cumulate amounts or values of benefits.

78 (g) Notwithstanding any provision of this code to the
79 contrary, no person who knowingly acquires benefits or one or
80 more benefit access device contrary to the terms of the benefit
81 program may be subject to prosecution under both this section
82 and section four, article five, chapter nine of this code for
83 conduct arising out of the same transaction or occurrence.

CHAPTER 189

**(S. B. 403 - By Senators Laird, Barnes, Edgell, Facemire,
Prezioso, Snyder, Unger, Miller and Beach)**

[Passed March 7, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2014.]

AN ACT to amend and reenact §20-2-64 of the Code of West Virginia, 1931, as amended, relating to regulating the importation and possession of certain injurious aquatic species.

Be it enacted by the Legislature of West Virginia:

That §20-2-64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-64. Regulating release of fish, water animal and other aquatic organisms; stocking permit.**

1 (a) It is unlawful for any person to release any fish, water
2 animal or other aquatic organism, alive or dead, or any part, nest
3 or egg thereof into the waters of this state except as authorized
4 by a stocking permit issued by the director: *Provided*, That
5 nothing in this subsection shall be construed as restricting the
6 release of fish, water animal or other aquatic organism into the
7 waters of this state from which they were taken by lawful
8 methods: *Provided, however*, That nothing in this subsection
9 shall be construed as restricting the release of native or
10 established species of fish in privately owned ponds.

11 (b) A stocking permit is not required for the stocking of trout
12 in waters of the state provided that the trout originate from a
13 source within the state or meet the disease-free certification
14 requirements for imported salmonidae set forth in section
15 thirteen of this article.

16 (c) A stocking permit is not required for the stocking of
17 black bass provided that the Division of Natural Resources is
18 notified prior to stocking and is provided a disease-free
19 certification.

20 (d) It is unlawful for any person to possess, sell, offer for
21 sale, import, bring or cause to be brought or imported into this
22 state or release into the waters of this state, in a live state, any
23 bighead carp (*Hypophthalmichthys nobilis*), silver carp
24 (*Hypophthalmichthys molitrix*), black carp (*Mylopharyngodon*
25 *piceus*), largescale silver carp (*Hypophthalmichthys harmandi*),
26 diploid white amur (*Ctenopharyngodon idella*) or snakehead
27 (*Channa spp.*), gametes or eggs of the same, or any hybrids of
28 these species. The director may not issue a stocking permit to

29 any person for the species and their hybrids listed in this
30 subsection, but may issue written authorization for the
31 importation or possession of these species or their hybrids into
32 this state if the importation or possession does not violate any
33 federal law and if the use is limited to scientific research.

CHAPTER 190

**(Com. Sub. for H. B. 4196 - By Delegates Marshall,
Fleischauer and Cooper)**

[Passed March 7, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact §5B-2B-4 of the Code of West Virginia, 1931, as amended, relating to requiring the Workforce Investment Council to provide information and guidance to local workforce investment boards that would enable them to better educate both women and men about higher paying jobs including jobs traditionally dominated by men or women.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-4. Duties of the Workforce Investment Council.

- 1 (a) The council shall assist the Governor in the:
- 2 (1) Development and revision of a strategic five-year state
- 3 workforce investment plan, including the establishment of an

4 overall workforce investment public agenda with goals and
5 benchmarks of success for the state, state agencies and for local
6 workforce investment boards;

7 (2) Development and continuous improvement of a statewide
8 system of workforce investment activities including:

9 (A) Development of linkages in order to assure coordination
10 and nonduplication of services and activities of workforce
11 investment programs conducted by various entities in the state;
12 and

13 (B) The review of strategic plans created and submitted by
14 local workforce investment boards;

15 (3) Commenting at least annually on the measures taken by
16 the state pursuant to the Carl D. Perkins Vocational and Applied
17 Technology Education Act, 20 U.S.C. §2323;

18 (4) Designation and revision of local workforce investment
19 areas;

20 (5) Development and revision of allocation formulas for the
21 distribution of funds for adult employment and training activities
22 and youth activities to local areas;

23 (6) Development and continuous improvement of
24 comprehensive state performance measures, including state-
25 adjusted levels of performance, to assess the effectiveness of the
26 workforce investment activities in the State;

27 (7) Preparation of the annual report to the Secretary of Labor
28 as required by the Workforce Investment Act, 29 U.S.C. §2871;

29 (8) Development and continued improvement of a statewide
30 employment statistics system; and

31 (9) Development and revision of an application for
32 workforce investment incentive grants.

33 (b) The council shall make a report to the Legislative
34 Oversight Commission on Workforce Investment for Economic
35 Development and the Legislative Oversight Commission on
36 Education Accountability on or before November 1 of each year,
37 detailing: (1) All the publicly funded workforce investment
38 programs operating in the state, including the amount of federal
39 and state funds expended by each program, how the funds are
40 spent and the resulting improvement to the workforce; (2) the
41 council's recommendations concerning future use of funds for
42 workforce investment programs; (3) the council's analysis of
43 operations of local workforce investment programs; (4) the
44 council's recommendations for the establishment of an overall
45 workforce investment public agenda with goals and benchmarks
46 of success for the state, state agencies and for local workforce
47 investment boards; (5) the status of one-stop system operations
48 in the state, including all memoranda of understanding entered
49 into by the one-stop partners and local workforce investment
50 boards; (6) the status and outcome data regarding the council and
51 local workforce investment boards' success in linking West
52 Virginia PROMISE scholars to employment with a West
53 Virginia employer; and (7) any other information the
54 commission may require.

55 (c) To aid in the report required in subsection (b) of this
56 section, each local workforce investment board shall report
57 annually to the council on or before September 1 of each year on
58 the status of one-stop centers within the region each board
59 represents, attaching all memoranda of understanding entered
60 into with one-stop partners.

61 (d) The council shall provide information and guidance to
62 local workforce investment boards and staff, to enable them to
63 better educate both women and men about higher paying jobs
64 and careers including jobs traditionally dominated by men or
65 women. Such guidance shall promote services provided by the
66 local workforce investment boards for job seekers that includes:

67 (1) Current information about compensation for jobs and
68 careers that offer high earning potential including jobs that are
69 traditionally dominated by men or women;

70 (2) Counseling, skills development and training
71 opportunities that encourage both women and men to seek
72 employment in such jobs;

73 (3) Referral information to employers offering such jobs; or

74 (4) Information regarding the long-term consequences,
75 including lower social security benefits or pensions, of choosing
76 jobs that offer lower earnings potential and are traditionally
77 dominated by women or men.

CHAPTER 191

**(Com. Sub. for H. B. 4242 - By Delegates Diserio, Jones,
Swartzmiller, Ferro, Fleischauer, Perdue, Poore, Storch,
D. Poling, Eldridge and L. Phillips)**

[Passed March 7, 2014; in effect from passage.]

[Approved by the Governor on March 28, 2014.]

AN ACT to authorize the Commissioner of the West Virginia Division
of Highways to allow an increase of gross weight limitations on
certain roads in Brooke County.

Be it enacted by the Legislature of West Virginia:

**WEIGHT LIMITATIONS ON CERTAIN ROADS IN BROOKE
COUNTY.**

§1. Authority of the Commissioner of the West Virginia Division of Highways to increase weight limitations on certain highways within Brooke County.

1 (a) If the Commissioner of the West Virginia Division of
2 Highways determines that the design, construction and safety of
3 the highways in Brooke County described in subsection c of this
4 section are such that gross weight limits may be increased
5 without damage, the commissioner may establish new
6 limitations applicable to the highways or portions thereof.

7 (b) The commissioner may not establish any weight
8 limitation in excess or in conflict with any weight limitation
9 prescribed by or pursuant to acts of Congress with respect to the
10 National System of Interstate and Defense Highways.

11 (c) If the commissioner determines that those portions of
12 Brooke County Route 2/20, north and southbound, from milepost
13 0.00 to milepost 0.44; WV 2 in Brooke County, north and
14 southbound, from milepost 12.34 to milepost 15.61; and U.S. 22,
15 east and westbound, from milepost 0.00 to milepost 0.3, and all
16 connecting ramps are designed and constructed to allow the
17 gross weight limitation to be increased without damage, the
18 commissioner may increase the gross weight limitations up to
19 108,000 pounds, with no tolerance permitted, on those sections
20 described above: *Provided*, That any person, organization or
21 corporation exceeding the 80,000 pounds gross weight limitation
22 while using these routes must first obtain a permit from the
23 commissioner before proceeding: *Provided, however*, That the
24 increased weight limitations are not barred by an act of the
25 United States Congress.

26 (d) The commissioner shall create a permit that shall be
27 obtained by any person, organization or corporation wishing to
28 utilize the provisions of subsection c of this section.

29 (e) The commissioner shall develop procedures for the
30 issuance of the permit and those procedures shall be consistent
31 with the existing procedures for the issuance of similar permits.
32 The permit issued shall be valid for one year from the date of
33 issuance.

34 (f) The information required in the application for the permit
35 shall include:

36 (1) Tractor and trailer information;

37 (2) Number of axles;

38 (3) Axle spacings;

39 (4) Overall dimensions;

40 (5) Load information;

41 (6) Load weight and gross weight; and

42 (7) Effective dates.

43 (g) Upon submission of this information the person,
44 organization or corporation shall be provided an appropriate
45 permit based on the information provided in subsection f.

46 (h) The commissioner shall charge a permit fee of five-
47 hundred dollars for each vehicle.

48 (i) The Commissioner shall have the authority to
49 immediately reduce the weight limit authorized by the permit
50 should a bridge report be issued stating that the safe load weight
51 limit is below 108,000 pounds.

CHAPTER 192

(S. B. 631 - By Senator Snyder)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to extend the time for the city council of the Town of Fayetteville, Fayette County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for the laying, repair and maintenance of the streets and sidewalks, and for the purpose of paying all costs incurred in the laying of this additional levy from between March 7 and March 28 and the third Tuesday in April until May 31, 2014.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF THE TOWN OF FAYETTEVILLE MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the city council for the Town of Fayetteville to meet as a levying body for an election to supplement current funds for the laying, repair and maintenance of the streets and sidewalks, and for the purpose of paying all costs incurred in the laying of the additional levy.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the city
3 council of the Town of Fayetteville, Fayette County, is
4 authorized to extend the time for its meeting as a levying body,
5 setting the levy rate and certifying its actions to the State Auditor
6 and the State Tax Commissioner from between March 7 and
7 March 28 and the third Tuesday in April until May 31, 2014, for
8 the purpose of submitting to the voters of the Town of

9 Fayetteville the question of supplementing current funds for the
10 laying, repair and maintenance of the streets and sidewalks, and
11 for the purpose of paying all costs incurred in the laying of this
12 additional levy.

CHAPTER 193

(H. B. 4259 - By Delegate Romine)

[Passed March 4, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to extend the time for the city council of the city of Sistersville, Tyler County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for the operation of parks, the library, fire department and streets and for the purpose of paying all costs incurred in the laying of this additional levy from between the seventh and twenty-eighth days of March and the third Tuesday in April until May 31, 2014.

Be it enacted by the Legislature of West Virginia:

**THE CITY COUNCIL OF THE CITY OF SISTERSVILLE
MEETING AS A LEVYING BODY EXTENDED.**

§1. Extending time for the city council for the city of Sistersville to meet as a levying body for an election to supplement current funds for the city park and pool operation and for the purpose of paying all costs incurred in the laying of the additional levy.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the city

3 council of the city of Sistersville, Tyler County, is authorized to
4 extend the time for its meeting as a levying body, setting the levy
5 rate and certifying its actions to the State Auditor and the State
6 Tax Commissioner from between March 7 and March 28 and the
7 third Tuesday in April until May 31, 2014, for the purpose of
8 submitting to the voters of the city of Sistersville the question of
9 supplementing current funds for the city park and pool operation
10 and for the purpose of paying all costs incurred in the laying of
11 this additional levy.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2014

CHAPTER 1

**(H. B. 104 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 14, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §19-12A-6a of the Code of West Virginia, 1931, as amended, relating to increasing the annual cap for collections into the Land Division special revenue account of the Department of Agriculture; and depositing half of any excess funds collected into the special revenue account and half into the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

That §19-12A-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12A. LAND DIVISION.

§19-12A-6a. Special revenue account.

1 (a) All funds collected by the commission pursuant to this
2 article, whether from the sale of food, the disposition of assets
3 other than land, the lease of land or minerals or any other source,
4 shall be paid into a special revenue account to be used for the
5 purposes of this article: *Provided*, That when the aggregate of
6 said funds so collected and deposited in the special revenue

7 account in any fiscal year total \$2,000,000, the commission shall
8 deposit half of any excess funds collected into the special
9 revenue account, and half into the General Revenue Fund of the
10 state.



CHAPTER 2

**(Com. Sub. for S. B. 1002 - By Senators Kessler (Mr. President)
and M. Hall)**

[By Request of the Executive]

[Passed March 14, 2014; in effect from passage.]

[Approved by the Governor on March 19, 2014.]

AN ACT expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2014, in the amount of \$10,000,000 from the Joint Expenses, fund 0175, fiscal year 2006, organization 2300, activity 642, in the amount of \$10,000,000 from the Joint Expenses, fund 0175, fiscal year 2007, organization 2300, activity 642, in the amount of \$5,293,000 from the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, in the amount of \$20,000,000 from Joint Expenses, Joint Expense Lottery Fund, fund 1736, fiscal year 2014, organization 2300, in the amount of \$5,707,000 from Joint Expenses, Tax Reduction and Federal Funding Increased Compliance, fund 1732, fiscal year 2014, organization 2300, in the amount of \$9,000,000 from the Attorney General, Consumer Protection Fund, fund 1509, fiscal year 2014, organization 1500, and in the amount of \$10,000,000 from the Department of Revenue, Insurance Commissioner, Insurance Commission Fund, fund 7152, fiscal year 2014, organization 0704, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of

Military Affairs and Public Safety, Division of Corrections - Correctional Units, and to the Department of Military Affairs and Public Safety, Division of Juvenile Services, by supplementing and amending the appropriations for the fiscal year ending June 30, 2014.

WHEREAS, The Governor finds that the account balances in Joint Expense, fund 0175, fiscal year 2006, organization 2300, activity 642, Joint Expenses, fund 0175, fiscal year 2007, organization 2300, activity 642, Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, Joint Expenses, Joint Expense Lottery Fund, fund 1736, fiscal year 2014, organization 2300, Joint Expenses, Tax Reduction and Federal Funding Increased Compliance, fund 1732, fiscal year 2014, organization 2300, the Attorney General, Consumer Protection Fund, fund 1509, fiscal year 2014, organization 1500, and the Department of Revenue, Insurance Commissioner, Insurance Commission Fund, fund 7152, fiscal year 2014, organization 0704, exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 8, 2014, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2013, and further included the estimate of revenues for fiscal year 2014, less net appropriation balances forwarded and regular appropriations for the fiscal year 2014; and

WHEREAS, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first seven months of fiscal year 2014 as prepared by the State Budget Office; and

WHEREAS, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately \$73.1 million for the first seven months of fiscal year 2014, as compared to the monthly revenue estimates for the first seven months of the fiscal year 2014; and

WHEREAS, Current economic and fiscal trends will result in projected year-end revenue deficits, including projected shortfalls in Personal Income Tax, Consumers Sales and Use Tax, and Interest Income; and

WHEREAS, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

WHEREAS, The total projected year-end revenue deficit for the General Revenue Fund is now projected to be higher than the previous estimated deficit of \$60 million; and

WHEREAS, The Constitution of the State of West Virginia requires that there be a balance between the state's revenues and expenditures for each fiscal year; and

WHEREAS, On December 17, 2013, the Governor issued a memorandum to cabinet secretaries implementing temporary restrictions on general revenue-funded hiring to help reduce expenditures and close the anticipated budget gap in fiscal year 2014; and

WHEREAS, On January 3, 2014, the Governor, after careful analysis of fiscal year 2014 spending trends to date, issued Executive Order 1-14 to effect a spending reduction of targeted appropriation to aid in the balancing of the fiscal year 2014 budget; and

WHEREAS, This spending reduction is expected to generate a savings of approximately \$33 million; and

WHEREAS, There are other possible spending reductions available to the Governor should the need arise; and

WHEREAS, There is remaining an expected deficit in the budget that must be balanced; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2014, to the Joint Expenses, fund 0175, fiscal year 2006, organization 2300, activity 642, be decreased by expiring the amount of \$10,000,000, and to the Joint Expenses, fund 0175, fiscal year 2007, organization 2300, activity 642, be decreased by expiring the amount of \$10,000,000, and to the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, be decreased by expiring the amount of \$5,293,000, and to the Joint Expenses, Joint Expense Lottery Fund, fund 1736, fiscal year 2014, organization 2300, be decreased by expiring the amount of \$20,000,000, and to the Joint Expenses, Tax Reduction and Federal Funding Increased Compliance, fund 1732, fiscal year 2014, organization 2300, be decreased by expiring the amount of \$5,707,000, and to the Attorney General, Consumer Protection Fund, fund 1509, fiscal year 2014, organization 1500, be decreased by expiring the amount of \$9,000,000, and to the Department of Revenue, Insurance Commissioner, Insurance Commission Fund, fund 7152, fiscal year 2014, organization 0704, be decreased by expiring the amount of \$10,000,000, all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2014.

And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0570, fiscal year 2014, organization 0621, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

78-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2014 Org 0621

			Act- ivity	General Revenue Fund
1	3	Robert L. Shell Juvenile Center..	267	\$ 50,653
2	10	Kenneth Honey Rubenstein		
3	11	Juvenile Center (R).....	980	106,445

4 And, That the total appropriation for the fiscal year ending
 5 June 30, 2014, to fund 0450, fiscal year 2014, organization 0608,
 6 be supplemented and amended by adding a new item of
 7 appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

*74—Division of Corrections -
 Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 2014 Org 0608

			Act- ivity	General Revenue Fund
1	18a	Investigative Services.....	716	\$ 157,098

2 The purpose of this supplemental appropriation bill is to
 3 supplement, amend, decrease, add a new item, and expire items

- 4 of appropriation in the aforesaid accounts for the designated
5 spending units for expenditure during the fiscal year 2014.

CHAPTER 3

**(Com. Sub. for S. B. 1003 - By Senators Kessler (Mr. President)
and M. Hall)
[By Request of the Executive]**

[Passed March 14, 2014; in effect from passage.]

