

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2016
First Extraordinary Session, 2016
Second Extraordinary Session, 2016

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

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OF
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CLERK OF THE HOUSE



CLERK'S OFFICE LEGISLATIVE GROUP

Bo Hoover
Assistant Clerk/Parliamentarian

Robert Altmann	Lynn Lewis
Anne Landgrebe	Lori Skull

FOREWORD

These volumes contain the Acts of the Second Regular Session and the First and Second Extraordinary Sessions of the 82nd Legislature, 2016.

Second Regular Session, 2016

The Second Regular Session of the 82nd Legislature convened on January 13, 2016. The Constitutional sixty-day limit on the duration of the session was midnight, March 12, 2016. The Governor issued a proclamation on March 9, 2016 extending the session for a period not to exceed three days for the purpose of considering the Budget, and the Legislature adjourned *sine die* on March 15, 2016.

Bills totaling 1,896 were introduced in the two houses during the session (1,191 House, 453 of which were carryover bills from the 2015 Regular Session, and 705 Senate). The Legislature passed 276 bills, 138 House and 138 Senate.

The Governor vetoed twenty-seven bills (**Com. Sub. for H. B. 2110**, Relating generally to the tax treatment of manufacturing entities; **H. B. 2796**, Providing paid leave for certain state officers and employees during a declared state of emergency; **H. B. 4005**, Repealing prevailing hourly rate of wages requirements; **Com. Sub. for H. B. 4007**, Relating generally to appointment of attorneys to assist the Attorney General; **Com. Sub. for H. B. 4014**, Preventing the State Board of Education from implementing common core academic standards and assessments; **Com. Sub. for H. B. 4080**, Department of Veterans' Assistance, rule relating to VA headstones or markers; **Com. Sub. for H. B. 4145**, Relating to carry or use of a handgun or deadly weapon; **Com. Sub. for H. B. 4168**, Creating a special motor vehicle collector license plate; **Com. Sub. for H. B. 4171**, Relating to the public school calendar; **H. B. 4246**, Changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library; **Com. Sub. for H. B. 4307**, Clarifying that a firearm may be carried for self-

defense in state parks, state forests and state recreational areas; **H. B. 4378**, Relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person; **Com. Sub. for H. B. 4433**, Allowing an adjustment to gross income for calculating the personal income tax liability of certain retirees; **Com. Sub. for H. B. 4505**, Allowing powerball winners to remain anonymous; **Com. Sub. for H. B. 4561**, Creating a special hiring process for West Virginia Division of Highways employees; **Com. Sub. for H. B. 4668**, Raising the allowable threshold of the coal severance tax revenue fund budgeted for personal services; **S. B. 1**, Establishing WV Workplace Freedom Act; **Com. Sub. for S. B. 10**, Creating Unborn Child Protection from Dismemberment Abortion Act; **Com. Sub. for S. B. 102**, Conforming to federal Law-Enforcement Officers Safety Act; **Com. Sub. for S. B. 157**, Authorizing Department of Revenue to promulgate legislative rules; **Com. Sub. for S. B. 159**, Authorizing promulgation of legislative rules by miscellaneous boards and commissions; **Com. Sub. for S. B. 254**, Not allowing county park commissions to prohibit firearms in facilities; **Com. Sub. for S. B. 272**, Allowing investigators from Attorney General's office to carry concealed weapons; **S. B. 437**, Updating and clarifying code relating to rules governing mixed martial arts; **Com. Sub. for S. B. 599**, Relating generally to Uniform Unclaimed Property Act; **Com. Sub. for S. B. 601**, Relating to exception from jurisdiction of PSC for materials recovery facilities or mixed waste processing facilities; **S. B. 658**, Allowing licensed professionals donate time to care of indigent and needy in clinical setting). The Legislature amended and again passed Com. Sub. for H. B. 4007 and Com. Sub. for S. B. 601. Notwithstanding the objections of the Governor, the Legislature again passed H. B. 4005, Com. Sub. for H. B. 4145, S. B. 1 and Com. Sub. for S. B. 10. Due to action not being taken before the five day deadline for supplemental appropriations, the following five bills are considered as having become law without the signature of the Governor: **H. B. 4150**, Making a supplementary appropriation to the Department of Health and Human Resources; **H. B. 4151**, Making a supplementary appropriation to the Department of Education; **H. B. 4152**, Making a

supplementary appropriation to the Division of Environmental Protection – Protect Our Water Fund; **H. B. 4155**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, and the Department of Health and Human Resources, Division of Human Services - Medical Services Trust Fund; **S. B. 427**, Transferring funds from State Excess Lottery Fund to Department of Revenue. Com. Sub. for H. B. 4040, originally styled as Chapter 135, was enrolled and signed by the Governor in an incorrect form, and therefore, omitted from the Acts of the Legislature, leaving a total of 254 bills, 124 House and 130 Senate, which became law.