[Approved by the Governor on March 19, 2014.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2014, in the amount of \$4,057,000 from the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, and in the amount of \$409,167.60 from the Department of Commerce, Division of Tourism, fund 0246, fiscal year 2005, organization 0304, activity 859, and in the amount of \$261,246.01 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 075, and in the amount of \$5,999.39 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2000, organization 0307, activity 131, and in the amount of \$58,527.20 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 131, and in the amount of \$154,061.74 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 131, and in the amount of \$257,617.06 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 131, and in the amount of \$209,609.04 from the Department of Commerce, West Virginia Development Office,

fund 0256, fiscal year 2004, organization 0307, activity 131, and in the amount of \$145,560.18 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 131, and in the amount of \$131,792.70 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 131, and in the amount of \$198,809.53 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 266, and in the amount of \$65,804.47 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 266, and in the amount of \$26,183.53 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 266, and in the amount of \$250,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 266, and in the amount of \$11,758.05 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 480, and in the amount of \$62,039.15 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 480, and in the amount of \$25,265 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 480, and in the amount of \$124,338.34 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 480, and in the amount of \$123,100 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 480, and in the amount of \$140,830.80 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 480, and in the amount of \$47,113.16 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 819, and in the amount of \$223,665.85 from the Department of Commerce, West Virginia

Development Office, fund 0256, fiscal year 2002, organization 0307, activity 819, and in the amount of \$44,007.60 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 819, and in the amount of \$123,230.47 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 819, and in the amount of \$742,930.92 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 819, and in the amount of \$539,290.37 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 819, and in the amount of \$334,180.67 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 900, and in the amount of \$650,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, activity 941, and in the amount of \$461.83 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2002, organization 0506, activity 803, and in the amount of \$10,489.51 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2003, organization 0506, activity 803, and in the amount of \$8,056.23 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2004, organization 0506, activity 803, and in the amount of \$13,718.82 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2005, organization 0506, activity 803, and in the amount of \$0.70 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2006, organization 0506, activity 803, and in the amount of \$24,307.51 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization 0506, activity 803, and in the amount of \$6,600.22 from the Department of Health and Human Resources, Consolidated

Medical Service Fund, fund 0525, fiscal year 2008, organization 0506, activity 803, and in the amount of \$76,423.45 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2009, organization 0506, activity 803, and in the amount of \$211,730.74 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2010, organization 0506, activity 803, and in the amount of \$150,334.97 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2011, organization 0506, activity 803, and in the amount of \$136,909.29 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2012, organization 0506, activity 803, and in the amount of \$1,974.51 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, activity 803, and in the amount of \$15,640.96 from the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2009, organization 0601, activity 953, and in the amount of \$240,051.69 from the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2010, organization 0601, activity 953, and in the amount of \$215,075.18 from the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2011, organization 0601, activity 953, and in the amount of \$871,905.27 from the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2012, organization 0621, activity 818, and in the amount of \$870,992.77 from the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2013, organization 0621, activity 818, and in the amount of \$2,250,000 from the Auditor's Office, Purchasing Card Administration Fund, fund 1234, fiscal year 2014, organization 1200, and in the amount of \$3,000,000 from the Secretary of State, General Administrative Fees Account, fund 1617, fiscal year 2014, organization 1600, and in the amount of \$200,000 from the Department of Administration,

Office of the Secretary, State Employee Sick Leave Fund, fund 2045, fiscal year 2014, organization 0201, and in the amount of \$200,000 from the Department of Administration, Division of General Services, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2014, organization 0211, and in the amount of \$4,737,257 from the Department of Administration, Board of Risk and Insurance, Premium Tax Savings Fund, fund 2367, fiscal year 2014, organization 0218, and in the amount of \$500,000 from the Department of Administration, Surplus Property, Sale of State Surplus Property Fund, fund 2281, fiscal year 2014, organization 0214, and in the amount of \$500,000 from the Department of Administration, Division of Purchasing, Purchasing Improvement Fund, fund 2264, fiscal year 2014, organization 0213, and in the amount of \$2,000,000 from the Department of Administration, Division of Personnel, Division of Personnel Fund, fund 2440, fiscal year 2014, organization 0222, and in the amount of \$45,607.91 from the Department of Military Affairs and Public Safety, Office of the Secretary, Secretary of Military Affairs and Public Safety Lottery Fund, fund 6005, fiscal year 2014, organization 0601, and in the amount of \$200,000 from the Department of Revenue, Division of Financial Institutions, Assessment and Examination Fund, fund 3041, fiscal year 2014, organization 0303, and in the amount of \$724,487.42 from the Department of Revenue, Lottery Commission, Revenue Center Construction Fund, fund 7209, fiscal year 2014, organization 0705, and in the amount of \$7,500,000 from the Department of Revenue, Lottery Commission, Operating and Expense Fund, fund 7200, fiscal year 2014, organization 0705, and in the amount of \$2,008,911.50 from the Department of Revenue, Racing Commission, Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account, fund 7307, fiscal year 2014, organization 0707, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public

Defender Services, fund 0226, fiscal year 2014, organization 0221, to the Department of Commerce, Division of Natural Resources, fund 0265, fiscal year 2014, organization 0310, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2014, organization 0506, to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2014, organization 0506, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2014, organization 0511, to the Department of Military Affairs and Public Safety, West Virginia Parole Board, fund 0440, fiscal year 2014, organization 0605, to the Department of Military Affairs and Public Safety, Division of Homeland Security and Emergency Management, fund 0443, fiscal year 2014, organization 0606, to the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2014, organization 0608, to the Department of Revenue, State Budget Office, fund 0595, fiscal year 2014, organization 0703, to the Bureau of Senior Services, fund 0420, fiscal year 2014, organization 0508, and to the Higher Education Policy Commission, Administration - Control Account, fund 0589, fiscal year 2014, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2014.

WHEREAS, The Legislature finds that the account balances in the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, the Department of Commerce, Division of Tourism, fund 0246, fiscal year 2005, organization 0304, activity 859, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 075, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2000, organization 0307, activity 131, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 131, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 131, the Department of Commerce, West

Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 131, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 131, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 131, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 131, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 266, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 266, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 266, Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 266, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 480, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 480, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 480, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 480, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 480, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 480, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 819, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 819, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 819, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 819, the Department of Commerce, West

Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 819, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 819, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 900, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, activity 941, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2002, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2003, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2004, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2005, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2006, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2008, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2009, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2010, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2011, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2012, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, activity 803, the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2009, organization 0601, activity 953, the Department of Military Affairs and

Public Safety, Office of the Secretary, fund 0430, fiscal year 2010, organization 0601, activity 953, the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2011, organization 0601, activity 953, the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2012, organization 0621, activity 818, the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2013, organization 0621, activity 818, the Auditor's Office, Purchasing Card Administration Fund, fund 1234, fiscal year 2014, organization 1200, the Secretary of State, General Administrative Fees Account, fund 1617, fiscal year 2014, organization 1600, the Department of Administration, Office of the Secretary, State Employee Sick Leave Fund, fund 2045, fiscal year 2014, organization 0201, the Department of Administration, Division of General Services, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2014, organization 0211, the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2014, organization 0218, the Department of Administration, Surplus Property, Sale of State Surplus Property Fund, fund 2281, fiscal year 2014, organization 0214, the Department of Administration, Division of Purchasing, Purchasing Improvement Fund, fund 2264, fiscal year 2014, organization 0213, the Department of Administration, Division of Personnel, Division of Personnel Fund, fund 2440, fiscal year 2014, organization 0222, the Department of Military Affairs and Public Safety, Office of the Secretary, Secretary of Military Affairs and Public Safety Lottery Fund, fund 6005, fiscal year 2014, organization 0601, the Department of Revenue, Division of Financial Institutions, Assessment and Examination Fund, fund 3041, fiscal year 2014, organization 0303, the Department of Revenue, Lottery Commission, Revenue Center Construction Fund, fund 7209, fiscal year 2014, organization 0705, the Department of Revenue, Lottery Commission, Operating and Expense Fund, fund 7200, fiscal year 2014, organization 0705, the Department of Revenue, Racing Commission, Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account, fund 7307, fiscal year 2014, organization 0707, exceed that

which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 8, 2014, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2013, and further included the estimate of revenues for the fiscal year 2014, less net appropriation balances forwarded and regular appropriations for the fiscal year 2014; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2014; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2014, in the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, be decreased by expiring the amount of \$4,057,000, and in the Department of Commerce, Division of Tourism, fund 0246, fiscal year 2005, organization 0304, activity 859, be decreased by expiring the amount of \$409,167.60, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 075, be decreased by expiring the amount of \$261,246.01, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2000, organization 0307, activity 131, be decreased by expiring the amount of \$5,999.39, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 131, be decreased by expiring the amount of \$58,527.20, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 131, be decreased by expiring the amount of \$154,061.74, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 131, be

decreased by expiring the amount of \$257,617.06, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 131, be decreased by expiring the amount of \$209,609.04, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 131, be decreased by expiring the amount of \$145,560.18, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 131, be decreased by expiring the amount of \$131,792.70, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 266, be decreased by expiring the amount of \$198,809.53, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 266, be decreased by expiring the amount of \$65,804.47, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 266, be decreased by expiring the amount of \$26,183.53, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 266, be decreased by expiring the amount of \$250,000, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 480, be decreased by expiring the amount of \$11,758.05, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 480, be decreased by expiring the amount of \$62,039.15, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 480, be decreased by expiring the amount of \$25,265, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 480, be decreased by expiring the amount of \$124,338.34, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 480, be decreased by expiring the amount of \$123,100, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307,

activity 480, be decreased by expiring the amount of \$140,830.80, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 819, be decreased by expiring the amount of \$47,113.16, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 819, be decreased by expiring the amount of \$223,665.85, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 819, be decreased by expiring the amount of \$44,007.60, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 819, be decreased by expiring the amount of \$123,230.47, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 819, be decreased by expiring the amount of \$742,930.92, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 819, be decreased by expiring the amount of \$539,290.37, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 900, be decreased by expiring the amount of \$334,180.67, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, activity 941, be decreased by expiring the amount of \$650,000, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2002, organization 0506, activity 803, be decreased by expiring the amount of \$461.83, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2003, organization 0506, activity 803, be decreased by expiring the amount of \$10,489.51, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2004, organization 0506, activity 803, be decreased by expiring the amount of \$8,056.23, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2005, organization 0506, activity 803, be decreased by expiring the amount of \$13,718.82, and in the Department of Health and Human

Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2006, organization 0506, activity 803, be decreased by expiring the amount of \$0.70, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization 0506, activity 803, be decreased by expiring the amount of \$24,307.51, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2008, organization 0506, activity 803, be decreased by expiring the amount of \$6,600.22, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2009, organization 0506, activity 803, be decreased by expiring the amount of \$76,423.45, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2010, organization 0506, activity 803, be decreased by expiring the amount of \$211,730.74, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2011, organization 0506, activity 803, be decreased by expiring the amount of \$150,334.97, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2012, organization 0506, activity 803, be decreased by expiring the amount of \$136,909.29, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, activity 803, be decreased by expiring the amount of \$1,974.51, and in the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2009, organization 0601, activity 953, be decreased by expiring the amount of \$15,640.96, and in the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2010, organization 0601, activity 953, be decreased by expiring the amount of \$240,051.69, and in the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2011, organization 0601, activity 953, be decreased by expiring the amount of \$215,075.18, and in the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2012, organization 0621, activity 818, be decreased by expiring the amount of \$871,905.27, and in the Department of Military Affairs and Public

Safety, Division of Juvenile Services, fund 0570, fiscal year 2013, organization 0621, activity 818, be decreased by expiring the amount of \$870,992.77, and in the Auditor's Office, Purchasing Card Administration Fund, fund 1234, fiscal year 2014, organization 1200, be decreased by expiring the amount of \$2,250,000, and in the Secretary of State, General Administrative Fees Account, fund 1617, fiscal year 2014, organization 1600, be decreased by expiring the amount of \$3,000,000, and in the Department of Administration, Office of the Secretary, State Employee Sick Leave Fund, fund 2045, fiscal year 2014, organization 0201, be decreased by expiring the amount of \$200,000, and in the Department of Administration, Division of General Services, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2014, organization 0211, be decreased by expiring the amount of \$200,000, and in the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2014, organization 0218, be decreased by expiring the amount of \$4,737,257, and in the Department of Administration, Surplus Property, Sale of State Surplus Property Fund, fund 2281, fiscal year 2014, organization 0214, be decreased by expiring the amount of \$500,000, and in the Department of Administration, Division of Purchasing, Purchasing Improvement Fund, fund 2264, fiscal year 2014, organization 0213, be decreased by expiring the amount of \$500,000, and in the Department of Administration, Division of Personnel, Division of Personnel Fund, fund 2440, fiscal year 2014, organization 0222, be decreased by expiring the amount of \$2,000,000, and in the Department of Military Affairs and Public Safety, Office of the Secretary, Secretary of Military Affairs and Public Safety Lottery Fund, fund 6005, fiscal year 2014, organization 0601, be decreased by expiring the amount of \$45,607.91, and in the Department of Revenue, Division of Financial Institutions, Assessment and Examination Fund, fund 3041, fiscal year 2014, organization 0303, be decreased by expiring the amount of \$200,000, and in the Department of Revenue, Lottery Commission, Revenue Center Construction Fund, fund 7209, fiscal year 2014, organization 0705, be decreased by expiring the amount of \$724,487.42, and in the Department of Revenue, Lottery Commission, Operating and Expense

Fund, fund 7200, fiscal year 2014, organization 0705, be decreased by expiring the amount of \$7,500,000, and in the Department of Revenue, Racing Commission, Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account, fund 7307, fiscal year 2014, organization 0707, be decreased by expiring the amount of \$2,008,911.50, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2014.

And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0226, fiscal year 2014, organization 0221, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2014 Org 0221

	Act-	General
	ivity	Revenue
		Fund
1 5 Appointed Counsel Fees -		
2 Surplus.	435	\$ 12,000,000

3 And, That the total appropriation for the fiscal year ending
 4 June 30, 2014, to fund 0265, fiscal year 2014, organization 0310,
 5 be supplemented and amended by adding a new item of
 6 appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

39-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2014 Org 0310

	Act- ivity	General Revenue Fund
1 11a State Park Improvements -		
2 Surplus (R).....	763	\$ 1,000,000

3 Any unexpended balance remaining in the appropriation for
4 State Park Improvements - Surplus (fund 0265, activity 763) at
5 the close of the fiscal year 2014 is hereby reappropriated for
6 expenditure during the fiscal year 2015.

7 And, That the total appropriation for the fiscal year ending
8 June 30, 2014, to fund 0407, fiscal year 2014, organization 0506,
9 be supplemented and amended by increasing existing items of
10 appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*63-Division of Health -
Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2014 Org 0506

		Act- ivity	General Revenue Fund
1	1	Personal Services - Surplus 243	\$ 518,729
2	2	Employee Benefits - Surplus 250	180,765

3 And, That the total appropriation for the fiscal year ending
 4 June 30, 2014, to fund 0525, fiscal year 2014, organization 0506,
 5 be supplemented and amended by increasing an existing item of
 6 appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

64-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2014 Org 0506

		Act- ivity	General Revenue Fund
1	4	Behavioral Health Program -	
2		Surplus (R). 631	\$ 4,718,630

3 Any unexpended balance remaining in the above
 4 appropriation for Behavioral Health Program - Surplus (fund
 5 0525, activity 631) at the close of the fiscal year 2014 is hereby
 6 reappropriated for expenditure during the fiscal year 2015.

7 And, That the total appropriation for the fiscal year ending
 8 June 30, 2014, to fund 0403, fiscal year 2014, organization 0511,
 9 be supplemented and amended by increasing existing items and
 10 adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT HEALTH AND HUMAN RESOURCES

67-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2014 Org 0511

		Act- ivity	General Revenue Fund
1	8	Medical Services - Surplus (R). 633	\$ 7,400,000
2	9	Social Services - Surplus. 082	6,793,446
3	35a	Technology Improvements -	
4		Surplus (R). 725	3,016,766

5 Any unexpended balance remaining in the above
 6 appropriations for Medical Services - Surplus (fund 0403,
 7 activity 633) and Technology Improvements - Surplus (fund
 8 0403, activity 725) at the close of the fiscal year 2014 are hereby
 9 reappropriated for expenditure during the fiscal year 2015.

10 And, That the total appropriation for the fiscal year ending
 11 June 30, 2014, to fund 0440, fiscal year 2014, organization 0605,
 12 be supplemented and amended by increasing existing items and
 13 adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

71-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2014 Org 0605

		Act- ivity		General Revenue Fund
1	1	Personal Services - Surplus.	243	\$ 45,928
2	2	Employee Benefits - Surplus.	250	22,358
3	6a	Operating Expenses - Surplus.	779	38,000

4 And, That the total appropriation for the fiscal year ending
5 June 30, 2014, to fund 0443, fiscal year 2014, organization 0606,
6 be supplemented by increasing an existing item of appropriation
7 as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

*72-Division of Homeland Security and
Emergency Management*

(WV Code Chapter 15)

Fund 0443 FY 2014 Org 0606

		Act- ivity	General Revenue Fund
1	13	WVU Charleston Poison Control	
2	14	Hotline - Surplus (R)..... 720	\$ 57,000
3	Any unexpended balance remaining in the above		
4	appropriation for WVU Charleston Poison Control Hotline -		
5	Surplus (fund 0443, activity 720) at the close of the fiscal year		
6	2014 is hereby reappropriated for expenditure during the fiscal		
7	year 2015. And, That the total appropriation for the fiscal year		
8	ending June 30, 2014, to fund 0450, fiscal year 2014,		
9	organization 0608, be supplemented and amended by adding a		
10	new item of appropriation as follows:		

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY***74-Division of Corrections-
Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 2014 Org 0608

		Act- ivity	General Revenue Fund
1	20a	Operating Expenses -	
2		Surplus (R). 779	\$ 6,235,205

3 Any unexpended balance remaining in the above
 4 appropriation for Operating Expenses - Surplus (fund 0450,
 5 activity 779) at the close of the fiscal year 2014 is hereby
 6 reappropriated for expenditure during the fiscal year 2015.

7 And, That the total appropriation for the fiscal year ending
 8 June 30, 2014, to fund 0595, fiscal year 2014, organization 0703,
 9 be supplemented and amended by adding a new item of
 10 appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF REVENUE

82-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2014 Org 0703

	Act- ivity	General Revenue Fund
1 4a Revenue Shortfall Reserve Fund -		
2 Transfer - Surplus (R).	718	\$ 3,000,000

3 The above appropriation for Revenue Shortfall Reserve Fund
 4 - Transfer - Surplus (activity 718) shall be transferred to the
 5 Revenue Shortfall Reserve Fund (fund 7005).

6 And, That the total appropriation for the fiscal year ending
 7 June 30, 2014, to fund 0420, fiscal year 2014, organization 0508,
 8 be supplemented and amended by increasing an existing item of
 9 appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF SENIOR SERVICES

91-Bureau of Senior Services -

(WV Code Chapter 29)

Fund 0420 FY 2014 Org 0508

		Act- ivity	General Revenue Fund
1	1	Transfer to Division of Human	
2	2	Services for Health Care and	
3	3	Title XIX Waiver for	
4	4	Senior Citizens - Surplus (R).. 765	\$ 1,000,000

5 Any unexpended balance remaining in the appropriation for
6 Transfer to Division of Human Services for Health Care and
7 Title XIX Waiver for Senior Citizens - Surplus (fund 0420,
8 activity 765) at the close of the fiscal year 2014 is hereby
9 reappropriated for expenditure during the fiscal year 2015.

10 And, That the total appropriation for the fiscal year ending
11 June 30, 2014, to fund 0589, fiscal year 2014, organization 0441,
12 be supplemented and amended by adding a new item of
13 appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

*103-Higher Education Policy Commission-
Administration-
Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2014 Org 0441

	Act- ivity	General Revenue Fund
1 14 Higher Education - Special		
2 14a Projects - Surplus (R).....	946	\$ 5,250,000

3 Any unexpended balance remaining in the above
 4 appropriation for Higher Education - Special Projects - Surplus
 5 (fund 0589, activity 946) at the close of the fiscal year 2014 is
 6 hereby reappropriated for expenditure during the fiscal year
 7 2015.

8 The purpose of this supplemental appropriation bill is to
 9 expire, supplement, amend, increase, and add items of
 10 appropriation in the aforesaid accounts for the designated
 11 spending units for expenditure during the fiscal year 2014.



CHAPTER 4

**(S. B. 1005 - By Senators Kessler (Mr. President)
and M. Hall)**

[By Request of the Executive]

 [Passed March 4, 2014; in effect from its passage.]
 [Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact §7-7-1 and §7-7-4 of the Code of West Virginia, 1931, as amended, all relating to authorizing an increase in the salaries of county commissioners and elected county officials; revising legislative findings; requiring the State Auditor to consider certain factors when certifying whether a county has an

amount sufficient for payment of the salary increases; providing that the State Auditor may not be held liable for relying upon information and data provided by a county commission in assessing a county's fiscal condition or annual budget; requiring submission of a written request for a salary increase; providing salary ranges for county commissioners and other county officials for the time period beginning July 1, 2014; and requiring certain prosecuting attorneys to be devoted full time to public duties.

Be it enacted by the Legislature of West Virginia:

That §7-7-1 and §7-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-1. Legislative findings and purpose.

1 (a) The Legislature finds that it has, since January 1, 2007,
2 consistently and annually imposed upon the county
3 commissioners, sheriffs, county and circuit clerks, assessors and
4 prosecuting attorneys in each county new and additional duties
5 by the enactment of new provisions and amendments to this
6 code. The new and additional duties imposed upon the aforesaid
7 county officials by these enactments are such that they would
8 justify the increases in compensation as provided in section four
9 of this article, without violating the provisions of section
10 thirty-eight, article VI of the Constitution of West Virginia.

11 (b) The Legislature further finds that there are, from time to
12 time, additional duties imposed upon all county officials through
13 the acts of the Congress of the United States and that such acts
14 constitute new and additional duties for county officials and, as
15 such, justify the increases in compensation as provided by
16 section four of this article, without violating the provisions of
17 section thirty-eight, article VI of the Constitution of West
18 Virginia.

19 (c) The Legislature further finds that there is a direct
20 correlation between the total assessed property valuations of a
21 county on which the salary levels of the county commissioners,
22 sheriffs, county and circuit clerks, assessors and prosecuting
23 attorneys are based, and the new and additional duties that each
24 of these officials is required to perform as they serve the best
25 interests of their respective counties. Inasmuch as the reappraisal
26 of the property valuations in each county has now been
27 accomplished, the Legislature finds that a change in
28 classification of counties by virtue of increased property
29 valuations will occur on an infrequent basis. However, it is the
30 further finding of the Legislature that when such change in
31 classification of counties does occur, that new and additional
32 programs, economic developments, requirements of public
33 safety and the need for new services provided by county officials
34 all increase, that the same constitute new and additional duties
35 for county officials as their respective counties reach greater
36 heights of economic development, as exemplified by the
37 substantial increases in property valuations and, as such, justify
38 the increases in compensation provided in section four of this
39 article, without violating the provisions of section thirty-eight,
40 article VI of the Constitution of West Virginia.

41 (d) The Legislature further finds and declares that the
42 amendments enacted to this article are intended to modify the
43 provisions of this article so as to cause the same to be in full
44 compliance with the provisions of the Constitution of West
45 Virginia and to be in full compliance with the decisions of the
46 Supreme Court of Appeals of West Virginia.

**§7-7-4. Compensation of elected county officials and county
commissioners for each class of county; effective date.**

1 (1) The increased salaries to be paid to the county
2 commissioners and the other elected county officials described
3 in this section on and after July 1, 2014, are set out in
4 subsections (5) and (7) of this section. Every county

5 commissioner and elected county official in each county, whose
6 term of office commenced prior to or on or after July 1, 2014,
7 shall receive the same annual salary by virtue of legislative
8 findings of extra duties as set forth in section one of this article.

9 (2) Before the increased salaries, as set out in subsections (5)
10 and (7) of this section, are paid to the county commissioners and
11 the elected county officials, the following requirements must be
12 met:

13 (A) The Auditor has certified that the fiscal condition of the
14 county, considering costs, revenues, liabilities and significant
15 trends of the same; maintenance standards; and the commitment
16 to the provision of county services has sufficiently improved
17 over the previous fiscal years so that there exists an amount
18 sufficient for the payment of the increase in the salaries set out
19 in subsections (5) and (7) of this section and the related
20 employment taxes: *Provided*, That the Auditor may not provide
21 the certification for the payment of the increase in the salaries
22 where any proposed annual county budget contains anticipated
23 receipts which are unreasonably greater or lesser than that of the
24 previous year. For purposes of this subsection, the term
25 "receipts" does not include unencumbered fund balance or
26 federal or state grants: *Provided, however*, That the Auditor shall
27 not be held liable for relying upon information and data provided
28 by a county commission in assessing the county's fiscal
29 condition or a proposed annual county budget; and

30 (B) Each county commissioner or other elected official
31 described in this section in office on the effective date of the
32 increased salaries provided by this section who desires to receive
33 the increased salary shall have prior to that date filed in the
34 office of the clerk of the county commission his or her written
35 request for the salary increase. The salary for the person who
36 holds the office of county commissioner or other elected official
37 described in this section who fails to file the written request as

38 required by this paragraph shall be the salary for that office in
39 effect immediately prior to the effective date of the increased
40 salaries provided by this section until the person vacates the
41 office or his or her term of office expires, whichever first occurs.

42 Any request for a salary increase shall use the following
43 language:

44 I, [name of office holder], the duly elected [name of office]
45 in and for the County of [name of county], West Virginia, do
46 hereby request a salary increase pursuant to W. Va. Code §7-7-4,
47 as amended. This salary increase is effective July 1, 2014.

48 [Signature of office holder]

49 [Date]

50 (3) If the Auditor has failed to certify that there is an amount
51 sufficient for the payment of the increase in the salaries and the
52 related employment taxes pursuant to this section, then the
53 salaries of that county's elected officials and commissioners
54 shall remain at the level in effect at the time certification was
55 sought.

56 (4) In any county having a tribunal in lieu of a county
57 commission, the county commissioners of that county may be
58 paid less than the minimum salary limits of the county
59 commission for that particular class of the county.

60 (5) Prior to July 1, 2014:

61 COUNTY COMMISSIONERS

62	Class I	\$36,960
63	Class II	\$36,300
64	Class III	\$35,640
65	Class IV	\$34,980

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COUNTY COMMISSIONERS

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66	Class V	\$34,320
67	Class VI	\$28,380
68	Class VII	\$27,720
69	Class VIII	\$25,080
70	Class IX	\$24,420
71	Class X	\$19,800

72 After June 30, 2014:

73

COUNTY COMMISSIONERS

74	Class I	\$41,395
75	Class II	\$40,656
76	Class III	\$39,917
77	Class IV	\$39,178
78	Class V	\$38,438
79	Class VI	\$31,786
80	Class VII	\$31,046
81	Class VIII	\$28,090
82	Class IX	\$27,350
83	Class X	\$22,176

84 (6) For the purpose of determining the salaries to be paid to
 85 the elected county officials of each county, the salaries for each
 86 county office by class, set out in subdivision (7) of this
 87 subsection, are established and shall be used by each county
 88 commission in determining the salaries of each of their county
 89 officials other than salaries of members of the county
 90 commission.

91 (7) Prior to July 1, 2014:

92

OTHER ELECTED OFFICIALS

93		County	Circuit	Prosecuting	
94	Sheriff	Clerk	Clerk	Assessor	Attorney
95	Class I	\$44,880	\$55,440	\$55,440	\$44,880 \$ 96,600

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96	Class II	\$44,220	\$54,780	\$54,780	\$44,220	\$ 94,400
97	Class III	\$43,890	\$53,460	\$53,460	\$43,890	\$ 92,200
98	Class IV	\$43,560	\$53,154	\$53,154	\$43,560	\$ 90,000
99	Class V	\$43,230	\$52,800	\$52,800	\$43,230	\$ 87,800
100	Class VI	\$42,900	\$49,500	\$49,500	\$42,900	\$ 59,400
101	Class VII	\$42,570	\$48,840	\$48,840	\$42,570	\$ 56,760
102	Class VIII	\$42,240	\$48,180	\$48,180	\$42,240	\$ 54,120
103	Class IX	\$41,910	\$47,520	\$47,520	\$41,910	\$ 50,160
104	Class X	\$38,280	\$42,240	\$42,240	\$38,280	\$ 46,200

105 After June 30, 2014:

106 OTHER ELECTED OFFICIALS

107		County	Circuit	Prosecuting		
108		Sheriff	Clerk	Clerk	Assessor	Attorney
109	Class I	\$50,266	\$62,093	\$62,093	\$50,266	\$108,192
110	Class II	\$49,526	\$61,354	\$61,354	\$49,526	\$105,728
111	Class III	\$49,157	\$59,875	\$59,875	\$49,157	\$103,264
112	Class IV	\$48,787	\$59,532	\$59,532	\$48,787	\$100,800
113	Class V	\$48,418	\$59,136	\$59,136	\$48,418	\$98,336
114	Class VI	\$48,048	\$55,440	\$55,440	\$48,048	\$66,528
115	Class VII	\$47,678	\$54,701	\$54,701	\$47,678	\$63,571
116	Class VIII	\$47,309	\$53,962	\$53,962	\$47,309	\$60,614

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117	Class IX	\$46,939	\$53,222	\$53,222	\$46,939	\$56,179
118	Class X	\$42,874	\$47,309	\$47,309	\$42,874	\$51,744
119	(8) Any county clerk, circuit clerk, county assessor,					
120	prosecuting attorney or sheriff of a Class I through Class V					
121	county, inclusive, any assessor or any sheriff of a Class VI					
122	through Class IX county, inclusive, shall devote full time to his					
123	or her public duties to the exclusion of any other employment:					
124	<i>Provided</i> , That any public official whose term of office begins					
125	when his or her county's classification imposes no restriction on					
126	his or her outside activities may not be restricted on his or her					
127	outside activities during the remainder of the term for which he					
128	or she is elected.					



CHAPTER 5

**(S. B. 1009 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]**

[Passed March 14, 2014; in effect from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to repeal §11-1C-5b of the Code of West Virginia, 1931, as amended; to repeal §18-9A-2a of said code; to amend and reenact §11-3-1 of said code; and to amend and reenact §18-9A-2 and §18-9A-11 of said code, all relating to the computation of local share for public school support purposes; repealing, retrospectively to June 30, 2013, provisions requiring the use of assumed assessed real property values that are based upon an assessment ratio study instead of actual real property values for the purpose of the computation of local share for public school support purposes; repealing, retrospectively to June 30, 2013, provisions that require

that the annual amount of local share for which a county board of education is responsible be increased where, during the prior year, the real property assessments in that county were not at least fifty-four percent of market value as indicated by the assessment ratio study; requiring the Tax Commissioner to appoint special assessors to appraise and assess property in any county whenever property in that county is found to be assessed at less than sixty percent of its fair market value for two consecutive years; providing that appointment of special assessors is not required where a county meets certain criteria prescribed by rule; requiring Tax Commissioner to promulgate rules; providing that the county bear the expense of such special assessors; revising definitions; specifying that for fiscal years beginning after June 30, 2014, the State Board of Education shall use ninety-six percent of total assessed public utility valuation in the calculation of local share; specifying a four percent loss deduction in computation of local share for the fiscal year beginning on July 1, 2014, and for each fiscal year thereafter; expressing legislative intent to continue the computation of local share for public school support based upon actual real property values rather than assumed assessed real property values; expressing legislative intent that the annual amount of local share for which a county board of education is responsible continue to be computed without reference to whether the real property assessments in that county were at least fifty-four percent of market value in the prior year; and removing provisions requiring county school boards to provide funding for public libraries from discretionary retainage.

Be it enacted by the Legislature of West Virginia:

That §11-1C-5b of the Code of West Virginia, 1931, as amended, be repealed; that §18-9A-2a of said code be repealed; that §11-3-1 of said code be amended and reenacted; and that §18-9A-2 and §18-9A-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.**ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.****§11-3-1. Time and basis of assessments; true and actual value; default; reassessment; special assessors; criminal penalty.**

1 (a) All property, except public service businesses assessed
2 pursuant to article six of this chapter, shall be assessed annually
3 as of July 1 at sixty percent of its true and actual value; that is to
4 say, at the price for which the property would sell if voluntarily
5 offered for sale by the owner thereof, upon the terms as the
6 property, the value of which is sought to be ascertained, is
7 usually sold, and not the price which might be realized if the
8 property were sold at a forced sale.

9 (b) Any conflicting provisions of subsection (a) of this
10 section notwithstanding, the true and actual value of all property
11 owned, used and occupied by the owner thereof exclusively for
12 residential purposes shall be arrived at by also giving
13 consideration to the fair and reasonable amount of income which
14 the same might be expected to earn, under normal conditions in
15 the locality wherein situated, if rented: *Provided*, That the true
16 and actual value of all farms used, occupied and cultivated by
17 their owners or bona fide tenants shall be arrived at according to
18 the fair and reasonable value of the property for the purpose for
19 which it is actually used regardless of what the value of the
20 property would be if used for some other purpose; and that the
21 true and actual value shall be arrived at by giving consideration
22 to the fair and reasonable income which the same might be
23 expected to earn under normal conditions in the locality wherein
24 situated, if rented: *Provided, however*, That nothing herein shall
25 alter the method of assessment of lands or minerals owned by
26 domestic or foreign corporations.

27 (c) The taxes upon all property shall be paid by those who
28 are the owners thereof on the assessment date whether it be
29 assessed to them or others.

30 (d) If at any time after the beginning of the assessment year
31 it be ascertained by the Tax Commissioner that the assessor, or
32 any of his or her deputies, is not complying with this provision
33 or that they have failed, neglected or refused, or is failing,
34 neglecting or refusing after five days' notice to list and assess all
35 property therein at sixty percent of its true and actual value as
36 determined under this chapter, the Tax Commissioner shall order
37 and direct a reassessment of any or all of the property in any
38 county, district or municipality where any assessor or deputy
39 fails, neglects or refuses to assess the property in the manner
40 herein provided. And, if the Tax Commissioner has determined
41 that the assessor has not complied or has so failed, neglected or
42 refused to list and assess property as aforesaid for two or more
43 consecutive years, for the purpose of making assessment and
44 correction of values, the Tax Commissioner shall appoint one or
45 more special assessors, unless the Tax Commissioner determines
46 that such appointment should be made earlier, as necessity may
47 require, to make assessment in any county and any such special
48 assessor or assessors, as the case may be, has the power and
49 authority now vested by law in assessors, and the work of such
50 special assessor or assessors shall be accepted and treated for all
51 purposes by the county boards of review and equalization and
52 the levying bodies, subject to any revisions of value on appeal,
53 as the true and lawful assessment of that year as to all property
54 valued by him or her or them. The Tax Commissioner shall fix
55 the compensation of all special assessors appointed, which,
56 together with their actual expenses, shall be paid out of the
57 county fund by the county commission of the county in which
58 any such assessment is ordered, upon the receipt of a certificate
59 of the Tax Commissioner filed with the clerk of the county
60 commission showing the amounts due and to whom payable,

61 after such expenses have been audited by the county
62 commission. All of this subsection is subject to the following:

63 (1) Notwithstanding any other provision of this subsection
64 to the contrary, if the Tax Commissioner has determined that the
65 assessor has not complied or has so failed, neglected or refused
66 to list and assess property as aforesaid for two consecutive years,
67 but the assessor can show that the criteria established by rule
68 pursuant to this subsection are met, the Tax Commissioner is not
69 required to appoint one or more special assessors pursuant to this
70 section, and in lieu of appointing one or more special assessors,
71 may again order and direct a reassessment of any or all of the
72 property pursuant to this subsection;

73 (2) For any third or succeeding consecutive year or years
74 that the Tax Commissioner determines that the assessor has not
75 complied or has so failed, neglected or refused to list and assess
76 property as aforesaid, the Tax Commissioner shall appoint one
77 or more special assessors pursuant to the provisions of this
78 subsection regardless of whether or not the assessor can show
79 that he or she will list and assess property as aforesaid the next
80 year; and

81 (3) For the purposes of determining consecutive years
82 pursuant to this subsection, only tax years beginning on and after
83 the July 1, 2013, assessment date may be considered a first year.

84 (4) For purposes of subdivision (1) of this subsection,
85 criteria for determining whether the assessor has made a
86 satisfactory showing that he or she will list and assess property
87 as aforesaid for the year next succeeding the two assessment
88 years specified in subdivision (1) of this subsection, the Tax
89 Commissioner shall apply criteria based on: (A) Sales validity;
90 (B) appraisal uniformity; (C) appraisal evaluation; and (D) such
91 other criteria as the Tax Commissioner may prescribe. The Tax
92 Commissioner shall promulgate a legislative rule to specify

93 criteria for the treatment authorized herein for any such third
94 year or succeeding consecutive year or years, and such
95 administrative and procedural requirements and criteria as the
96 Tax Commissioner may prescribe.

97 (e) Any assessor who knowingly fails, neglects or refuses to
98 assess all the property of his or her county, as herein provided,
99 shall be guilty of malfeasance in office and, upon conviction
100 thereof, shall be fined not less than \$100 nor more than \$500, or
101 imprisoned not less than three nor more than six months, or both,
102 in the discretion of the court, and upon conviction, shall be
103 removed from office.

104 (f) For purposes of this chapter and chapter eleven-a of this
105 code, the following terms have the meanings ascribed to them in
106 this section unless the context in which the term is used clearly
107 indicates that a different meaning is intended by the Legislature:

108 (1) "Assessment date" means July 1 of the year preceding
109 the tax year.

110 (2) "Assessment year" means the twelve-month period that
111 begins on the assessment date.

112 (3) "Tax year" or "property tax year" means the next
113 calendar year that begins after the assessment date.

114 (4) "Taxpayer" means the owner and any other person in
115 whose name the taxes on the subject property are lawfully
116 assessed.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

1 For the purpose of this article:

2 (a) "State board" means the West Virginia Board of
3 Education.

4 (b) "County board" or "board" means a county board of
5 education.

6 (c) "Professional salaries" means the state legally mandated
7 salaries of the professional educators as provided in article four,
8 chapter eighteen-a of this code.

9 (d) "Professional educator" shall be synonymous with and
10 shall have the same meaning as "teacher" as defined in section
11 one, article one of this chapter, and includes technology
12 integration specialists.

13 (e) "Professional instructional personnel" means a
14 professional educator whose regular duty is as that of a
15 classroom teacher, librarian, attendance director or school
16 psychologist. A professional educator having both instructional
17 and administrative or other duties shall be included as
18 professional instructional personnel for that ratio of the school
19 day for which he or she is assigned and serves on a regular
20 full-time basis in appropriate instruction, library, attendance or
21 psychologist duties.

22 (f) "Professional student support personnel" means a
23 "teacher" as defined in section one, article one of this chapter
24 who is assigned and serves on a regular full-time basis as a
25 counselor or as a school nurse with a bachelor's degree and who
26 is licensed by the West Virginia Board of Examiners for
27 Registered Professional Nurses. For all purposes except for the
28 determination of the allowance for professional educators
29 pursuant to section four of this article, professional student
30 support personnel are professional educators.