There were 196 Concurrent Resolutions introduced during the session, 125 House and 71 Senate, of which 35 House and 46 Senate were adopted. 40 House Joint Resolutions and 14 Senate Joint Resolutions were introduced, none of which were adopted by the Legislature. The House introduced 18 House Resolutions, and the Senate introduced 73 Senate Resolutions, of which 17 House and 73 Senate were adopted.

First Extraordinary Session, 2016

The Proclamation, as amended, calling the Legislature into Extraordinary Session on May 16, 2016, contained fifteen items for consideration.

The Legislature introduced 42 bills during the Extraordinary Session, 25 House Bills and 17 Senate Bills. One concurrent resolution was adopted, H. C. R. 1, Providing for an adjournment of the Legislature until June 12, 2016, and for reconvening prior thereto by the Speaker of the House of Delegates and the President of the Senate. In accordance with H. C. R. 1, the Speaker and the President called the Legislature back into session on June 11, 2016. During the First Extraordinary session, the House adopted 1 House Resolution, and the Senate adopted 4 Senate Resolutions. The Legislature passed 13 bills, 6 House and 7 Senate.

The Governor vetoed one bill, (Com. Sub. for H. B. 101, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution), leaving a total of 12 bills, 5 House and 7 Senate (including S. B. 1013, Budget Bill), which became law.

The Legislature adjourned the First Extraordinary Session *sine die* on June 14, 2016.

Second Extraordinary Session, 2016

The Proclamation calling the Legislature into Extraordinary Session on September 18, 2016, contained two items for consideration.

The Legislature passed, and the Governor approved 1 House bill.

The House of Delegates adjourned *sine die* on September 19, 2016, and the Senate adjourned *sine die*, ending the Second Extraordinary Session, on September 20, 2016.

STEPHEN J. HARRISON

*Clerk of the House and
Keeper of the Rolls.*

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2016

OFFICERS

Speaker – Tim Armstead, Elkview

Clerk – Stephen J. Harrison, Cross Lanes

Sergeant-at-Arms – Marshall Clay, Fayetteville

Doorkeeper – Frank Larese, Belle

District	Name	Address	Occupation or Profession	Legislative Service
First.	Pat McGeehan (R)	Chester	Business Sales/Author.	79 th ; 82 nd
	Mark Zatezalo (R)	Wierton	Hydrogeologist.	82 nd
Second.	Ryan W. Weld (R)	Wellsburg	Legal Assistant.	82 nd
Third.	Shawn Fluharty (D)	Wheeling	Attorney	82 nd
	Erikka Storch (R)	Wheeling	Financial Officer.	80 th - 82 nd
Fourth.	David A. Evans (R)	Cameron	Retired Teacher.	81 st - 82 nd
	Michael T. Ferro (D)	McMechen	Retired Educator/Coach.	79 th - 82 nd
Fifth.	Dave Pethel (D)	Hundred	Retired Teacher	69 th - 71 st ;
				74 th - 82 nd
Sixth.	William Roger Romine (R)	Sistersville	Retired School Administrator	75 th - 82 nd
Seventh.	Lynwood "Woody" Ireland (R)	Pullman	Retired Chemical Engineer/Farmer.	78 th - 82 nd
Eighth.	W. "Bill" Anderson, Jr. (R)	Williamstown	Educator	71 st - 82 nd
Ninth.	Anna Border Sheppard (R)	Davisville	Educator	Appt. 6/21/2011,
				80 th - 82 nd
Tenth.	Mike Azinger (R)	Parkersburg	Manager	82 nd
	Frank Deem (R)	Vienna	Businessman	52 nd - 58 th ; 82 nd
	John R. Kelly (R)	Parkersburg	Retired	82 nd
Eleventh.	Martin Atkinson, III (R)	Reedy	Director of Sales	Appt. 10/2/2015;
				82 nd
Twelfth.	Steve Westfall (R)	Ripley	Insurance Agent	81 st - 82 nd
Thirteenth.	Scott Cadle (R)	Letart	Trucking/Excavating.	81 st - 82 nd
	Michael Ihle (R)	Ravenswood	Mayor	82 nd
Fourteenth.	Jim Butler (R)	Henderson	Excavating Contractor.	81 st - 82 nd
Fifteenth.	Geoff Foster (R)	Winfield	Construction Supply	82 nd
Sixteenth.	Sean Hornbuckle (D)	Huntington	Financial Services Broker.	82 nd
Seventeenth.	Carol Miller (R)	Huntington	Small Business Owner/Property Management.	78 th - 82 nd
	Jim Morgan (D)	Huntington	Retired	69 th - 70 th ; Appt. 2/23/2001, 75 th ;
				76 th - 82 nd
Seventeenth.	Doug Reynolds (D)	Huntington	Engineering and Construction Executive.	78 th - 82 nd
	Matthew Rohrbach (R)	Huntington	Physician	82 nd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Eighteenth...	Kelli Sobonya (R)	Barboursville	Realtor	76 th - 82 nd
Nineteenth...	Kenneth Paul Hicks (D)	Kenova	Attorney	82 nd
	Don C. Perdue (D)	Prichard	Pharmacist	74 th - 82 nd
Twentieth...	Justin J. Marcum (D)	Williamson	Attorney	Appt. 1/18/2012, 80 th - 82 nd
Twenty-first..	Phyllis White (D)	Gilbert	Educator/Principal	Appt. 1/12/2016, 82 nd
Twenty-second.	Jeff Eldridge (D)	Alum Creek	Self Employed	77 th - 79 th ; 81 st - 82 nd
	Michel Moffatt (R)	Hurricane	Former Manufacturing Manager	82 nd
Twenty-third..	Joshua Nelson (R)	Danville	Coal Miner	81 st - 82 nd
Twenty-fourth.	Rupert Phillips, Jr. (D)	Lorado	Sales Manager	80 th - 82 nd
	Ralph Rodighiero (D)	Logan	UPS Delivery Driver	78 th , 80 th ; 82 nd
Twenty-fifth..	Frank L. Blackwell (D)	Mullens	Retired Superintendent of Schools	Appt. 1/12/2016, 82 nd
Twenty-sixth..	Clif Moore (D)	Thorpe	Administrator	77 th - 82 nd
Twenty-seventh.	Joe Ellington (R)	Princeton	Physician	80 th - 82 nd
	Marty Gearheart (R)	Bluefield	Businessman	80 th - 82 nd
	John H. Shott (R)	Bluefield	Attorney	79 th , Resigned 5/2010; 81 st - 82 nd
Twenty-eighth.	Roy G. Cooper (R)	Wayside	Retired U. S. Navy	81 st - 82 nd
	John D. O'Neal, IV (R)	Beckley	Businessman	80 th - 82 nd
Twenty-ninth..	Ricky Moye (D)	Crab Orchard	Businessman/School Bus Operator	78 th - 82 nd
Thirtieth....	Mick Bates (D)	Beckley	Physical Therapist	82 nd
Thirty-first...	Karen "Lynne" Arvon (R)	Beckley	Medical Sales/Social Services	81 st - 82 nd
Thirty-second.	Tom Fast (R)	Fayetteville	Attorney	82 nd
	Kayla Kessinger (R)	Mount Hope	Director of Human Resources	82 nd
	David G. Perry (D)	Oak Hill	Educator	75 th - 82 nd
Thirty-third...	Roger Hanshaw (R)	Wallback	Attorney	82 nd
Thirty-fourth..	Brent Boggs (D)	Gassaway	Railroad Engineer	73 rd - 82 nd
Thirty-fifth..	Andrew D. Byrd (D)	South Charleston	Attorney	82 nd
	John B. McCuskey (R)	Charleston	Attorney	81 st - 82 nd