31 (g) "Service personnel salaries" means the state legally
32 mandated salaries for service personnel as provided in section
33 eight-a, article four, chapter eighteen-a of this code.

34 (h) "Service personnel" means all personnel as provided in
35 section eight, article four, chapter eighteen-a of this code. For the
36 purpose of computations under this article of ratios of service
37 personnel to net enrollment, a service employee shall be counted
38 as that number found by dividing his or her number of
39 employment days in a fiscal year by two hundred: *Provided,*
40 That the computation for any service person employed for three
41 and one-half hours or less per day as provided in section eight-a,
42 article four, chapter eighteen-a of this code shall be calculated as
43 one half an employment day.

44 (i) "Net enrollment" means the number of pupils enrolled in
45 special education programs, kindergarten programs and grades
46 one to twelve, inclusive, of the public schools of the county. Net
47 enrollment further shall include:

48 (1) Adults enrolled in regular secondary vocational programs
49 existing as of the effective date of this section, subject to the
50 following:

51 (A) Net enrollment includes no more than one thousand of
52 those adults counted on the basis of full-time equivalency and
53 apportioned annually to each county in proportion to the adults
54 participating in regular secondary vocational programs in the
55 prior year counted on the basis of full-time equivalency; and

56 (B) Net enrollment does not include any adult charged
57 tuition or special fees beyond that required of the regular
58 secondary vocational student;

59 (2) Students enrolled in early childhood education programs
60 as provided in section forty-four, article five of this chapter,
61 counted on the basis of full-time equivalency;

62 (3) No pupil shall be counted more than once by reason of
63 transfer within the county or from another county within the

64 state, and no pupil shall be counted who attends school in this
65 state from another state;

66 (4) The enrollment shall be modified to the equivalent of the
67 instructional term and in accordance with the eligibility
68 requirements and rules established by the state board; and

69 (5) For the purposes of determining the county's basic
70 foundation program only, for any county whose net enrollment
71 as determined under all other provisions of this definition is less
72 than one thousand four hundred, the net enrollment of the county
73 shall be increased by an amount to be determined in accordance
74 with the following:

75 (A) Divide the state's lowest county student population
76 density by the county's actual student population density;

77 (B) Multiply the amount derived from the calculation in
78 paragraph (A) of this subdivision by the difference between one
79 thousand four hundred and the county's actual net enrollment;

80 (C) If the increase in net enrollment as determined under this
81 subdivision plus the county's net enrollment as determined under
82 all other provisions of this subsection is greater than one
83 thousand four hundred, the increase in net enrollment shall be
84 reduced so that the total does not exceed one thousand four
85 hundred; and

86 (D) During the 2008-2009 interim period and every three
87 interim periods thereafter, the Legislative Oversight Commission
88 on Education Accountability shall review this subdivision to
89 determine whether or not these provisions properly address the
90 needs of counties with low enrollment and a sparse population
91 density.

92 (j) "Sparse-density county" means a county whose ratio of
93 net enrollment, excluding any increase in the net enrollment of

94 counties, pursuant to subdivision (5), subsection (i) of this
95 section, of the definition of “net enrollment”, to the square miles
96 of the county is less than five.

97 (k) “Low-density county” means a county whose ratio of net
98 enrollment, excluding any increase in the net enrollment of
99 counties, pursuant to subdivision (5), subsection (i) of this
100 section, of the definition of “net enrollment”, to the square miles
101 of the county is equal to or greater than five but less than ten.

102 (l) “Medium-density county” means a county whose ratio of
103 net enrollment, excluding any increase in the net enrollment of
104 counties, pursuant to subdivision (5), subsection (i) of this
105 section, of the definition of “net enrollment”, to the square miles
106 of the county is equal to or greater than ten but less than twenty.

107 (m) “High-density county” means a county whose ratio of
108 net enrollment, excluding any increase in the net enrollment of
109 counties, pursuant to subdivision (5), subsection (i) of this
110 section, of the definition of “net enrollment”, to the square miles
111 of the county is equal to or greater than twenty.

112 (n) “Levies for general current expense purposes” means
113 ninety percent of the levy rate for county boards of education
114 calculated or set by the Legislature pursuant to section six-f,
115 article eight, chapter eleven of this code.

116 (o) “Technology integration specialist” means a professional
117 educator who has expertise in the technology field and is
118 assigned as a resource teacher to provide information and
119 guidance to classroom teachers on the integration of technology
120 into the curriculum.

121 (p) “State aid eligible personnel” means all professional
122 educators and service personnel employed by a county board in
123 positions that are eligible to be funded under this article and
124 whose salaries are not funded by a specific funding source such

125 as a federal or state grant, donation, contribution or other
126 specific funding source not listed.

**§18-9A-11. Computation of local share; appraisal and assessment
of property; valuations for tax increment financing
purposes; computations in growth counties; public
library support.**

1 (a) On the basis of each county's certificates of valuation as
2 to all classes of property as determined and published by the
3 assessors pursuant to section six, article three, chapter eleven of
4 this code for the next ensuing fiscal year in reliance upon the
5 assessed values annually developed by each county assessor
6 pursuant to articles one-c and three of that chapter, the state
7 board shall for each county compute by application of the levies
8 for general current expense purposes, as defined in section two
9 of this article, the amount of revenue which the levies would
10 produce if levied upon one hundred percent of the assessed value
11 of each of the several classes of property contained in the report
12 or revised report of the value made to it by the Tax
13 Commissioner as follows:

14 (1) For each fiscal year beginning before July 1, 2014, the
15 state board shall first take ninety-five percent of the amount
16 ascertained by applying these rates to the total assessed public
17 utility valuation in each classification of property in the county.
18 For each fiscal year beginning after June 30, 2014, the state
19 board shall first take ninety-six percent of the amount
20 ascertained by applying these rates to the total assessed public
21 utility valuation in each classification of property in the county;
22 and

23 (2) For each fiscal year beginning before July 1, 2014, the
24 state board shall then apply these rates to the assessed taxable
25 value of other property in each classification in the county as
26 determined by the Tax Commissioner and shall deduct therefrom

27 five percent as an allowance for the usual losses in collections
28 due to discounts, exonerations, delinquencies and the like. For
29 each fiscal year beginning after June 30, 2014, the state board
30 shall then apply these rates to the assessed taxable value of other
31 property in each classification in the county as determined by the
32 Tax Commissioner and shall deduct therefrom four percent as an
33 allowance for the usual losses in collections due to discounts,
34 exonerations, delinquencies and the like. All of the amount so
35 determined shall be added to the ninety-five or ninety-six
36 percent, as applicable, of public utility taxes computed as
37 provided in subdivision (1) of this subsection and this total shall
38 be further reduced by the amount due each county assessor's
39 office pursuant to section eight, article one-c, chapter eleven of
40 this code and this amount shall be the local share of the
41 particular county.

42 As to any estimations or preliminary computations of local
43 share required prior to the report to the Legislature by the Tax
44 Commissioner, the state shall use the most recent projections or
45 estimations that may be available from the Tax Department for
46 that purpose.

47 (b) It is the intent of the Legislature that the computation of
48 local share for public school support continue to be based upon
49 actual real property values rather than assumed assessed real
50 property values that are based upon an assessment ratio study,
51 and that the annual amount of local share for which a county
52 board of education is responsible continue to be computed
53 without reference to whether the real property assessments in
54 that county were at least fifty-four percent of market value in the
55 prior year as indicated by the assessment ratio study.
56 Accordingly, the effective date of the operation of this section as
57 amended and reenacted during 2014, and the effective date of the
58 operation of the repeal of section two-a of this article and the
59 operation of the repeal of section five-b, article one-c, chapter

60 eleven of this code, all as provided under this enactment, are
61 expressly made retrospective to June 30, 2013.

62 (c) Whenever in any year a county assessor or a county
63 commission fails or refuses to comply with this section in setting
64 the valuations of property for assessment purposes in any class
65 or classes of property in the county, the State Tax Commissioner
66 shall review the valuations for assessment purposes made by the
67 county assessor and the county commission and shall direct the
68 county assessor and the county commission to make corrections
69 in the valuations as necessary so that they comply with the
70 requirements of chapter eleven of this code and this section and
71 the Tax Commissioner may enter the county and fix the
72 assessments at the required ratios. Refusal of the assessor or the
73 county commission to make the corrections constitutes grounds
74 for removal from office.

75 (d) For the purposes of any computation made in accordance
76 with this section, in any taxing unit in which tax increment
77 financing is in effect pursuant to article eleven-b, chapter seven
78 of this code, the assessed value of a related private project shall
79 be the base-assessed value as defined in section two of said
80 article.

81 (e) For purposes of any computation made in accordance
82 with this section, in any county where the county board of
83 education has adopted a resolution choosing to use the Growth
84 County School Facilities Act set forth in section six-f, article
85 eight, chapter eleven of this code, estimated school board
86 revenues generated from application of the regular school board
87 levy rate to new property values, as that term is designated in
88 said section, may not be considered local share funds and shall
89 be subtracted before the computations in subdivisions (1) and
90 (2), subsection (a) of this section are made.

91 (f) The Legislature finds that public school systems
92 throughout the state provide support in varying degrees to public

93 libraries through a variety of means including budgeted
94 allocations, excess levy funds and portions of their regular
95 school board levies. A number of public libraries are situated on
96 the campuses of public schools and several are within public
97 school buildings serving both the students and public patrons. To
98 the extent that public schools recognize and choose to avail the
99 resources of public libraries toward developing within their
100 students such legally recognized elements of a thorough and
101 efficient education as literacy, interests in literature, knowledge
102 of government and the world around them and preparation for
103 advanced academic training, work and citizenship, public
104 libraries serve a legitimate school purpose and may do so
105 economically. Therefore, county boards are encouraged to
106 support public libraries within their counties.



CHAPTER 6

**(H. B. 106 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 14, 2014; in effect from passage.]

[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §29-22-18e of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-22-18f; to amend and reenact §31-15-16b of said code; and to amend and reenact §31-15A-17b of said code, all relating to debt service on bonds secured by the State Excess Lottery Revenue Fund; clarifying the timing of debt service payments to the Cacapon and Beech Fork State Park Lottery Revenue Debt Service Fund; providing a backup pledge of bonds supported by the State Lottery Fund and State Excess

Lottery Revenue Fund; clarifying priority and method of payment of debt service; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §29-22-18e 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 §29-22-18f; that §31-15-16b of said code be amended and reenacted; and that §31-15A-17b of said code be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND COMMISSIONS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18e. Increase in allocation to State Park Improvement Fund from State Excess Lottery Revenue Fund to permit the issuance of bonds for improvements to Cacapon Resort State Park and Beech Fork State Park.

1 Notwithstanding any provision of subsection (d), section
2 eighteen-a of this article to the contrary, the deposit of \$5 million
3 into the State Park Improvement Fund set forth in section
4 eighteen-a of this article is for the fiscal year beginning July 1,
5 2012, only. For the fiscal year beginning July 1, 2013, and each
6 fiscal year thereafter, in lieu of the deposits required under
7 subdivision (7), subsection (d), section eighteen-a of this article,
8 the commission shall first deposit an amount equal to the
9 certified debt service requirement, not to exceed \$3 million in
10 any one fiscal year, into the Cacapon and Beech Fork State Park
11 Lottery Revenue Debt Service Fund created in section sixteen-b,
12 article fifteen, chapter thirty-one of this code, to be used in
13 accordance with the provisions of that section, and second,
14 deposit \$5 million into the State Park Improvement Fund,

15 established in subsection (d), section eighteen-a of this article, to
16 be used in accordance with the provisions of that section.

**§29-22-18f. Backup pledge of bonds supported by the State
Lottery Fund and the State Excess Lottery
Revenue Fund; payment of bond debt service.**

1 (a) Any and all remaining funds in the State Excess Lottery
2 Revenue Fund after payment of debt service pursuant to sections
3 eighteen-a, eighteen-d, and eighteen-e of this article shall be
4 made available to pay debt service in connection with any
5 revenue bonds issued pursuant to section eighteen of this article,
6 if and to the extent needed for such purpose from time to time.

7 (b) Notwithstanding any other provision of this code to the
8 contrary, after first satisfying the requirements for funds
9 dedicated to pay debt service in accordance with bonds payable
10 from the State Lottery Fund pursuant to section eighteen of this
11 article, any and all remaining funds in the State Lottery Fund
12 shall be made available to pay debt service in connection with
13 revenue bonds issued pursuant to sections eighteen-a, eighteen-d,
14 and eighteen-e, of this article, if and to the extent needed for
15 such purpose from time to time.

16 (c) Notwithstanding the provisions of subsection (h), section
17 eighteen-a of this article, when bonds are issued for projects
18 under subsection (d) or (e) of section eighteen-a of this article,
19 or for the School Building Authority, infrastructure pursuant to
20 section eighteen-d of this article, higher education, or state park
21 improvements pursuant to section eighteen-e of this article that
22 are secured by profits from lotteries deposited in the State
23 Excess Lottery Revenue Fund, the Lottery Director shall allocate
24 first to the Economic Development Project Fund an amount
25 equal to one tenth of the projected annual principal, interest and
26 coverage requirements on any and all revenue bonds issued, or
27 to be issued as certified to the Lottery Director; and second, to

28 the fund or funds from which debt service is paid on bonds
29 issued under section eighteen-a of this article for the School
30 Building Authority, infrastructure pursuant to section eighteen-d
31 of this article, higher education, and state park improvements
32 pursuant to section eighteen-e of this article an amount equal to
33 one tenth of the projected annual principal, interest and coverage
34 requirements on any and all revenue bonds issued, or to be
35 issued as certified to the Lottery Director. In the event there are
36 insufficient funds available in any month to transfer the amounts
37 required pursuant to this subsection, the deficiency shall be
38 added to the amount transferred in the next succeeding month in
39 which revenues are available to transfer the deficiency.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-16b. Lottery revenue bonds for Cacapon Resort State Park and Beech Fork State Park.

1 (a)(1) The economic development authority shall, in
2 accordance with the provisions of this article, issue revenue
3 bonds, in one or more series, from time to time, to pay for all or
4 a portion of the cost of constructing, equipping, improving or
5 maintaining capital improvement projects under this section or
6 to refund the bonds, at the discretion of the authority. The
7 principal amount of the bonds issued under this section shall not
8 exceed, in the aggregate principal amount of \$52.5 million. Any
9 revenue bonds issued on or after the effective date of this section
10 which are secured by lottery proceeds shall mature at a time or
11 times not exceeding thirty years from their respective dates. The
12 principal of, and the interest and redemption premium, if any, on
13 the bonds shall be payable solely from the Cacapon and Beech
14 Fork State Parks Lottery Revenue Debt Service Fund established
15 in this section.

16 (2) There is hereby created in the State Treasury a special
17 revenue fund named the "Cacapon and Beech Fork State Parks
18 Lottery Revenue Service Fund" into which shall be deposited
19 those amounts specified in section eighteen-e, article
20 twenty-two, chapter twenty-nine of this code. All amounts
21 deposited in the fund shall be pledged to the repayment of the
22 principal, interest and redemption premium, if any, on any
23 revenue bonds or refunding revenue bonds authorized by this
24 section. The authority may further provide in the trust agreement
25 for priorities on the revenues paid into the Cacapon and Beech
26 Fork State Parks Lottery Revenue Debt Service Fund as may be
27 necessary for the protection of the prior rights of the holders of
28 bonds issued at different times under the provisions of this
29 section. The Cacapon and Beech Fork State Parks Lottery
30 Revenue Debt Service Fund shall be pledged solely for the
31 repayment of bonds issued pursuant to this section. On or prior
32 to May 1 of each year, commencing, upon issuance of the bonds,
33 the authority shall certify to the state lottery director the
34 principal and interest and coverage ratio requirements for the
35 following fiscal year on any revenue bonds or refunding revenue
36 bonds issued pursuant to this section, and for which moneys
37 deposited in the Cacapon and Beech Fork State Parks Lottery
38 Revenue Debt Service Fund have been pledged, or will be
39 pledged, for repayment pursuant to this section.

40 (3) After the authority has issued bonds authorized by this
41 section, and after the requirements of all funds have been
42 satisfied, including coverage and reserve funds established in
43 connection with the bonds issued pursuant to this section, any
44 balance remaining in the Cacapon and Beech Fork State Parks
45 Lottery Revenue Debt Service Fund may be used for the
46 redemption of any of the outstanding bonds issued under this
47 section which, by their terms, are then redeemable or for the
48 purchase of the outstanding bonds at the market price, but not to
49 exceed the price, if any, at which redeemable, and all bonds

50 redeemed or purchased shall be immediately canceled and shall
51 not again be issued.

52 (b) The authority shall expend the bond proceeds, net of
53 issuance costs, reserve funds and refunding costs, for certified
54 capital improvement projects at Cacapon Resort State Park and
55 Beech Fork State Park. The Division of Natural Resources shall
56 submit a proposed list of capital improvement projects to the
57 Governor on or before January 1, 2013. Thereafter, the Governor
58 shall certify to the authority on or before February 1, 2013, a list
59 of those capital improvement projects at Cacapon Resort State
60 Park and Beech Fork State Park that will receive funds from the
61 proceeds of bonds issued pursuant to this section. At any time
62 prior to the issuance of bonds under this section, the Governor
63 may certify to the authority a revised list of capital improvement
64 projects at Cacapon Resort State Park and Beech Fork State Park
65 that will receive funds from the proceeds of bonds issued
66 pursuant to this section. The Governor shall consult with the
67 Division of Natural Resources prior to certifying a revised list of
68 capital improvement projects to the authority.

69 (c) Except as may otherwise be expressly provided by the
70 authority, every issue of its notes or bonds shall be special
71 obligations of the authority, payable solely from the property,
72 revenues or other sources of or available to the authority pledged
73 therefor.

74 (d) The bonds and the notes shall be authorized by the
75 authority pursuant to this section, and shall be secured, be in
76 such denominations, may bear interest at such rate or rates,
77 taxable or tax-exempt, be in such form, either coupon or
78 registered, carry such registration privileges, be payable in such
79 medium of payment and at such place or places and such time or
80 times and be subject to such terms of redemption as the authority
81 may authorize. The bonds and notes of the authority may be sold
82 by the authority, at public or private sale, at or not less than the

83 price the authority determines. The bonds and notes shall be
84 executed by manual or facsimile signature by the chairman of
85 the board, and the official seal of the authority or a facsimile
86 thereof shall be affixed to or printed on each bond and note and
87 attested, manually or by facsimile signature, by the secretary of
88 the board, and any coupons attached to any bond or note shall
89 bear the manual or facsimile signature of the chairman of the
90 board. In case any officer whose signature, or a facsimile of
91 whose signature, appears on any bonds, notes or coupons ceases
92 to be such officer before delivery of such bonds or notes, such
93 signature or facsimile is nevertheless sufficient for all purposes
94 the same as if he or she had remained in office until such
95 delivery; and, in case the seal of the authority has been changed
96 after a facsimile has been imprinted on such bonds or notes, such
97 facsimile seal will continue to be sufficient for all purposes.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-17b. Infrastructure lottery revenue bonds for watershed compliance projects.