	Eric Nelson (R)	Charleston	Financial Services/Management	80 th - 82 nd
	Chris Stansbury (R)	Charleston	Doctor of Optometry	82 nd
Thirty-sixth ...	Nancy Peoples Guthrie (D)	Charleston	Former Small Business Owner	78 th - 82 nd
	Larry L. Rowe (D)	Charleston	Attorney	73 rd - 75 th ; 82 nd
	Brad White (R)	Charleston	Insurance Agent	82 nd
Thirty-seventh..	Mike Pushkin (D)	Charleston	Taxi Driver / Musician	82 nd
Thirty-eighth..	Patrick Lane (R)	Cross Lanes	Attorney/Entrepreneur	77 th - 82 nd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Thirty-ninth...	Ron Walters (R).....	Charleston.	Insurance Executive/ President.	71 st - 73 rd ; 75 th - 82 nd
Fortieth.	Tim Armstead (R).	Elkview.	Attorney.....	Appt. 9/5/1998, 73 rd ; 74 th - 82 nd
Forty-first....	Jordan Hill (R).....	Mt. Nebo.	Human Resources.	82 nd
Forty-second..	George "Boogie" Ambler (R).	Fort Springs.	Businessman/ Educator/Farmer	81 st - 82 nd
	Ray Canterbury (R).	Ronceverte.	Internet Entrepreneur.	75 th - 82 nd
Forty-third. . . .	Denise L. Campbell (D).....	Elkins.	Licensed Nursing Home Administrator.	80 th - 82 nd
	William G. Hartman (D)	Elkins.	Retired Independent Insurance Agent.....	76 th - 82 nd
Forty-fourth. . .	Dana L. Lynch (D).....	Webster Springs. . .	Retired.	81 st - 82 nd
Forty-fifth. . . .	Bill Hamilton (R).....	Buckhannon.	Retired Independent Insurance Agency Owner.....	76 th - 82 nd
Forty-sixth. . . .	Peggy Donaldson Smith (D)..	Weston.	Attorney/Professor.	79 th - 82 nd
Forty-seventh.	Danny Wagner (R).....	Philippi.	Retired Educator/ Coach.....	82 nd
Forty-eighth. . .	Danny Hamrick (R).	Clarksburg.	Consulting/ Media Production.....	81 st - 82 nd
	Tim Miley (D).	Clarksburg.	Attorney.....	77 th - 82 nd
	Patsy Samuel Trecoast II (D)..	Clarksburg.	Frontier Communications.	82 nd
	Theresa Waxman (R).....	Bridgeport.	Homemaker.	82 nd
Forty-ninth....	Amy Summers (R).....	Flemington.	Registered Nurse.	82 nd
Fiftieth.	Mike Caputo (D).	Fairmont.....	UMWA, District 31 Vice-President.	73 rd - 82 nd
	Linda Longstreth (D).....	Fairmont.....	Administrator/Educator.	77 th - 82 nd
	Tim Manchin (D).....	Fairmont.....	Attorney.....	76 th - 82 nd
Fifty-first. . . .	Barbara Evans Fleischauer (D).	Morgantown.....	Attorney/Small Business Owner.....	72 nd - 75 th ; 78 th - 82 nd
	Cindy Frich (R).	Morgantown.	Sales/Writer/Consultant.	76 th - 77 th ; 81 st - 82 nd
	Brian Kurcaba (R).....	Morgantown.	Financial Advisor.....	82 nd
	William Flanigan (R).....	Morgantown.	Attorney.....	Appt. 1/15/2016, 82 nd
	Joe Statler (R).	Core.	Retired.	82 nd
Fifty-second. . .	Steven Shaffer (D).....	Tunnelton.	Attorney.....	Appt. 4/29/2015, 82 nd
Fifty-third. . . .	Randy E. Smith (R).	Terra Alta.....	Coal Miner.....	81 st - 82 nd
Fifty-fourth. . .	Allen V. Evans (R).....	Petersburg.....	Poultry Producer/Farmer.	70 th - 82 nd
Fifty-fifth. . . .	Isaac Sponaugle (D).....	Franklin.	Attorney.....	81 st - 82 nd
Fifty-sixth. . . .	Gary G. Howell (R).	Keyser.	Small Business Owner.. . . .	80 th - 82 nd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Fifty-seventh..	Ruth Rowan (R).....	Points.....	Retired Educator.....	77 th - 82 nd
Fifty-eighth...	Daryl E. Cowles (R).....	Berkeley Springs. .	Businessman.....	78 th - 82 nd
Fifty-ninth....	Saira Blair (R).....	Martinsburg.....	Student.....	82 nd
Sixtieth.....	Larry W. Faircloth (R).....	Inwood.....	Small Business Consulting.....	81 st - 82 nd
Sixty-first. . . .	Walter E. Duke (R).....	Martinsburg.....	Retired Educator.....	76 th - 80 th ; 82 nd
Sixty-second..	John Overington (R).....	Martinsburg.....	Public Relations/ Former Educator.....	67 th - 82 nd
Sixty-third... .	Michael "Mike" Folk (R)....	Martinsburg.....	Airline Pilot/Farmer... .	81 st - 82 nd
Sixty-fourth...	Eric L. Householder (R).....	Martinsburg.....	Small Business Owner..	80 th - 82 nd
Sixty-fifth. . . .	Jill Upson (R).....	Charles Town.....	Former Retail Manager/ Student.....	82 nd
Sixty-sixth. . . .	Paul Espinosa (R).....	Charles Town.....	General Manager, Frontier Communications.....	81 st - 82 nd
Sixty-seventh.	Stephen Skinner (D).....	Shepherdstown... .	Attorney.....	81 st - 82 nd