1 (a)(1) The Chesapeake Bay has been identified as an
2 impaired water body due to excessive nutrients entering the bay
3 from various sources in six states, including wastewater facilities
4 in West Virginia. To restore the Chesapeake Bay, the states have
5 agreed to reduce their respective nutrient contributions to the
6 Chesapeake Bay.

7 (2) The Greenbrier River Watershed in southeastern West
8 Virginia which encompasses approximately 1,646 square miles,
9 the majority of which lies within Pocahontas, Greenbrier,
10 Monroe and Summers counties, has been identified as an
11 impaired water body due to excessive levels of fecal coliform
12 and phosphorus entering the watershed from various sources,
13 including wastewater facilities in West Virginia. To restore the

14 Greenbrier River Watershed, the state agrees to reduce the fecal
15 coliform and phosphorus contributions to the Greenbrier River
16 Watershed.

17 (b) Notwithstanding any other provision of this code to the
18 contrary, the Water Development Authority may issue, in
19 accordance with the provisions of section seventeen of this
20 article, infrastructure lottery revenue bonds payable from the
21 West Virginia Infrastructure Lottery Revenue Debt Service Fund
22 created by section nine of this article and such other sources as
23 may be legally pledged for such purposes other than the West
24 Virginia Infrastructure Revenue Debt Service Fund created by
25 section seventeen of this article.

26 (c) The council shall direct the Water Development
27 Authority to issue bonds in one or more series when it has
28 approved Chesapeake Bay watershed compliance projects and
29 Greenbrier River watershed compliance projects with an
30 authorized permitted flow of four hundred thousand gallons per
31 day or more. The proceeds of the bonds shall be used solely to
32 pay costs of issuance, fund a debt service reserve account,
33 capitalize interest, pay for security instruments necessary to
34 market the bonds and to make grants to governmental
35 instrumentalities of the state for the construction of approved
36 Chesapeake Bay watershed compliance projects and Greenbrier
37 River watershed compliance projects. To the extent funds are
38 available in the West Virginia Infrastructure Lottery Revenue
39 Debt Service Fund that are not needed for debt service, the
40 council may direct the Water Development Authority to make
41 grants to project sponsors for the design or construction of
42 approved Chesapeake Bay watershed compliance projects and
43 Greenbrier River watershed compliance projects: *Provided*, That
44 the council shall direct the Water Development Authority to
45 provide from moneys in the Lottery Revenue Debt Service Fund
46 not needed to pay debt service in fiscal year 2013 a grant of \$6
47 million to a Chesapeake Bay watershed compliance project

48 which opened bids on December 28, 2011, and further provided
49 that such Chesapeake Bay watershed compliance project shall
50 receive no further grant funding under this section after receipt
51 of the \$6 million grant.

52 (d) No later than June 30, 2012, each publicly owned facility
53 with an authorized permitted flow of four hundred thousand
54 gallons per day or more that is subject to meeting Chesapeake
55 Bay compliance standards or Greenbrier River watershed
56 compliance standards shall submit to the council a ten-year
57 projected capital funding plan for Chesapeake Bay watershed
58 compliance projects or Greenbrier River watershed compliance
59 projects, as the case may be, including a general project
60 description, cost estimate and estimated or actual project start
61 date and project completion date, if any. The council shall timely
62 review the submitted capital funding plans and forward approved
63 plans to the Water Development Authority for further processing
64 and implementation pursuant to this article. If the council finds
65 a plan to be incomplete, inadequate or otherwise problematic, it
66 shall return the plan to the applicant with comment on the plan
67 shortcomings. The applicant may then resubmit to council an
68 amended capital funding plan for further consideration pursuant
69 to the terms of this subsection.

70 (e) Upon approval, each proposed Chesapeake Bay
71 watershed compliance project or Greenbrier River watershed
72 compliance project, or portion of a larger project, which portion
73 is dedicated to compliance with nutrient standards, or fecal
74 coliform and phosphorus standards, established for the
75 protection and restoration of the Chesapeake Bay or the
76 Greenbrier River watershed, as the case may be, shall be eligible
77 for grant funding by funds generated by the infrastructure lottery
78 revenue bonds described in subsection (b) of this section. At the
79 request of the applicant, the remaining percentage of project
80 funding not otherwise funded by grant under the provisions of
81 this article may be reviewed as a standard project funding
82 application.

83 (f) No later than December 1, 2012, the Water Development
84 Authority shall report to the Joint Committee on Government
85 and Finance the total cost of Chesapeake Bay watershed
86 compliance projects and the Greenbrier River watershed
87 compliance projects and the proposed grant awards for each
88 eligible project. From the proceeds of bonds issued under
89 subsection (b) of this section, the council shall direct the Water
90 Development Authority to make grants to eligible projects ready
91 to proceed to construction and those grant awards shall be pro
92 rated to an equal percentage of total eligible costs among all
93 applicants for each eligible project as certified by the Water
94 Development Authority in its report to the Joint Committee on
95 Government and Finance dated November 26, 2012: *Provided*,
96 That the final project, and its financing, is consistent with the
97 scope of the eligible project included in the council's approval
98 on December 5, 2012.

99 (g) Eligible projects that have obtained project financing
100 prior to December 31, 2012, may apply to the council for
101 funding under the provisions of this section. These applications
102 shall be processed and considered as all other eligible projects,
103 and a grant funding awarded shall, to the extent allowed by law,
104 be dedicated to prepay all or a portion of debt previously
105 incurred by governmental instrumentalities of the state for
106 required Chesapeake Bay nutrient removal projects or
107 Greenbrier River watershed fecal coliform and phosphorus
108 removal projects, subject to the bond covenants and contractual
109 obligations of the borrowing governmental entity. However, any
110 private portion of funding provided by agreement between a
111 political subdivision and one or more private entities, either by
112 direct capital investment or debt service obligation, shall not be
113 eligible for grant funding under the provisions of this article.

CHAPTER 7

**(H. B. 101 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 14, 2014; in effect from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §29-22-18d of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §29-22A-10d, §29-22A-10e and §29-22A-10f; to amend said code by adding thereto a new section, designated §29-22C-27a; and to amend said code by adding thereto a new section, designated §29-25-22b, all relating to the transfer of certain revenues derived from lottery activities generally; reducing the distributions to the West Virginia Infrastructure Fund to \$20 million for fiscal year 2015 and increasing the percentage of funds available for grants therefrom; reducing the amount that may be transferred to the Racetrack Modernization Fund to \$9 million; transferring certain revenues derived from racetrack video lottery, lottery racetrack table games and lottery historic resort hotel gaming activities to the State Excess Lottery Revenue Fund for appropriation; reducing statutory distributions to capital reinvestment, purse funds and development funds by ten percent; and authorizing distributions to be paid on a pro rata basis.

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; that said code be amended by adding thereto three new sections, designated §29-22A-10d, §29-22A-10e and §29-22A-10f; that said code be amended by adding thereto a new section, designated §29-22C-27a; and that

said code be amended by adding thereto a new section, designated §29-25-22b, all 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 shall not exceed fifty percent of the total funds available for the
23 funding of projects.

ARTICLE 22A. RACETRACK VIDEO LOTTERY ACT.

§29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery fund.

1 (a) Notwithstanding any provision of subsection (b), section
2 ten of this article to the contrary, for the fiscal year beginning
3 July 1, 2014, and each fiscal year thereafter, the commission
4 may transfer up to \$9 million as actual costs and expenses to the
5 Licensed Racetrack Modernization Fund.

6 (b) Notwithstanding any provision of subsection (c), section
7 ten of this article to the contrary, for the fiscal year beginning
8 July 1, 2014, and each fiscal year thereafter, each distribution,
9 except those distributions to be made pursuant to subdivisions
10 (1), (2), (3), (4), (5) and (7), subsection (c), section ten of this
11 article, shall be reduced by one hundred percent. Payments shall
12 not be made pursuant to section ten of this article, other than
13 those excepted by this subsection, and are made in lieu thereof
14 in an amount to be determined by appropriation from the State
15 Excess Lottery Revenue Fund.

16 (c) The total amount of reductions resulting from subsection
17 (b) of this section shall be paid into the State Excess Lottery
18 Revenue Fund, created by section eighteen-a, article twenty-two
19 of this chapter. For the fiscal year beginning July 1, 2014, and
20 each fiscal year thereafter, distributions to be made pursuant to
21 subdivisions (2) and (5), subsection (c), section ten of this article
22 shall be reduced by ten percent, and the amounts resulting from
23 the reduction shall be paid into the State Excess Lottery Revenue
24 Fund.

25 (d) Notwithstanding any other provision of this code to the
26 contrary, for the fiscal year beginning July 1, 2014, and each
27 fiscal year thereafter, moneys deposited to the State Excess
28 Lottery Revenue Fund pursuant to this section shall be expended
29 by the Lottery in accordance with appropriations.

30 (e) Prior to payment of any appropriation made pursuant to
31 this section, debt service payments payable from the State
32 Excess Lottery Fund shall first be paid in accordance with the

33 provisions of sections eighteen-a, eighteen-d and eighteen-e,
34 article twenty-two of this chapter and in the priority as defined
35 by subsection (c), section eighteen-f, article twenty-two of this
36 chapter.

37 (f) Notwithstanding any other provision of this code to the
38 contrary, after payment of debt service from the State Excess
39 Lottery Revenue Fund, all other distributions required by section
40 eighteen-a, article twenty-two of this chapter and the
41 distributions appropriated pursuant to this section shall be paid
42 on a pro rata basis.

43 (g) Notwithstanding the provisions of paragraph (B),
44 subdivision (9), subsection (c), section ten of this article, upon
45 certification of the Governor to the Legislature that an
46 independent actuary has determined that the unfunded liability
47 of the Old Fund, as defined in chapter twenty-three of this code,
48 has been paid or provided for in its entirety, the transfers made
49 to the Workers' Compensation Debt Reduction Fund pursuant to
50 paragraph (A), subdivision (9), subsection (c), section ten of this
51 article shall expire and those funds shall remain in the State
52 Excess Lottery Revenue Fund subject to appropriation.

**§29-22A-10e. Changes in distribution of excess net terminal
income; distributions from excess lottery fund.**

1 (a) Notwithstanding any provision of subsection (a), section
2 ten-b of this article to the contrary, for the fiscal year beginning
3 July 1, 2014, and each fiscal year thereafter, each distribution,
4 except those distributions to be made pursuant to subdivisions
5 (1), (2), (3), (4), (5) and (7), subsection (a), section ten-b of this
6 article, shall be reduced by one hundred percent. Payments shall
7 not be made pursuant to section ten-b of this article, other than
8 those excepted by this subsection, and are made in lieu thereof
9 in an amount to be determined by appropriation from the State
10 Excess Lottery Revenue Fund.

11 (b) The total amount of reductions resulting from subsection
12 (a) of this section shall be paid into the State Excess Lottery
13 Revenue Fund created in section eighteen-a, article twenty-two
14 of this chapter. For the fiscal year beginning July 1, 2014, and
15 each fiscal year thereafter, distributions to be made pursuant to
16 subdivisions (2) and (5), subsection (a), section ten-b of this
17 article shall be reduced by ten percent, and the amounts resulting
18 from the reduction shall be paid into the State Excess Lottery
19 Revenue Fund.

20 (c) Notwithstanding any other provision of this code to the
21 contrary, for the fiscal year beginning July 1, 2014, and each
22 fiscal year thereafter, moneys deposited to the State Excess
23 Lottery Revenue Fund pursuant to this section shall be expended
24 by the Lottery in accordance with appropriations.

25 (d) Prior to payment of any appropriation made pursuant to
26 this section, debt service payments payable from the State
27 Excess Lottery Fund shall first be paid in accordance with the
28 provisions of sections eighteen-a, eighteen-d, and eighteen-e,
29 article twenty-two of this chapter and in the priority as defined
30 by subsection (c), section eighteen-f, article twenty-two of this
31 chapter.

32 (e) Notwithstanding any other provision of this code to the
33 contrary, after payment of debt service from the State Excess
34 Lottery Revenue Fund, all other distributions required by section
35 eighteen-a, article twenty-two of this chapter and the
36 distributions appropriated pursuant to this section shall be paid
37 on a pro rata basis.

38 (f) Notwithstanding the provisions of paragraph (B),
39 subdivision (9), subsection (a), section ten-b of this article, upon
40 certification of the Governor to the Legislature that an
41 independent actuary has determined that the unfunded liability
42 of the Old Fund, as defined in chapter twenty-three of this code,

43 has been paid or provided for in its entirety, the transfers made
44 to the Workers' Compensation Debt Reduction Fund pursuant to
45 paragraph (A), subdivision (9), subsection (a), section ten-b of
46 this article shall expire and those funds shall remain in the State
47 Excess Lottery Revenue Fund subject to appropriation.

§29-22A-10f. Changes in distribution of surcharge.

1 (a) Notwithstanding any provision of subsection (b), section
2 ten-c of this article to the contrary, for the fiscal year beginning
3 July 1, 2014, and each fiscal year thereafter, each distribution
4 made pursuant to section ten-c of this article shall be reduced by
5 ten percent.

6 (b) The total amount of reductions resulting from subsection
7 (a) of this section shall be paid into the State Excess Lottery
8 Revenue Fund created in section eighteen-a, article twenty-two
9 of this chapter.

**ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK
TABLE GAMES ACT.**

**§29-22C-27a. Changes in distribution of adjusted gross receipts;
distributions from excess lottery fund.**

1 (a) Notwithstanding any provision of section twenty-seven
2 of this article to the contrary, for the fiscal year beginning July
3 1, 2014, and each fiscal year thereafter, the distribution directed
4 pursuant to subdivision (1), subsection (d) of that section shall
5 be reduced by one hundred percent.

6 (b) The total amount of reductions resulting from subsection
7 (a) of this section shall be paid into the State Excess Lottery
8 Revenue Fund created in section eighteen-a, article twenty-two
9 of this chapter. For the fiscal year beginning July 1, 2014, and
10 each fiscal year thereafter, distributions to be made pursuant to
11 subdivisions (2) and (3), subsection (c), section twenty-seven of

12 this article shall be reduced by ten percent, and the amounts
13 resulting from the reduction shall be paid into the State Excess
14 Lottery Revenue Fund.

15 (c) Notwithstanding any other provision of this code to the
16 contrary, for the fiscal year beginning July 1, 2014, and each
17 fiscal year thereafter, moneys deposited to the State Excess
18 Lottery Revenue Fund pursuant to this section shall be expended
19 by the Lottery in accordance with appropriations.

20 (d) Prior to payment of any appropriation made pursuant to
21 this section, debt service payments payable from the State
22 Excess Lottery Fund shall first be paid in accordance with the
23 provisions of sections eighteen-a, eighteen-d and eighteen-e,
24 article twenty-two of this chapter and in the priority as defined
25 by subsection (c), section eighteen-f, article twenty-two of this
26 chapter.

27 (e) Notwithstanding any other provision of this code to the
28 contrary, after payment of debt service from the State Excess
29 Lottery Revenue Fund, all other distributions required by section
30 eighteen-a, article twenty-two of this chapter and the
31 distributions appropriated pursuant to this section shall be paid
32 on a pro rata basis.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-22b. Changes in distribution of adjusted gross receipts and additional income; distributions from excess lottery fund.

1 (a) Notwithstanding any provision of section twenty-two of
2 this article to the contrary, for the fiscal year beginning July 1,
3 2014, and each fiscal year thereafter, after payment of the
4 commission's expenses pursuant to subsection (b), section
5 twenty-two of this article, each distribution made in subsection

6 (c), section twenty-two of this article from gross terminal
7 income, and each distribution of the balance of the Historic
8 Resort Hotel Fund made in subsection (d), section twenty-two of
9 this article, except subdivisions (4), (5) (6), (7) and (8) of that
10 subsection, shall be reduced by one hundred percent. Payments
11 shall not be made pursuant to section twenty-two of this article,
12 other than those excepted by this subsection, and are made in
13 lieu thereof in an amount to be determined by appropriation from
14 the State Excess Lottery Revenue Fund.

15 (b) The total amount of reductions resulting from subsection
16 (a) of this section shall be paid into the State Excess Lottery
17 Revenue Fund created in section eighteen-a, article twenty-two
18 of this chapter.

19 (c) Notwithstanding any other provision of this code to the
20 contrary, for the fiscal year beginning July 1, 2014, and each
21 fiscal year thereafter, moneys deposited to the State Excess
22 Lottery Revenue Fund pursuant to this section shall be expended
23 by the Lottery in accordance with appropriations.

24 (d) Prior to payment of any appropriation made pursuant to
25 this section, debt service payments payable from the State
26 Excess Lottery Fund shall first be paid in accordance with the
27 provisions of section eighteen-a, eighteen-d and eighteen-e,
28 article twenty-two of this chapter and in the priority as defined
29 by subsection (c), section eighteen-f, article twenty-two of this
30 chapter.

31 (e) Notwithstanding any other provision of this code to the
32 contrary, after payment of debt service from the State Excess
33 Lottery Revenue Fund, all other distributions required by section
34 eighteen-a, article twenty-two of this chapter and the
35 distributions appropriated pursuant to this section shall be paid
36 on a pro rata basis.

CHAPTER 8

**(H. B. 108 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 14, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-9B-1, §15-9B-2 and §15-9B-3, all relating to establishing a regulatory system for sexual assault forensic examinations; creating the Sexual Assault Forensic Examination Commission; setting forth its membership; authorizing certain additional members; requiring the commission to establish mandatory statewide protocols for conducting sexual assault forensic examinations; setting forth other powers and responsibilities of the commission; authorizing rule-making; requiring county prosecutors to convene and chair local Sexual Assault Forensic Examination Boards; authorizing counties to combine to form regional boards; and setting forth minimum requirements for local plans developed by county or regional boards.

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 §15-9B-1, §15-9B-2 and §15-9B-3, all to read as follows:

**ARTICLE 9B. SEXUAL ASSAULT EXAMINATION
NETWORK.**

§15-9B-1. Sexual Assault Forensic Examination Commission.

1 (a) There is hereby created within the Governor's Committee
2 on Crime, Delinquency and Correction the Sexual Assault
3 Forensic Examination Commission. The purpose of the
4 commission is to establish, manage and monitor a statewide
5 system to facilitate the timely and efficient collection of forensic
6 evidence in sexual assault cases. As used in this article, the word
7 "commission" means the Sexual Assault Forensic Examination
8 Commission.

9 (b) The commission shall be chaired by the director of the
10 Division of Justice and Community Service. Membership on the
11 commission shall consist of the following:

12 (1) A representative chosen from the membership of the
13 West Virginia Prosecuting Attorneys Association;

14 (2) A representative chosen from the membership of the
15 West Virginia Association of Counties;

16 (3) The Commissioner of the Bureau for Public Health, or
17 his or her designee;

18 (4) A representative from the State Police Forensic
19 Laboratory;

20 (5) A representative from the membership of the West
21 Virginia Child Advocacy Network;

22 (6) The President of the West Virginia Hospital Association,
23 or his or her designee;

24 (7) A representative from the membership of the West
25 Virginia Foundation for Rape and Information Services;

26 (8) A representative of the West Virginia University
27 Forensic and Investigative Sciences Program; and

28 (9) A representative of the Marshall University Forensic
29 Science Center.