MEMBERS OF THE SENATE

REGULAR SESSION, 2016

OFFICERS

President – William P. Cole, III, Bluefield

Clerk – Clark S. Barnes, French Creek

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

Doorkeeper – Jeffrey L. Branham, Cross Lanes

District	Name	Address	Occupation or Profession	Legislative Service
First.	Ryan Ferns (R).....	Wheeling.	Physical Therapist.	82 nd
	Jack Yost (D).....	Wellsburg.....	Retired.	(House 76 th - 78 th); 79 th - 82 nd
Second.	Jeffrey V. Kessler (D).	Glen Dale.	Attorney.....	Appt. 11/1997, 73 rd ; 74 th - 82 nd
	Kent Leonhardt (R).	Fairview.....	Retired USMC/farmer.	82 nd
Third.	Donna J. Boley (R).	St. Marys.	Retired.	Appt. 5/14/1985, 67 th ; 68 th - 82 nd
	Bob Ashley (R).	Spencer.....	Insurance Agent.....	67 th - 73 rd , 75 th - 82 nd
Fourth.....	Mitch B. Carmichael (R).	Ripley.....	Director of Commercial Sales.	(House 75 th - 80 th); 82 nd
	Mike Hall (R).....	Winfield.	Businessman.	(House 72 nd - 74 th); 78 th - 82 nd
Fifth.	Robert H. Plymale (D).	Ceredo.	Businessman.	71 st - 82 nd
Sixth.	William P. Cole III (R).	Bluefield.....	Automobile Dealer.....	(House Appt. 5/28/2010, 79 th); 82 nd
	Mark R. Maynard (R).	Genoa.....	Automobile Dealer.....	82 nd
Seventh.....	Art Kirkendoll (D).....	Chapmanville.	Self Employed.	Appt 11/14/2011, 80 th ; 82 nd
	Ron Stollings (D).....	Madison.	Physician.	78 th - 82 nd
Eighth.....	Ed Gaunch (R).....	Charleston.	Retired.	82 nd
	Chris Walters (R).....	Nitro.....	Insurance.	81 st - 82 nd
Ninth.....	Sue Cline (R).	Brenton.....		Appt. 1/22/2016, 82 nd
	Jeff Mullins (R)	Shady Spring.	Insurance.	82 nd
Tenth.....	William Laird IV (D).....	Oak Hill.	Retired/Self-Employed..	(House 73 rd - 75 th); 79 th - 82 nd
	Ronald F. Miller (D).	Lewisburg.....	Self-Employed.	80 th - 82 nd
Eleventh.	Greg Boso (R).	Summersville.	Civil Engineer.	Appt. 1/16/2015, 82 nd
	Robert L. Karnes (R).	Tallmansville.	Information and Technology Field Services.	82 nd

MEMBERS OF THE SENATE - Continued

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

HOUSE OF DELEGATES COMMITTEES

**COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2016**

STANDING

AGRICULTURE AND NATURAL RESOURCES

A. Evans (*Chair of Agriculture*), Romine (*Vice Chair of Agriculture*), Hamilton (*Chair of Natural Resources*), Ambler (*Vice Chair of Natural Resources*), Anderson, Atkinson, Border, Cadle, Canterbury, Cooper, Folk, Ireland, Miller, R. Smith, Summers, Wagner, Blackwell, Eldridge (*Minority Chair of Agriculture*), Sponaugle (*Minority Vice Chair of Agriculture*), Lynch (*Minority Chair of Natural Resources*), Guthrie (*Minority Vice Chair of Natural Resources*), Campbell, Rodighiero, Shaffer and P. White.

BANKING AND INSURANCE

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

EDUCATION

Espinosa (*Chair*), Duke (*Vice Chair*), Ambler, Cooper, Ellington, D. Evans, Hamrick, Kelly, Kurcaba, Rohrbach, Romine, Rowan, Statler, Upson, Wagner, Westfall, Perry (*Minority Chair*), Moye (*Minority Vice Chair*), Blackwell, Campbell, Hicks, Hornbuckle, Perdue, Rodighiero and Trecost.

HOUSE OF DELEGATES COMMITTEES

ENERGY

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

FINANCE

E. Nelson (*Chair*), Householder (*Vice Chair*), Anderson, Butler, Canterbury, Espinosa, A. Evans, Frich, Gearheart, Hamilton, Miller, O'Neal, Storch, Walters, Waxman, Westfall, Boggs (*Minority Chair*), Guthrie (*Minority Vice Chair*), Bates, Reynolds, Longstreth, Moye, Perry, Pethtel and P. Smith.