30 (c) If any of the representative organizations listed in
31 subsection b) of this section cease to exist, the director may
32 select a person from a similar organization.

33 (d) The director may appoint the following additional
34 members of the commission, as needed:

35 (1) An emergency room physician;

36 (2) A victim advocate from a rape crisis center;

37 (3) A sexual assault nurse examiner;

38 (4) A law-enforcement officer with experience in sexual
39 assault investigations;

40 (5) A health care provider with pediatric and child abuse
41 expertise; and

42 (6) A director of a child advocacy center.

43 (e) The commission shall establish mandatory statewide
44 protocols for conducting sexual assault forensic examinations,
45 including designating locations and providers to perform
46 forensic examinations, establishing minimum qualifications and
47 procedures for performing forensic examinations and
48 establishing protocols to assure the proper collection of
49 evidence.

§15-9B-2. Powers and duties of the commission.

1 (a) The commission shall facilitate the recruitment and
2 retention of qualified health care providers that are properly
3 qualified to conduct forensic examinations. The commission
4 shall work with county and regional officials to identify areas of

5 greatest need and develop and implement recruitment and
6 retention programs to help facilitate the effective collection of
7 evidence.

8 (b) The commission shall authorize minimum training
9 requirements for providers conducting exams and establish a
10 basic standard of care for victims of sexual assault. The
11 commission may adopt necessary and reasonable requirements
12 relating to establishment of a statewide training and forensic
13 examination system, including, but not limited to, developing a
14 data collection system to monitor adherence to established
15 standards, assisting exam providers to receive training and
16 support services, advocating the fair and reasonable
17 reimbursement to exam providers and facilitating transportation
18 services for victims to get to and from designated exam
19 locations.

20 (c) The commission shall approve local plans for each area
21 of the state on a county or regional basis. If the commission
22 deems it necessary, it may add or remove a county or portion
23 thereof from a region to assure that all areas of the state are
24 included in an appropriate local plan. Upon the failure of any
25 county or local region to propose a plan, the commission may
26 implement a plan for that county or region.

27 (d) Once a plan is approved by the commission, it can only
28 be amended or otherwise altered as provided by the rules
29 authorized pursuant to subsection (e) of this section. Designated
30 facilities and organizations providing services shall give the
31 commission thirty days advance notice of their intent to
32 withdraw from the plan. If there is a change of circumstances
33 that would require a change in a county or regional plan, the
34 members of the local board and the state commission shall be
35 notified.

36 (e) The commission may propose rules for legislative
37 approval, in accordance with article three, chapter twenty-nine-a
38 of this code, as are necessary to implement this article.

§15-9B-3. Local Sexual Assault Forensic Examination Boards.

1 (a) Each county prosecutor, or his or her designee, shall
2 convene a Sexual Assault Forensic Examination Board, or may,
3 as an alternative, convene and chair the sexual assault response
4 team in the county to act as the Sexual Assault Forensic
5 Examination Board. If a regional board is authorized, all county
6 prosecutors from the designated area shall be members of the
7 board. The prosecutors shall assure that each board be
8 proportionally representative of the designated region. Each
9 board may vary in membership, but should include
10 representatives from local health care facilities, local law
11 enforcement, multidisciplinary investigative teams, county and
12 municipal governments and victims advocates. Each county or
13 regional board shall develop a local plan and protocols for the
14 area, which will address, at a minimum, the following:

15 (1) Identifying facilities that are appropriate for receipt and
16 treatment of sexual assault victims;

17 (2) Evaluating the needs and available resources of the area,
18 including the number of qualified physicians or nurses, or both,
19 to facilitate and encourage 24-hour, seven-day-a-week coverage;
20 and

21 (3) Developing an alternative plan in case there is a change
22 in circumstances to ensure continuity of service.

23 (b) If availability of services are limited, or the remoteness
24 of the region causes lack of adequate examination facilities or
25 personnel, the local boards may designate local government or
26 other resources to provide appropriate transport of victims to

27 facilities where the victim can receive a timely and appropriate
28 forensic examination.

CHAPTER 9

**(H. B. 107 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed March 14, 2014; in effect from passage.]

[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §22-15-8 and §22-15-11 of the Code of West Virginia, 1931, as amended, all relating to the disposal of drill cuttings and associated drilling waste generated from well sites at commercial solid waste facilities; allowing for the receipt of additional drilling waste at certain commercial solid waste facilities above the facility's existing tonnage limit if certain conditions are met; recognizing the facility's continuing obligation to receive municipal solid waste while exceeding its permitted tonnage caps; requiring radiation and leachate monitoring at all facilities receiving drill cuttings and drilling waste; establishing minimum requirements for the monitoring program; requiring the investigation and report by the department of environmental protection to the legislature on specified issues associated with the disposal of drill cuttings and drilling wastes at landfills; required scope of study; establishing deadlines, effective dates; creating a special revenue fund in the state treasury; limiting use of funds for specified purposes; establishing an additional solid waste fee; and requiring the promulgation of emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §22-15-8 and §22-15-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-8. Limit on the size of solid waste facilities; rulemaking.

1 (a) On and after October 1, 1991, it is unlawful to operate
2 any commercial solid waste facility that handles between ten
3 thousand and thirty thousand tons of solid waste per month,
4 except as provided in section nine of this article and sections
5 twenty-six, twenty-seven and twenty-eight, articles four and
6 four-a, chapter twenty-two-c of this code.

7 (b) Except as provided in section nine of this article, the
8 maximum quantity of solid waste which may lawfully be
9 received or disposed of at any commercial solid waste facility is
10 thirty thousand tons per month.

11 (c) The secretary shall, within the limits contained in this
12 article, place a limit on the amount of solid waste received or
13 disposed of per month in commercial solid waste facilities. The
14 secretary shall consider at a minimum the following criteria in
15 determining a commercial solid waste facility's monthly tonnage
16 limit:

17 (1) The proximity and potential impact of the solid waste
18 facility upon groundwater, surface water and potable water;

19 (2) The projected life and design capacity of the solid waste
20 facility;

21 (3) The available air space, lined acreage, equipment type
22 and size, adequate personnel and wastewater treatment
23 capabilities; and

24 (4) Other factors related to the environmentally safe and
25 efficient disposal of solid waste.

26 (d) Within the limits established in this article, the secretary
27 shall determine the amount of sewage sludge which may be
28 safely treated, stored, processed, composted, dumped or placed
29 in a solid waste facility.

30 (e) The secretary shall promulgate emergency rules and
31 propose for legislative promulgation, legislative rules pursuant
32 to the provisions of article three, chapter twenty-nine-a of this
33 code, to effectuate the requirements of this section. When
34 developing the rules, the secretary shall consider at a minimum
35 the potential impact of the treatment, storage, processing,
36 composting, dumping or placing sewage sludge at a solid waste
37 facility:

38 (1) On the groundwater, surface waters and potable waters
39 in the area;

40 (2) On the air quality in the area;

41 (3) On the projected life and design capacity of the solid
42 waste facility;

43 (4) On the available air space, lined acreage, equipment type
44 and size, personnel and wastewater treatment capabilities;

45 (5) The facility's ability to adequately develop markets and
46 market the product which results from the proper treatment of
47 sewage sludge; and

48 (6) Other factors related to the environmentally safe and
49 efficient treatment, storage, processing, composting, dumping or
50 placing of sewage sludge at a solid waste facility.

51 (f) Sewage sludge disposed of at a landfill must contain at
52 least twenty percent solid by weight. This requirement may be

53 met by adding or blending sand, sawdust, lime, leaves, soil or
54 other materials that have been approved by the secretary prior to
55 disposal. Alternative sewage sludge disposal methods can be
56 utilized upon obtaining written approval from the secretary. No
57 facility may accept for land filling in any month sewage sludge
58 in excess of twenty-five percent of the total tons of solid waste
59 accepted at the facility for land filling in the preceding month.

60 (g) Notwithstanding any other provision of this code to the
61 contrary, a commercial solid waste facility that is not located in
62 a county that is, in whole or in part, within a karst region as
63 determined by the West Virginia Geologic and Economic Survey
64 may lawfully receive drill cuttings and drilling waste generated
65 from horizontal well sites above the monthly tonnage limits of
66 the commercial solid waste facility under the following
67 conditions and limitations:

68 (1)(A) The drill cuttings and associated drilling waste are
69 placed in a separate cell dedicated solely to the disposal of drill
70 cuttings and drilling waste;

71 (B) The separate cell dedicated to drill cuttings and
72 associated drilling waste is constructed and maintained pursuant
73 to the standards set out in this article and legislative rules
74 promulgated thereunder; and

75 (C) On or before March 8, 2014, the facility has either
76 obtained a certificate of need, or amended certificate of need, or
77 has a pending application for a certificate or amended certificate
78 of need, authorizing such separate cell as may be required by the
79 Public Service Commission in accordance with section one-c,
80 article two, chapter twenty-four of this code.

81 (2) The secretary may only allow those solid waste facilities
82 that applied by December 31, 2013 for a permit modification to
83 construct a separate cell for drill cuttings and associated drilling

84 waste, to accept drill cuttings and associated drilling waste at its
85 commercial solid waste facility without counting the deposited
86 drill cuttings and associated drilling waste towards the landfill's
87 permitted monthly tonnage limits.

88 (3) No solid waste facility may exclude or refuse to take
89 municipal solid waste in the quantity up to and including its
90 permitted tonnage limit while the facility is allowed to lawfully
91 receive drill cuttings or drilling waste above its permitted
92 tonnage limits.

93 (h) Any solid waste facility taking drill cuttings and drilling
94 waste must install radiation monitors by January 1, 2015. The
95 secretary shall promulgate emergency and legislative rules to
96 establish limits for unique toxins associated with drill cuttings
97 and drilling waste including, but not limited to heavy metals,
98 petroleum-related chemicals, (benzene, toluene, xylene, barium,
99 chlorides, radium and radon) and establish the procedures the
100 facility must follow if that limit is exceeded: *Provided*, That said
101 rules shall establish and set forth a procedure to provide that any
102 detected radiation readings above any established radiation
103 limits will require that the solid waste landfill immediately cease
104 accepting all affected drill cuttings and drilling waste until the
105 secretary has inspected said landfill and certified pursuant to
106 established rules and regulations that radiation levels have
107 returned to below the established radiation limits. Any truck load
108 of drill cuttings or drilling waste which exceeds the radiation
109 reading limits shall not be allowed to enter the landfill until
110 inspected and approved by the Department of Environmental
111 Protection.

112 (i) Except for facilities which meet the requirements of
113 (g)(1) of this section, the total amount of waste received at a
114 commercial solid waste landfill that continues to mix said waste
115 with its municipal solid waste may not exceed the total volume
116 of its permitted capacity for that facility in any month, and the

117 quantities of drill cuttings and drilling waste received at that
118 facility shall be counted and applied toward the facility's
119 established tonnage cap.

120 (j) On or before July 1, 2015, the secretary shall submit an
121 investigation and report to the Joint Legislative Oversight
122 Commission on Water Resources and the Legislature's Joint
123 Committee on Government and Finance which examines: (1)
124 The hazardous characteristics of leachate collected from solid
125 waste facilities receiving drill cuttings and drilling waste,
126 including, but not limited to, the presence of heavy metals,
127 petroleum related chemicals (benzene, toluene, xylene, etc.)
128 barium, chlorides, radium and radon; (2) the potential negative
129 impacts on the surface water or groundwater resources of this
130 state associated with the collection, treatment and disposal of
131 leachate from such landfills; (3) the technical and economic
132 feasibility and benefits of establishing additional and/or separate
133 disposal locations which are funded, constructed, owned and/or
134 operated by the oil and gas industry; and (4) viable alternatives
135 for the handling, treatment and disposal of drill cuttings,
136 including the potential for processing, reusing and reapplying a
137 portion of the collected drill cuttings as suitable fill material for
138 roads, brownfield development or other projects, instead of
139 disposing of all collected material into landfills.

140 (k) The secretary shall submit any proposed contract for
141 conducting the studies set forth in subsection (j) of this section
142 for review and preapproval by the Legislature's Joint Committee
143 on Government and Finance.

§22-15-11. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is hereby
2 imposed upon the disposal of solid waste at any solid waste
3 disposal facility in this state in the amount of \$1.75 per ton or
4 part thereof of solid waste. The fee imposed by this section is in

5 addition to all other fees and taxes levied by law and shall be
6 added to and constitute part of any other fee charged by the
7 operator or owner of the solid waste disposal facility.

8 (b) *Collection, return, payment and records.* — The person
9 disposing of solid waste at the solid waste disposal facility shall
10 pay the fee imposed by this section, whether or not such person
11 owns the solid waste, and the fee shall be collected by the
12 operator of the solid waste facility who shall remit it to the Tax
13 Commissioner.

14 (1) The fee imposed by this section accrues at the time the
15 solid waste is delivered to the solid waste disposal facility.

16 (2) The operator shall remit the fee imposed by this section
17 to the Tax Commissioner on or before the fifteenth day of the
18 month next succeeding the month in which the fee accrued.
19 Upon remittance of the fee, the operator is required to file
20 returns on forms and in the manner as prescribed by the Tax
21 Commissioner.

22 (3) The operator shall account to the state for all fees
23 collected under this section and shall hold them in trust for the
24 state until remitted to the Tax Commissioner.

25 (4) If any operator fails to collect the fee imposed by this
26 section, he or she is personally liable for such amount as he or
27 she failed to collect, plus applicable additions to tax, penalties
28 and interest imposed by article ten, chapter eleven of this code.

29 (5) Whenever any operator fails to collect, truthfully account
30 for, remit the fee or file returns with the fee as required in this
31 section, the Tax Commissioner may serve written notice
32 requiring such operator to collect the fees which become
33 collectible after service of such notice, to deposit such fees in a
34 bank approved by the Tax Commissioner, in a separate account,
35 in trust for and payable to the Tax Commissioner and to keep the

36 amount of such fees in such account until remitted to the Tax
37 Commissioner. Such notice remains in effect until a notice of
38 cancellation is served on the operator or owner by the Tax
39 Commissioner.

40 (6) Whenever the owner of a solid waste disposal facility
41 leases the solid waste facility to an operator, the operator is
42 primarily liable for collection and remittance of the fee imposed
43 by this section and the owner is secondarily liable for remittance
44 of the fee imposed by this section. However, if the operator fails,
45 in whole or in part, to discharge his or her obligations under this
46 section, the owner and the operator of the solid waste facility are
47 jointly and severally responsible and liable for compliance with
48 the provisions of this section.

49 (7) If the operator or owner responsible for collecting the fee
50 imposed by this section is an association or corporation, the
51 officers thereof are liable, jointly and severally, for any default
52 on the part of the association or corporation, and payment of the
53 fee and any additions to tax, penalties and interest imposed by
54 article ten, chapter eleven of this code may be enforced against
55 them as against the association or corporation which they
56 represent.

57 (8) Each person disposing of solid waste at a solid waste
58 disposal facility and each person required to collect the fee
59 imposed by this section shall keep complete and accurate records
60 in such form as the Tax Commissioner may require in
61 accordance with the rules of the Tax Commissioner.

62 (c) *Regulated motor carriers.* — The fee imposed by this
63 section and section twenty-two, article five, chapter seven of this
64 code is considered a necessary and reasonable cost for motor
65 carriers of solid waste subject to the jurisdiction of the Public
66 Service Commission under chapter twenty-four-a of this code.
67 Notwithstanding any provision of law to the contrary, upon the

68 filing of a petition by an affected motor carrier, the Public
69 Service Commission shall, within fourteen days, reflect the cost
70 of said fee in said motor carrier's rates for solid waste removal
71 service. In calculating the amount of said fee to said motor
72 carrier, the commission shall use the national average of pounds
73 of waste generated per person per day as determined by the
74 United States Environmental Protection Agency.

75 (d) *Definition of solid waste disposal facility.* — For
76 purposes of this section, the term "solid waste disposal facility"
77 means any approved solid waste facility or open dump in this
78 state, and includes a transfer station when the solid waste
79 collected at the transfer station is not finally disposed of at a
80 solid waste disposal facility within this state that collects the fee
81 imposed by this section. Nothing herein authorizes in any way
82 the creation or operation of or contribution to an open dump.

83 (e) *Exemptions.* — The following transactions are exempt
84 from the fee imposed by this section:

85 (1) Disposal of solid waste at a solid waste disposal facility
86 by the person who owns, operates or leases the solid waste
87 disposal facility if the facility is used exclusively to dispose of
88 waste originally produced by such person in such person's
89 regular business or personal activities or by persons utilizing the
90 facility on a cost-sharing or nonprofit basis;

91 (2) Reuse or recycling of any solid waste;

92 (3) Disposal of residential solid waste by an individual not
93 in the business of hauling or disposing of solid waste on such
94 days and times as designated by the secretary is exempt from the
95 solid waste assessment fee; and

96 (4) Disposal of solid waste at a solid waste disposal facility
97 by a commercial recycler which disposes of thirty percent or less
98 of the total waste it processes for recycling. In order to qualify

99 for this exemption each commercial recycler must keep accurate
100 records of incoming and outgoing waste by weight. Such records
101 must be made available to the appropriate inspectors from the
102 division, upon request.

103 (f) *Procedure and administration.* — Notwithstanding
104 section three, article ten, chapter eleven of this code, each and
105 every provision of the “West Virginia Tax Procedure and
106 Administration Act” set forth in article ten, chapter eleven of this
107 code shall apply to the fee imposed by this section with like
108 effect as if said act were applicable only to the fee imposed by
109 this section and were set forth in extenso herein.

110 (g) *Criminal penalties.* — Notwithstanding section two,
111 article nine, chapter eleven of this code, sections three through
112 seventeen, article nine, chapter eleven of this code shall apply to
113 the fee imposed by this section with like effect as if said sections
114 were applicable only to the fee imposed by this section and were
115 set forth in extenso herein.

116 (h) *Dedication of proceeds.* — The net proceeds of the fee
117 collected by the Tax Commissioner pursuant to this section shall
118 be deposited at least monthly in an account designated by the
119 secretary. The secretary shall allocate \$0.25 for each ton of solid
120 waste disposed of in this state upon which the fee imposed by
121 this section is collected and shall deposit the total amount so
122 allocated into the “Solid Waste Reclamation and Environmental
123 Response Fund” to be expended for the purposes hereinafter
124 specified. The first \$1 million dollars of the net proceeds of the
125 fee imposed by this section collected in each fiscal year shall be
126 deposited in the “Solid Waste Enforcement Fund” and expended
127 for the purposes hereinafter specified. The next \$250,000 of the
128 net proceeds of the fee imposed by this section collected in each
129 fiscal year shall be deposited in the “Solid Waste Management
130 Board Reserve Fund”, and expended for the purposes hereinafter
131 specified: *Provided*, That in any year in which the Water

132 Development Authority determines that the Solid Waste
133 Management Board Reserve Fund is adequate to defer any
134 contingent liability of the fund, the Water Development
135 Authority shall so certify to the secretary and the secretary shall
136 then cause no less than \$50,000 nor more than \$250,000 to be
137 deposited to the fund: *Provided, however,* That in any year in
138 which the water development authority determines that the Solid
139 Waste Management Board Reserve Fund is inadequate to defer
140 any contingent liability of the fund, the Water Development
141 Authority shall so certify to the secretary and the secretary shall
142 then cause not less than \$250,000 nor more than \$500,000 to be
143 deposited in the fund: *Provided further,* That if a facility owned
144 or operated by the state of West Virginia is denied site approval
145 by a county or regional solid waste authority, and if such denial
146 contributes, in whole or in part, to a default, or drawing upon a
147 reserve fund, on any indebtedness issued or approved by the
148 Solid Waste Management Board, then in that event the Solid
149 Waste Management Board or its fiscal agent may withhold all or
150 any part of any funds which would otherwise be directed to such
151 county or regional authority and shall deposit such withheld
152 funds in the appropriate reserve fund. The secretary shall
153 allocate the remainder, if any, of said net proceeds among the
154 following three special revenue accounts for the purpose of
155 maintaining a reasonable balance in each special revenue
156 account, which are hereby continued in the State Treasury:

157 (1) The "Solid Waste Enforcement Fund" which shall be
158 expended by the secretary for administration, inspection,
159 enforcement and permitting activities established pursuant to this
160 article;

161 (2) The "Solid Waste Management Board Reserve Fund"
162 which shall be exclusively dedicated to providing a reserve fund
163 for the issuance and security of solid waste disposal revenue
164 bonds issued by the solid waste management board pursuant to
165 article three, chapter twenty-two-c of this code;

166 (3) The “Solid Waste Reclamation and Environmental
167 Response Fund” which may be expended by the secretary for the
168 purposes of reclamation, cleanup and remedial actions intended
169 to minimize or mitigate damage to the environment, natural
170 resources, public water supplies, water resources and the public
171 health, safety and welfare which may result from open dumps or
172 solid waste not disposed of in a proper or lawful manner.

173 (i) *Findings.* — In addition to the purposes and legislative
174 findings set forth in section one of this article, the Legislature
175 finds as follows:

176 (1) In-state and out-of-state locations producing solid waste
177 should bear the responsibility of disposing of said solid waste or
178 compensate other localities for costs associated with accepting
179 such solid waste;

180 (2) The costs of maintaining and policing the streets and
181 highways of the state and its communities are increased by long
182 distance transportation of large volumes of solid waste; and

183 (3) Local approved solid waste facilities are being
184 prematurely depleted by solid waste originating from other
185 locations.

186 (j) The “Gas Field Highway Repair and Horizontal Drilling
187 Waste Study Fund” is hereby created as a special revenue fund
188 in the State Treasury to be administered by the West Virginia
189 Division of Highways and to be expended only on the
190 improvement, maintenance, and repair of public roads of three
191 lanes or less located in the watershed from which the revenue
192 was received that are identified by the Commissioner of
193 Highways as having been damaged by trucks and other traffic
194 associated with horizontal well drilling sites or the disposal of
195 waste generated by such sites, and that experience congestion
196 caused, in whole or in part, by such trucks and traffic that

197 interferes with the use of said roads by residents in the vicinity
198 of such roads: *Provided*, That up to \$750,000 from such fund
199 shall be made available to the Department of Environmental
200 Protection from the same fund to offset contracted costs incurred
201 by the Department of Environmental Protection while
202 undertaking the horizontal drilling waste disposal studies
203 mandated by the provisions of subsection (j), section eight of this
204 article. Any balance remaining in the special revenue account at
205 the end of any fiscal year shall not revert to the General Revenue
206 Fund but shall remain in the special revenue account and shall be
207 used solely in a manner consistent with this section. The fund
208 shall consist of the fee provided for in subsection (k) of this
209 section.

210 (k) Horizontal drilling waste assessment fee — An
211 additional solid waste assessment fee is hereby imposed upon the
212 disposal of drill cuttings and drilling waste generated by
213 horizontal well sites in the amount of \$1 per ton, which fee is in
214 addition to all other fees and taxes levied by this section or
215 otherwise and shall be added to and constitute part of any other
216 fee charged by the operator or owner of the solid waste disposal
217 facility: *Provided*, That the horizontal drilling waste assessment
218 fee shall be collected and administered in the same manner as the
219 solid waste assessment fee imposed by this section, but shall be
220 imposed only upon the disposal of drill cuttings and drilling
221 waste generated by horizontal well sites.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2014

CHAPTER 1

**(S. B. 2003 - By Senators Kessler (Mr. President)
and M. Hall)**

[By Request of the Executive]

[Passed May 21, 2014; in effect from passage.]

[Approved by the Governor on May 26, 2014.]

AN ACT making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, by supplementing and amending chapter thirteen, Acts of the Legislature, regular session, 2014, known as the Budget Bill, by supplementing and amending Title II, section five.

WHEREAS, The passage of House Bill No. 101 during the 2014 First Extraordinary Session increased the revenues available for appropriation from the State Excess Lottery Revenue Fund during the fiscal year ending June 30, 2015; and

WHEREAS, The Governor submitted to the Legislature an Executive Message on May 19, 2014, which included a revised Statement of the State Excess Lottery Revenue Fund, setting forth therein the estimated unappropriated cash balance as of July 1, 2014, and further included the revised estimate of revenue for the fiscal year 2015, less regular appropriations and other adjustments for the fiscal year 2015; and

WHEREAS, It appears from the Governor's Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated

balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, Acts of the Legislature, regular session , 2014, known as the Budget Bill, be supplemented and amended by amending Title II, section five, to read as follows:

TITLE II—APPROPRIATIONS.

1 **Sec. 5. Appropriations from State Excess Lottery**
2 **Revenue Fund.**— In accordance with W.Va. Code §29-22-18a,
3 §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the
4 following appropriations shall be deposited and disbursed by the
5 Director of the Lottery to the following accounts in this section
6 in the amounts indicated.

7 After first funding the appropriations required by W.Va.
8 Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and
9 §29-25-22b, the Director of the Lottery shall provide funding
10 from the State Excess Lottery Revenue Fund for the remaining
11 appropriations in this section to the extent that funds are
12 available. In the event that revenues to the State Excess Lottery
13 Revenue Fund are not sufficient to meet all the appropriations
14 made pursuant to this section, then the Director of the Lottery
15 shall first provide the necessary funds to meet fund 7208,
16 appropriation 70011 of this section; next, to provide the funds
17 necessary for fund 3517, appropriation 09500 of this section;
18 next, to provide the funds necessary for fund 5365, appropriation
19 18900. Allocation of the funds for each appropriation shall be
20 allocated in succession before any funds are provided for the
21 next subsequent appropriation.

*298—Lottery Commission-
Refundable Credit*

Fund 7207 FY 2015 Org 0705

	Appropriation	Excess Lottery Funds
1 Directed Transfer	70000	\$ 10,000,000

2 The above appropriation shall be transferred to the General
3 Revenue Fund to provide reimbursement for the refundable
4 credit allowable under W.Va. Code §11-21-21. The amount of
5 the required transfer shall be determined solely by the State Tax
6 Commissioner and shall be completed by the Director of the
7 Lottery upon the commissioner’s request.

*299–Lottery Commission-
General Purpose Account*

Fund 7206 FY 2015 Org 0705

1 General Revenue Fund -		
2 Transfer	70011	\$ 65,000,000

3 The above appropriation shall be transferred to the General
4 Revenue Fund as determined by the Director of the Lottery in
5 accordance with W.Va. Code §29-22-18a.

*300–Higher Education Policy Commission-
Education Improvement Fund*

Fund 4295 FY 2015 Org 0441

1 PROMISE Scholarship -		
2 Transfer	80000	\$ 29,000,000

3 The above appropriation shall be transferred to the
4 PROMISE Scholarship Fund (fund 4296, org 0441) established
5 by W.Va. Code §18C-7-7.

6 The Legislature has explicitly set a finite amount of
 7 available appropriations and directed the administrators of the
 8 program to provide for the award of scholarships within the
 9 limits of available appropriations.

*301-Economic Development Authority-
 Economic Development Project Fund*

Fund 9065 FY 2015 Org 0944

1 Debt Service - Total 31000 \$ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f), excess
 3 lottery revenues are authorized to be transferred to the lottery
 4 fund as reimbursement of amounts transferred to the Economic
 5 Development Project Fund pursuant to section four of this title
 6 and W.Va. Code §29-22-18, subsection (f).

*302-Economic Development Authority-
 Cacapon and Beech Fork State Parks
 Lottery Revenue Debt Service Fund*

Fund 9067 FY 2015 Org 0944

1 Debt Service 04000 \$ 0

303-School Building Authority

Fund 3514 FY 2015 Org 0402

1 Debt Service - Total 31000 \$ 19,000,000

304-West Virginia Infrastructure Council

Fund 3390 FY 2015 Org 0316

1 Directed Transfer 70000 \$ 26,000,000

2 The above appropriation shall be allocated pursuant to
3 W.Va. Code §29-22-18d and §31-15-9.

*305-Higher Education Policy Commission-
Higher Education Improvement Fund*

Fund 4297 FY 2015 Org 0441

1 Directed Transfer 70000 \$ 15,000,000

2 The above appropriation shall be transferred to fund 4903,
3 org 0442 as authorized by Senate Concurrent Resolution No. 41.

*306-Division of Natural Resources
State Park Improvement Fund*

Fund 3277 FY 2015 Org 0310

1	Current Expenses (R)	13000	\$	2,438,300
2	Repairs and Alterations (R).	06400		2,161,200
3	Equipment (R).	07000		200,000
4	Buildings (R).	25800		100,000
5	Other Assets (R).	69000		<u>100,500</u>
6	Total.		\$	5,000,000

7 Any unexpended balances remaining in the above
8 appropriations for Repairs and Alterations (fund 3277,
9 appropriation 06400), Equipment (fund 3277, appropriation
10 07000), Unclassified – Total (fund 3277, appropriation 09600),
11 Unclassified (fund 3277, appropriation 09900), Current
12 Expenses (fund 3277, appropriation 13000), Buildings (fund
13 3277, appropriation 25800), and Other Assets (fund 3277,
14 appropriation 69000) at the close of the fiscal year 2014 are
15 hereby reappropriated for expenditure during the fiscal year
16 2015.

*307-Racing Commission*Fund 7308 FY 2015 Org 0707

1	Special Breeders Compensation		
2	(WVC §29-22-18a,		
3	subsection (l))	21800	\$ 2,000,000

*307a-Lottery Commission-
Distributions to Statutory Funds and Purposes*Fund_ FY 2015 Org 0705

1	Parking Garage Fund -		
2	Transfer.	70001	\$ 500,000
3	2004 Capitol Complex Parking		
4	Garage Fund - Transfer	70002	279,461
5	Capitol Dome and Improve-		
6	ments Fund - Transfer.	70003	2,471,387
7	Capitol Renovation and Improve-		
8	ment Fund - Transfer.	70004	3,074,079
9	Development Office Promotion		
10	Fund - Transfer.	70005	1,676,770
11	Research Challenge Fund -		
12	Transfer.	70006	2,235,694
13	Tourism Promotion Fund -		
14	Transfer.	70007	6,232,286
15	Cultural Facilities and Capitol		
16	Resources Matching Grant		
17	Program Fund - Transfer.	70008	1,500,000
18	Workers' Compensation Debt		
19	Reduction Fund - Transfer.	70009	11,000,000
20	State Debt Reduction Fund -		
21	Transfer.	70010	20,119,104
22	General Revenue Fund -		
23	Transfer.	70011	1,794,761

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24	West Virginia Racing Commission	
25	Racetrack Video Lottery	
26	Account.	70012 4,471,387
27	Historic Resort Hotel Fund.	70013 34,200
28	Licensed Racetrack Regular	
29	Purse Fund.	70014 <u>14,581,522</u>
30	Total.	\$ 69,970,651

*308-Lottery Commission-
Excess Lottery Revenue Fund Surplus*

Fund 7208 FY 2015 Org 0705

- 1 General Revenue Fund -
- 2 Transfer 70011 \$ 27,600,000

3 The above appropriation for General Revenue Fund -
4 Transfer (fund 7208, appropriation 70011) shall be transferred
5 to the General Revenue Fund.

309-Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2015 Org 0100

- 1 Any unexpended balance remaining in the appropriation for
- 2 Publication of Papers and Transition Expenses – Lottery Surplus
- 3 (fund 1046, appropriation 06600) at the close of the fiscal year
- 4 2014 is hereby reappropriated for expenditure during the fiscal
- 5 year 2015.

310-West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2015 Org 0307

- 1 Any unexpended balances remaining in the appropriations
- 2 for Unclassified – Total (fund 3170, appropriation 09600),

3 Recreational Grants or Economic Development Loans (fund
 4 3170, appropriation 25300), and Connectivity Research and
 5 Development – Lottery Surplus (fund 3170, appropriation
 6 92300) at the close of the fiscal year 2014 are hereby
 7 reappropriated for expenditure during the fiscal year 2015.

311-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3517 FY 2015 Org 0402

1	Teachers' Retirement Savings		
2	Realized	09500	\$ 4,051,000
3	Retirement Systems - Unfunded		
4	Liability.	77500	<u>0</u>
5	Total.		\$ 4,051,000

6 The above appropriation for Teachers' Retirement Savings
 7 Realized (fund 7208, appropriation 09500) shall be transferred
 8 to the Employee Pension and Health Care Benefit Fund (fund
 9 2044).

*312-Higher Education Policy Commission-
 Administration-
 Control Account*

(WV Code Chapter 18B)

Fund 4932 FY 2015 Org 0441

1 Any unexpended balance remaining in the appropriation for
 2 Advanced Technology Centers (fund 4932, appropriation 02800)
 3 at the close of the fiscal year 2014 is hereby reappropriated for
 4 expenditure during the fiscal year 2015.

*313-Division of Health-
Central Office*

(WV Code Chapter 16)

Fund 5219 FY 2015 Org 0506

1 Any unexpended balance remaining in the appropriation for
2 Capital Outlay and Maintenance (fund 5219, appropriation
3 75500) at the close of the fiscal year 2014 is hereby
4 reappropriated for expenditure during the fiscal year 2015.

313a-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2015 Org 0511

1	Medical Services.	18900	\$ 26,228,418
2	Family Resource Networks.	27400	150,464
3	Domestic Violence Legal		
4	Services Fund.	38400	30,000
5	In-Home Family Education.	68800	250,000
6	Grants for Licensed Domestic		
7	Violence Programs and		
8	Statewide Prevention.....	75000	357,900
9	Children’s Trust Fund -		
10	Transfer.	95100	<u>80,000</u>
11	Total.		\$ 27,096,782

12 The above appropriation for Domestic Violence Legal
13 Services Fund (fund 5365, appropriation 38400) shall be
14 transferred to the Domestic Violence Legal Services Fund (fund
15 5455). From the above appropriation for the Grants for
16 Licensed Domestic Violence Programs and Statewide Prevention
17 (fund 5365, appropriation 75000), fifty percent of the total shall
18 be divided equally and distributed among the fourteen (14)

19 licensed programs and the West Virginia Coalition Against
 20 Domestic Violence (WVCADV). The balance remaining in the
 21 appropriation for Grants for Licensed Domestic Violence
 22 Programs and Statewide Prevention (fund 5365, appropriation
 23 75000), shall be distributed according to the formula established
 24 by the Family Protection Services Board.

25 The above appropriation for Children’s Trust Fund -
 26 Transfer (fund 5365, appropriation 95100), shall be transferred
 27 to the Children’s Fund (fund 5469, org 0511).

*314-Division of Corrections-
 Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 6238 FY 2015 Org 0608

1 Any unexpended balance remaining in the appropriation for
 2 Capital Outlay and Maintenance (fund 6283, appropriation
 3 75500) at the close of the fiscal year 2014 is hereby
 4 reappropriated for expenditure during the fiscal year 2015.

314a-Division of Justice and Community Services-

(WV Code Chapter 15)

Fund_ FY 2015 Org 0620

1	Child Advocacy Centers.	45800	\$	200,000
2	Total TITLE II, Section 5 –			
3	Excess Lottery Funds.		\$	<u>318,918,433</u>

4 The purpose of this supplementary appropriation bill is to
 5 supplement and amend Title II, section five, chapter thirteen,
 6 Acts of the Legislature, regular session, 2014, known as the
 7 Budget Bill, for the appropriations ending June 30, 2015.

CHAPTER 2

**(H. B. 203 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed May 21, 2014; in effect from passage.]
[Approved by the Governor on May 29, 2014.]

AN ACT to amend and reenact §20-9-3 and §20-9-4 of the Code of West Virginia, 1931, as amended, all relating to boat dock and marina safety; extending the deadline for electrical inspection, and extending the deadline for compliance with this article.

Be it enacted by the Legislature of West Virginia:

That §20-9-3 and §20-9-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 9. BOAT DOCK AND MARINA SAFETY
REQUIREMENTS — THE MICHAEL
CUNNINGHAM ACT.**

**§20-9-3. Boat dock and marina safety requirements-electrical
shock and electrocution.**

1 All boat dock or marina owners or operators shall comply
2 with the following requirements to prevent electrical shock,
3 electrocution or injury to users of their facilities and the
4 surrounding areas:

5 (1) All electrical wiring involving 110 AC or 220 AC shall
6 be installed by and maintained by a holder of a valid West
7 Virginia journeyman electrician license or master electrician
8 license in accordance with the most recently adopted versions of

9 the National Fire Protection Association's Standards for Marinas
10 and Boatyards (NFPA 303) and the National Electric Code
11 (NFPA 70);

12 (2) Install ground fault circuit interrupters on all boat dock
13 and marina electrical wiring circuits; and

14 (3) Cause an inspection before January 1, 2015, and at least
15 once every three years thereafter by a West Virginia licensed
16 electrical inspector of all sources of electrical supply, including
17 ship-to-shore power pedestals, submersible pumps, and sewage
18 pump-out facilities, that could result in unsafe electrical current
19 in the water.

§20-9-4. Compliance date and enforcement.

1 Each boat dock and marina shall be in full compliance with
2 this article by January 1, 2015. The penalties contained in
3 section seven of this article apply only to conduct on or after
4 January 1, 2015. Enforcement of sections three and four of this
5 article regarding the work of electricians shall be conducted by
6 the State Fire Marshal.

CHAPTER 3

**(Com. Sub. for S. B. 2004 - By Senators Kessler (Mr. President)
and M. Hall,
By Request of the Executive)**

[Passed May 21, 2014; in effect from passage.]
[Approved by the Governor on May 29, 2014.]

AN ACT to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended, relating to the distribution of funds

from the Tourism Promotion Fund; authorizing the transfer of up to \$4,700,000 of moneys from the Tourism Promotion Fund to the Courtesy Patrol Fund; and designating the Secretary of Commerce as the approving authority for the expenditure of certain funds to effectively promote and market the state's parks, state forests, state recreation areas and wildlife recreational resources.

Be it enacted by the Legislature of West Virginia:

That §5B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12. Tourism Promotion Fund created; use of funds.

1 There is hereby continued in the State Treasury the special
2 revenue fund known as the Tourism Promotion Fund created
3 under prior enactment of section nine, article one of this chapter.