GOVERNMENT ORGANIZATION

Howell (*Chair*), Arvon (*Vice Chair*), Atkinson, Blair, Border, Cadle, Faircloth, Flanigan, Hamrick, Hill, Ihle, McGeehan, Moffatt, J. Nelson, R. Smith, Stansbury, Morgan (*Minority Chair*), Ferro (*Minority Vice Chair*), Caputo, Eldridge, Hartman, Lynch, Pushkin, Sponaugle and P. White.

HEALTH AND HUMAN RESOURCES

Ellington (*Chair*), Summers (*Vice Chair*), Arvon, Atkinson, Cooper, Faircloth, Hill, Householder, Kurcaba, Lane, Rohrbach, Sobonya, Stansbury, Waxman, Westfall, B. White, Fleischauer (*Minority Chair*), Campbell (*Minority Vice Chair*), Bates, Fluharty, Longstreth, Moore, Perdue, Pushkin and Rodighiero.

HOUSE OF DELEGATES COMMITTEES

INDUSTRY AND LABOR

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

INTERSTATE COOPERATION

Storch (*Chair*), Faircloth (*Vice Chair*), Ellington, Hamrick, Romine, Ferro and P. Smith.

JUDICIARY

Shott (*Chair*), Lane (*Vice Chair*), Azinger, Deem, Fast, Folk, Foster, Hanshaw, Ireland, Kessinger, McCuskey, Overington, Sobonya, Summers, Weld, Zatezalo, Manchin (*Minority Chair*), Skinner (*Minority Vice Chair*), Byrd, Fleischauer, Fluharty, Marcum, Moore, Rowe and Shaffer.

PENSIONS AND RETIREMENT

Canterbury (*Chair*), Folk (*Vice Chair*), Hamilton, Kurcaba, Walters, Marcum and Pethtel.

POLITICAL SUBDIVISIONS

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

HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION

Gearheart (*Chair*), Hamrick (*Vice Chair*), Ambler, Arvon, Butler, Cadle, Espinosa, A. Evans, D. Evans, Fast, Foster, Howell, Moffatt, Rohrbach, Statler, Wagner, Trecost (*Minority Chair*), Guthrie (*Minority Vice Chair*), Blackwell, Boggs, Longstreth, Moye, Reynolds, P. Smith and Sponaugle.

RULES

Armstead (*Chair*), Anderson, Cowles, Espinosa, Howell, Ireland, Lane, Miller, E. Nelson, O'Neal, Overington, Shott, Sobonya, Boggs, Campbell, Caputo, Fleischauer, Guthrie, Manchin and Miley.

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Ellington (*Chair*), Stansbury (*Vice Chair*), Frich, Hanshaw, Sobonya, Storch, Upson, Bates, Boggs, Perdue and Shaffer.

SENIOR CITIZEN ISSUES

Rowan (*Chair*), Border (*Vice Chair*), Canterbury, Deem, Duke, Faircloth, Hamilton, Hill, Kelly, E. Nelson, Overington, Rohrbach, Romine, Walters, B. White, Zatezalo, Moye (*Minority Chair*), Pethel (*Minority Vice Chair*), Campbell, Ferro, Hartman, Moore, Perry, Phillips and Shaffer.

HOUSE OF DELEGATES COMMITTEES

**SMALL BUSINESS, ENTREPRENEURSHIP AND
ECONOMIC DEVELOPMENT**

Miller (*Chair*), Hill (*Vice Chair*), Blair, Ellington, Espinosa, Faircloth, Flanigan, Hanshaw, Kelly, Kessinger, Lane, Stansbury, Storch, Waxman, Westfall, Zatezalo, Skinner (*Minority Chair*), Rowe (*Minority Vice Chair*), Bates, Hartman, Hornbuckle, Manchin, Miley, Morgan and P. White.

VETERANS' AFFAIRS AND HOMELAND SECURITY

J. Nelson (*Chair of Veterans' Affairs*), Cooper (*Vice Chair of Veterans' Affairs*), D. Evans (*Chair of Homeland Security*), McGeehan (*Vice Chair of Homeland Security*), Arvon, Atkinson, Foster, Frich, Howell, Ireland, Kelly, Kessinger, Rowan, Upson, Wagner, Weld, Longstreth (*Minority Chair of Veterans' Affairs*), Hornbuckle (*Minority Vice Chair of Veterans' Affairs*), P. Smith (*Minority Chair of Homeland Security*), Pushkin (*Minority Vice Chair of Homeland Security*), Byrd, Ferro, Fleischauer, Lynch and Trecost.

ENROLLED BILLS

McCuskey (*Chair*), Westfall (*Vice Chair*), Hanshaw, Marcum and Sponaule.

SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2016

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Senators Karnes (*Chair*), Leonhardt (*Vice Chair*), Blair, Cline, Maynard, Sypolt, Beach, Laird, Miller, Williams and Woelfel.

BANKING AND INSURANCE

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

CONFIRMATIONS

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

ECONOMIC DEVELOPMENT

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

EDUCATION

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

SENATE COMMITTEES

ENERGY, INDUSTRY AND MINING

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

ENROLLED BILLS

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION

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

SENATE COMMITTEES

JUDICIARY

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

LABOR

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

MILITARY

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

NATURAL RESOURCES

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

PENSIONS

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

RULES

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

SENATE COMMITTEES

TRANSPORTATION AND INFRASTRUCTURE

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

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2016

CHAPTER 1

**(H. B. 2605 - By Delegates Moore,
Hornbuckle and Shott)**

[Passed March 12, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §55-2-15 of the Code of West Virginia, 1931, as amended, relating generally to limitations on civil actions accruing to persons under legal disability; and establishing the limitation on actions against the perpetrator of sexual assault or sexual abuse upon a minor to be four years upon reaching the age of majority or four year upon discovery of the sexual assault or sexual abuse, whichever is longer.

Be it enacted by the Legislature of West Virginia:

That §55-2-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-15. Special and general savings as to persons under disability.

- 1 (a) A personal action for damages resulting from sexual
- 2 assault or sexual abuse of a person who was an infant at the time
- 3 of the act or acts alleged, shall be brought against the perpetrator
- 4 of the sexual assault or abuse within four years after reaching the

5 age of majority or within four years after discovery of the sexual
6 assault or sexual abuse, whichever is longer.

7 (b) If any person to whom the right accrues to bring any
8 personal action other than an action described in subsection (a)
9 of this section, suit or scire facias, or any bill to repeal a grant,
10 shall be, at the time the same accrues, an infant or insane, the
11 same may be brought within the like number of years after his or
12 her becoming of full age or sane that is allowed to a person
13 having no such impediment to bring the same after the right
14 accrues, or after such acknowledgment as is mentioned in
15 section eight of this article, except that it shall in no case be
16 brought after twenty years from the time when the right accrues.



CHAPTER 2

(S. B. 29 - By Senator Palumbo)

[Passed March 7, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §55-2-21 of the Code of West Virginia, 1931, as amended, relating generally to tolling statute of limitations in certain cases; limiting circumstances within which statute of limitations is tolled for institution of third-party complaints associated with pending civil actions; providing alternative periods when statute of limitations on third-party complaints is tolled; defining “third-party complaint”; and clarifying that this section does not limit doctrine of equitable tolling or discovery rule.

Be it enacted by the Legislature of West Virginia:

That §55-2-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.**§55-2-21. Statutes of limitation tolled on claims assertible in civil actions when actions commence.**

1 (a) After a civil action is commenced, the running of any
2 statute of limitation is tolled for, and only for, the pendency of
3 that civil action as to any claim that has been or may be asserted
4 in the civil action by counterclaim, whether compulsory or
5 permissive, or cross-claim: *Provided*, That if a permissive
6 counterclaim would be barred but for the provisions of this
7 section, the permissive counterclaim may be asserted only in the
8 action tolling the statute of limitations under this section. This
9 section shall be deemed to toll the running of any statute of
10 limitation with respect to any claim for which the statute of
11 limitation has not expired on the effective date of this section,
12 but only for so long as the action tolling the statute of limitations
13 is pending.

14 (b) Any defendant who desires to file a third-party complaint
15 shall have one hundred eighty days from the date of service of
16 process of the original complaint, or the time remaining on the
17 applicable statute of limitations, whichever is longer, to bring
18 any third-party complaint against any non-party person or entity:
19 *Provided*, That any new party brought into litigation by a third-
20 party complaint shall be afforded, from the date of service of
21 process of the third-party complaint, an additional 180-day
22 period, or the remaining statute of limitations period, whichever
23 is longer, to file any third-party complaint of its own, and any
24 applicable statute of limitation shall be tolled during this time
25 period.

26 (c) For purposes of this section, the term “third-party
27 complaint” means a claim brought by a defendant against any
28 person or entity that was not originally a party to the underlying

29 civil action, where the new claim is made a part of the
30 underlying civil action.

31 (d) This section tolls the running of any statute of limitation
32 with respect to any claim for which the statute of limitation has
33 not expired on the effective date of this section, but only for so
34 long as the action tolling the statute of limitations is pending.
35 This section does not limit the ability of a court to use the
36 doctrine of equitable tolling or the discovery rule to toll the
37 statute of limitations in any action, including any third-party
38 complaint that would otherwise be subject to subsection (b) of
39 this section.