4 (a) The Legislature finds that a courtesy patrol program
5 providing assistance to motorists on the state's highways is one
6 of the most beneficial methods to introduce a tourist visiting the
7 state to the state's hospitality and good will. For that reason, up
8 to \$4,700,000 of the moneys deposited in the fund each year
9 shall be transferred to a special revenue account in the State
10 Treasury known as the Courtesy Patrol Fund. Expenditures from
11 the fund shall be used solely to fund the courtesy patrol program
12 providing assistance to motorists on the state's highways.
13 Amounts collected in the fund which are found, from time to
14 time, to exceed funds needed for the purposes set forth in this
15 subdivision may be transferred to other accounts or funds and
16 redesignated for other purposes by appropriation of the
17 Legislature.

18 (b) If there are funds remaining after the transfers required
19 in subdivision (a) of this section, a minimum of five percent of
20 the moneys deposited remaining in the fund each year shall be

21 used solely for direct advertising for West Virginia travel and
22 tourism: *Provided*, That no less than twenty percent of these
23 funds be expended, with the approval of the Secretary of
24 Commerce, to effectively promote and market the state's parks,
25 state forests, state recreation areas and wildlife recreational
26 resources. "Direct advertising" means advertising which is
27 limited to television, radio, mailings, newspaper, magazines, the
28 Internet and outdoor billboards or any combination thereof.

29 (c) The balance of the moneys deposited in the fund shall be
30 used for direct advertising within the state's travel regions as
31 defined by the commission. The funds shall be made available
32 to these districts beginning July 1, 1995, according to legislative
33 rules authorized for promulgation by the Tourism Commission.

34 (d) All advertising expenditures over \$25,000 from the
35 Tourism Promotion Fund require prior approval by recorded vote
36 of the commission. No member of the commission or of any
37 committee created by the commission to evaluate applications
38 for advertising or other grants may participate in the discussion
39 of, or action upon, an application for or an award of any grant in
40 which the member has a direct financial interest.



CHAPTER 4

**(H. B. 202 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed May 21, 2014; in effect from passage.]

[Approved by the Governor on May 29, 2014.]

AN ACT to amend and reenact §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, as contained in chapter one

hundred fifteen, Acts of the Legislature, regular session, 2014, all relating to delaying the effective date of the affirmative defense to an action to enforce a mechanic's lien.

Be it enacted by the Legislature of West Virginia:

That §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. MECHANICS' LIENS.

§38-2-21. Effect of payment by owner to contractor or subcontractor.

1 (a) No payment by the owner to any contractor or
2 subcontractor of any part or all of the contract price for the
3 erection and construction of any building, structure or
4 improvement appurtenant to a building, structure or
5 improvement or for any part or section of a work may affect,
6 impair or limit the lien of the subcontractor, laborer, or
7 materialman or furnisher of machinery or other necessary
8 material or equipment, as provided in this article, except as
9 otherwise provided in this article.

10 (b) Notwithstanding any provisions of this code to the
11 contrary, beginning on July 1, 2015, it is an affirmative defense,
12 or an affirmative partial defense, as the case may be, in any
13 action to enforce a lien pursuant to this article that the owner is
14 not indebted to the contractor or is indebted to the contractor for
15 less than the amount of the lien sought to be perfected, when:

16 (1) The property is an existing single-family dwelling;

17 (2) The property is a residence constructed by the owner or
18 under a contract entered into by the owner prior to its occupancy
19 as the owner's primary residence; or

20 (3) The property is a single-family, owner-occupied
21 dwelling, including a residence constructed and sold for
22 occupancy as a primary residence. This subdivision does not
23 apply to a developer or builder of multiple residences except for
24 the residence that is occupied as the primary residence of the
25 developer or builder.

**§38-2-34. Time within which suit to enforce lien may be brought;
right of other lienors to intervene.**

1 (a) Unless an action to enforce any lien authorized by this
2 article is commenced in a circuit court within six months after
3 the person desiring to avail himself or herself of the court has
4 filed his or her notice in the clerk's office, as provided in this
5 article, the lien shall be discharged; but an action commenced by
6 any person having a lien shall, for the purpose of preserving the
7 same, inure to the benefit of all other persons having a lien under
8 this article on the same property, and persons may intervene in
9 the action for the purpose of enforcing their liens.

10 (b) Notwithstanding any provisions of this code to the
11 contrary, beginning on July 1, 2015, it is an affirmative defense,
12 or an affirmative partial defense, as the case may be, in any
13 action to enforce a lien pursuant to this article that the owner is
14 not indebted to the contractor or is indebted to the contractor for
15 less than the amount of the lien sought to be perfected, when:

16 (1) The property is an existing single-family dwelling;

17 (2) The property is a residence constructed by the owner or
18 under a contract entered into by the owner prior to its occupancy
19 as his or her primary residence; or

20 (3) The property is a single-family, owner-occupied
21 dwelling, including a residence constructed and sold for
22 occupancy as a primary residence. This subdivision does not
23 apply to a developer or builder of multiple residences except for

24 the residence that is occupied as the primary residence of the
25 developer or builder.

26 (c) As used in subsection (b):

27 (1) 'Dwelling' or 'residence' means any building or structure
28 intended for habitation, in whole or part, and includes, but is not
29 limited to, any house, apartment, mobile home, house trailer,
30 modular home, factory-built home and any adjacent
31 outbuildings.

32 (2) 'Outbuilding' means any building or structure which
33 adjoins, is part of, belongs to, or is used in connection with a
34 dwelling, and shall include, but not be limited to, any garage,
35 shop, shed, barn or stable.



CHAPTER 5

**(H. B. 201 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]**

[Passed May 21, 2014; in effect from passage.]

[Approved by the Governor on May 29, 2014.]

AN ACT to amend and reenact §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, as contained in chapter one hundred twenty-four, Acts of the Legislature, regular session, 2014, and to amend and reenact §21-5C-6 of said code, all relating to the application of minimum wage and maximum hour standards; modifying the definition of the term "employer"; clarifying the definition of the term "hours worked"; clarifying operative dates; requiring legislative rules; and authorizing promulgation of emergency rules.

Be it enacted by the Legislature of West Virginia:

That §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, as contained in chapter one hundred twenty-four, Acts of the Legislature, regular session, 2014, be amended and reenacted, and that §21-5C-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

1 As used in this article:

2 (a) “Commissioner” means the Commissioner of Labor or
3 his or her duly authorized representatives.

4 (b) “Wage and hour director” means the wage and hour
5 director appointed by the Commissioner of Labor as chief of the
6 Wage and Hour Division.

7 (c) “Wage” means compensation due an employee by reason
8 of his or her employment.

9 (d) “Employ” means to hire or permit to work.

10 (e) “Employer” includes the State of West Virginia, its
11 agencies, departments and all its political subdivisions, any
12 individual, partnership, association, public or private
13 corporation, or any person or group of persons acting directly or
14 indirectly in the interest of any employer in relation to an
15 employee; and who employs during any calendar week six or
16 more employees as herein defined in any one separate, distinct
17 and permanent location or business establishment: *Provided,*
18 That prior to January 1, 2015, the term “employer” does not
19 include any individual, partnership, association, corporation,

20 person or group of persons or similar unit if eighty percent of the
21 persons employed by him or her are subject to any federal act
22 relating to minimum wage, maximum hours and overtime
23 compensation: *Provided, however,* That after December 31,
24 2014, for the purposes of section three of this article, the term
25 “employer” does not include any individual, partnership,
26 association, corporation, person or group of persons or similar
27 unit if eighty percent of the persons employed by him or her are
28 subject to any federal act relating to maximum hours and
29 overtime compensation.

30 (f) “Employee” includes any individual employed by an
31 employer but shall not include: (1) Any individual employed by
32 the United States; (2) any individual engaged in the activities of
33 an educational, charitable, religious, fraternal or nonprofit
34 organization where the employer-employee relationship does not
35 in fact exist, or where the services rendered to such organizations
36 are on a voluntary basis; (3) newsboys, shoeshine boys, golf
37 caddies, pinboys and pin chasers in bowling lanes; (4) traveling
38 salesmen and outside salesmen; (5) services performed by an
39 individual in the employ of his or her parent, son, daughter or
40 spouse; (6) any individual employed in a bona fide professional,
41 executive or administrative capacity; (7) any person whose
42 employment is for the purpose of on-the-job training; (8) any
43 person having a physical or mental handicap so severe as to
44 prevent his or her employment or employment training in any
45 training or employment facility other than a nonprofit sheltered
46 workshop; (9) any individual employed in a boys or girls
47 summer camp; (10) any person sixty-two years of age or over
48 who receives old-age or survivors benefits from the Social
49 Security Administration; (11) any individual employed in
50 agriculture as the word agriculture is defined in the Fair Labor
51 Standards Act of 1938, as amended; (12) any individual
52 employed as a firefighter by the state or agency thereof; (13)
53 ushers in theaters; (14) any individual employed on a part-time
54 basis who is a student in any recognized school or college; (15)

55 any individual employed by a local or interurban motorbus
56 carrier; (16) so far as the maximum hours and overtime
57 compensation provisions of this article are concerned, any
58 salesman, parts man or mechanic primarily engaged in selling or
59 servicing automobiles, trailers, trucks, farm implements, aircraft
60 if employed by a nonmanufacturing establishment primarily
61 engaged in the business of selling such vehicles to ultimate
62 purchasers; (17) any employee with respect to whom the United
63 States Department of Transportation has statutory authority to
64 establish qualifications and maximum hours of service; (18) any
65 person employed on a per diem basis by the Senate, the House
66 of Delegates, or the Joint Committee on Government and
67 Finance of the Legislature of West Virginia, other employees of
68 the Senate or House of Delegates designated by the presiding
69 officer thereof, and additional employees of the Joint Committee
70 on Government and Finance designated by such joint committee;
71 or (19) any person employed as a seasonal employee of a
72 commercial whitewater outfitter where the seasonal employee
73 works less than seven months in any one calendar year and, in
74 such case, only for the limited purpose of exempting the seasonal
75 employee from the maximum wage provisions of section three
76 of this article.

77 (g) "Workweek" means a regularly recurring period of one
78 hundred sixty-eight hours in the form of seven consecutive
79 twenty-four hour periods, need not coincide with the calendar
80 week, and may begin any day of the calendar week and any hour
81 of the day.

82 (h) "Hours worked" means the hours for which an employee
83 is employed: *Provided*, That in determining hours worked for the
84 purposes of sections two and three of this article, there shall be
85 excluded any time spent in changing clothes or washing at the
86 beginning or end of each workday, time spent in walking, riding
87 or traveling to and from the actual place of performance of the
88 principal activity or activities which such employee is employed

89 to perform and activities which are preliminary to or
90 postliminary to said principal activity or activities, subject to
91 such exceptions as the commissioner may by rules and
92 regulations define.

§21-5C-2. Minimum wages.

1 (a) *Minimum wage:*

2 (1) After June 30, 2006, every employer shall pay to each of
3 his or her employees wages at a rate not less than \$5.85 per hour.

4 (2) After June 30, 2007, every employer shall pay to each of
5 his or her employees wages at a rate not less than \$6.55 per hour.

6 (3) After June 30, 2008, every employer shall pay to each of
7 his or her employees wages at a rate not less than \$7.25 per hour.

8 (4) After December 31, 2014, every employer shall pay to
9 each of his or her employees wages at a rate not less than \$8.00
10 per hour.

11 (5) After December 31, 2015, every employer shall pay to
12 each of his or her employees wages at a rate not less than \$8.75
13 per hour.

14 (6) When the federal minimum hourly wage as prescribed by
15 29 U.S.C. §206 (a) (1) is equal to or greater than the wage rate
16 prescribed in the applicable provision of this subsection, every
17 employer shall pay to each of his or her employees wages at a
18 rate of not less than the federal minimum hourly wage as
19 prescribed by 29 U.S.C. §206 (a) (1). The minimum wage rates
20 required under this subsection shall be thereafter adjusted in
21 accordance with adjustments made in the federal minimum
22 hourly rate. The adoption of the federal minimum wage provided
23 by this subsection includes only the federal minimum hourly rate
24 prescribed in 29 U.S.C. §206 (a) (1) and does not include other

25 wage rates, or conditions, exclusions, or exceptions to the federal
26 minimum hourly wage rate. In addition, adoption of the federal
27 minimum hourly wage rate does not extend or modify the scope
28 or coverage of the minimum wage rate required under this
29 subsection.

30 (b) *Training wage:*

31 (1) Notwithstanding the provisions set forth in subsection (a)
32 of this section to the contrary, an employer may pay an
33 employee first hired after June 30, 2006, a subminimum training
34 wage not less than \$5.15 per hour: *Provided*, That an employer
35 may pay an employee first hired after December 31, 2014, a
36 subminimum training wage not less than \$6.40 per hour.

37 (2) An employer may not pay the subminimum training
38 wage set forth in subdivision (1) of this subsection to any
39 individual:

40 (A) Who has attained or attains while an employee of the
41 employer, the age of twenty years; or

42 (B) For a cumulative period of not more than ninety days per
43 employee: *Provided*, That if any business has not been in
44 operation for more than ninety days at the time the employer
45 hired the employee, the employer may pay the employee the
46 subminimum training wage set forth in subdivision (1) of this
47 subsection for an additional period not to exceed ninety days.

48 (3) When the federal subminimum training wage as
49 prescribed by 29 U.S.C. §206 (g) (1) is equal to or greater than
50 the wage rate prescribed in subdivision (1) of this subsection,
51 every employer shall pay to each of his or her employees wages
52 at a rate of not less than the federal subminimum training wage
53 as prescribed by 29 U.S.C. §206 (g) (1). The subminimum
54 training wage rates required under this subsection shall be
55 thereafter adjusted in accordance with adjustments made in the

56 federal subminimum training wage rate. The adoption of the
57 federal subminimum training wage provided by this subsection
58 includes only the federal subminimum training wage rate
59 prescribed in 29 U.S.C. §206 (g) (1) and does not include other
60 wage rates, or conditions, exclusions, or exceptions to the federal
61 subminimum training wage rate. In addition, adoption of the
62 federal subminimum training wage rate does not extend or
63 modify the scope or coverage of the subminimum training wage
64 rate required under this subsection.

65 (c) Notwithstanding any provision or definition to the
66 contrary, the wages established pursuant to this section are
67 applicable to all individuals employed by the State of West
68 Virginia, its agencies and departments, regardless if the
69 employee or employer are subject to any federal act relating to
70 minimum wage: *Provided*, That at no time may the minimum
71 wage established pursuant to this section fall below the federal
72 minimum hourly wage as prescribed by 29 U.S.C. §206(a)(1),
73 and at no time may the subminimum training wage established
74 pursuant to this section fall below the federal subminimum
75 training wage rate as prescribed by 29 U.S.C. §206 (g) (1).

§21-5C-4. Credits.

1 Prior to January 1, 2015, in determining whether an
2 employer is paying an employee wages and overtime
3 compensation as provided in sections two and three of this
4 article, there shall be provided in accordance with the regulations
5 which shall be promulgated by the commissioner a credit to the
6 employer of twenty percent of the hourly rate of the amount paid
7 an employee customarily receiving gratuities, and a reasonable
8 credit for board and lodging furnished to an employee: *Provided*,
9 That after December 31, 2014, in determining whether an
10 employer is paying an employee wages and overtime
11 compensation as provided in sections two and three of this
12 article, there shall be provided in accordance with the legislative

13 rules proposed for promulgation by the commissioner a credit to
14 the employer of seventy percent of the hourly rate of the amount
15 paid an employee customarily receiving gratuities, and a
16 reasonable credit for board and lodging furnished to an
17 employee. The commissioner shall propose legislative rules for
18 promulgation relating to maximum allowances to employers for
19 room and board furnished to employees: *Provided, however,*
20 That the employer shall be required to furnish to the
21 commissioner upon request, documentary evidence that the
22 employee is receiving at least seventy percent of the minimum
23 wage in gratuities or is receiving room and lodging in
24 accordance with the rules and regulations promulgated by the
25 commissioner.

§21-5C-6. Duties and powers of commissioner of labor.

1 (a) It shall be the duty of the commissioner to enforce and
2 administer the provisions of this article and rules promulgated
3 thereunder, and to promulgate such rules and regulations, in
4 accordance with chapter twenty-nine-a of the Code of West
5 Virginia, 1931, as amended, as shall be needful to give effect to
6 the provisions of this article. The commissioner is authorized to
7 promulgate emergency rules prior to January 1, 2015, to
8 implement and administer the amendments made to this article
9 in 2014. If the commissioner makes a finding that a conflict
10 exists between state and federal standards defining employee
11 exemptions, the commissioner is further authorized to
12 promulgate emergency rules prior to January 1, 2015, for the
13 purpose of revising the state standards to conform with federal
14 law.

15 (b) The commissioner is authorized at reasonable times to
16 enter the place of business of an employer subject to the
17 provisions of this article, for purposes of: (1) Inspecting and
18 examining, and copying, photographing or otherwise
19 reproducing all payroll records of the employer directly relating

20 to wages and hours of employment of persons employed by him
21 or her; (2) questioning or otherwise examining persons
22 employed by the employer on the subject of wages and hours of
23 their employment, and gratuities received or earned in such
24 employment.

25 (c) The commissioner is authorized and empowered to make
26 investigations to determine whether there is reasonable cause to
27 believe that any person is an employer as defined in section one
28 of this article, or whether there is reasonable cause to believe
29 that any provision of this article is being or has been violated.

30 (d) The commissioner is authorized and empowered to file
31 criminal complaints against persons whom the commissioner has
32 reasonable cause to believe have committed any offense created
33 or defined by the provisions of this article.

34 (e) The commissioner is authorized and empowered to
35 institute civil actions seeking appropriate injunctive relief to
36 compel an employer subject to this article to comply with the
37 provisions of this article.

38 (f) The commissioner shall enforce and administer the
39 provisions of this article in accordance with chapter twenty-nine-
40 a of this code. The commissioner or his or her authorized
41 representatives are empowered to enter and inspect such places,
42 question such employees and investigate such facts, conditions,
43 or matters as they may deem appropriate, to determine whether
44 any person, firm or corporation has violated any provision of this
45 article, or any rule or regulation issued hereunder or which may
46 aid in the enforcement of the provisions of this article.

CHAPTER 6

**(S. B. 2006 - By Senators Kessler (Mr. President)
and M. Hall)**

[By Request of the Executive]

[Passed May 21, 2014; in effect from passage.]

[Approved by the Governor on May 29, 2014.]

AN ACT to extend the time for the Common Council of the City of Richwood, Nicholas County, to meet as a levying body for the purpose of presenting to the voters of the city an election supplementing the city's budget; setting the levy rate; certifying actions to State Auditor and State Tax Commissioner; and paying all costs incurred in the laying of this additional levy.

Be it enacted by the Legislature of West Virginia:

**THE COMMON COUNCIL OF THE CITY OF RICHWOOD
MEETING AS A LEVYING BODY EXTENDED.**

§1. Extending time for the Common Council for the City of Richwood to meet as a levying body for an election supplementing the city's budget; setting levy rate; certifying actions to the state; and for the purpose of paying all costs incurred in the laying of the additional levy.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the
3 Common Council of the City of Richwood, Nicholas County, is
4 authorized to extend the time for its meeting as a levying body,
5 setting the levy rate and certifying its actions to the State Auditor
6 and the State Tax Commissioner by June 30, 2014, for the
7 purpose of submitting to the voters of the City of Richwood the
8 question of supplementing the city's budget and for the purpose
9 of paying all costs incurred in the laying of this additional levy.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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