CHAPTER 3

**(Com. Sub. for S. B. 7 - By Senators Leonhardt, Carmichael,
Ashley, Stollings, Trump and Blair)**

[Passed February 24, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2016.]

AN ACT to amend and reenact §55-7-13d of the Code of West Virginia, 1931, as amended; and to amend and reenact §55-7B-5 of said code, all relating to comparative fault; providing one hundred eighty days after service of process for defendant to give notice of nonparties wholly or partially at fault; providing that a plaintiff's recovery only be reduced in proportion to the percentage of fault assigned to settling parties or nonparties and not the amount of any settlement taking place before the verdict; providing when plaintiff's criminal conduct bars recovery; prohibiting recovery in civil actions when damages are suffered as a result of the commission, attempted commission, or immediate flight from the commission or attempted commission of a felony; requiring

commission, attempted commission, or immediate flight from the commission or attempted commission of a felony be proximate cause of injury; providing that the burden of proof for establishing a criminal conduct defense is upon the person asserting such defense; providing that a court shall dismiss an action upon determination that, as a matter of law, the felonious conduct upon which there was a conviction, guilty plea or plea of no contest was a proximate cause of injury; defining damages; providing for stay of civil action in which criminal conduct defense is asserted during pendency, including appeals, of criminal action; establishing that the 2016 amendments apply to all causes of action accruing on or after the effective date of those amendments; prohibiting civil action under Medical Professional Liability Act related to prescription or dispensation of controlled substances when person's damages are a proximate result of the commission of a felony, a violent crime that is a misdemeanor, or violation of any law related to controlled substances; and providing exception if health care provider that prescribes or dispenses controlled substances in violation of law proximately causing injury.

Be it enacted by the Legislature of West Virginia:

That §55-7-13d of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §55-7B-5 of said code be amended and reenacted, all to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-13d. Determination of fault; imputed fault; when plaintiff's criminal conduct bars recovery; burden of proof; damages; stay of action; limitations; applicability; severability.

- 1 (a) *Determination of fault of parties and nonparties.* —
- 2 (1) In assessing percentages of fault, the trier of fact shall
- 3 consider the fault of all persons who contributed to the alleged

4 damages regardless of whether the person was or could have
5 been named as a party to the suit;

6 (2) Fault of a nonparty shall be considered if the plaintiff
7 entered into a settlement agreement with the nonparty or if a
8 defending party gives notice no later than one hundred eighty
9 days after service of process upon said defendant that a nonparty
10 was wholly or partially at fault. Notice shall be filed with the
11 court and served upon all parties to the action designating the
12 nonparty and setting forth the nonparty's name and last known
13 address, or the best identification of the nonparty which is
14 possible under the circumstances, together with a brief statement
15 of the basis for believing such nonparty to be at fault;

16 (3) In all instances where a nonparty is assessed a percentage
17 of fault, any recovery by a plaintiff shall be reduced in
18 proportion to the percentage of fault chargeable to such
19 nonparty. Where a plaintiff has settled with a party or nonparty
20 before verdict, that plaintiff's recovery will be reduced in
21 proportion to the percentage of fault assigned to the settling
22 party or nonparty, rather than by the amount of the nonparty's or
23 party's settlement;

24 (4) Nothing in this section is meant to eliminate or diminish
25 any defenses or immunities, which exist as of the effective date
26 of this section, except as expressly noted herein;

27 (5) Assessments of percentages of fault for nonparties are
28 used only as a vehicle for accurately determining the fault of
29 named parties. Where fault is assessed against nonparties,
30 findings of such fault do not subject any nonparty to liability in
31 that or any other action, or may not be introduced as evidence of
32 liability or for any other purpose in any other action; and

33 (6) In all actions involving fault of more than one person,
34 unless otherwise agreed by all parties to the action, the court
35 shall instruct the jury to answer special interrogatories or, if
36 there is no jury, shall make findings, indicating the percentage of

37 the total fault that is allocated to each party and nonparty
38 pursuant to this article. For this purpose, the court may
39 determine that two or more persons are to be treated as a single
40 person.

41 (b) *Imputed fault.* — Nothing in this section may be
42 construed as precluding a person from being held liable for the
43 portion of comparative fault assessed against another person who
44 was acting as an agent or servant of such person, or if the fault
45 of the other person is otherwise imputed or attributed to such
46 person by statute or common law. In any action where any party
47 seeks to impute fault to another, the court shall instruct the jury
48 to answer special interrogatories or, if there is no jury, shall
49 make findings, on the issue of imputed fault.

50 (c) *When plaintiff's criminal conduct bars recovery.* — In
51 any civil action, a person or person's legal representative who
52 asserts a claim for damages may not recover if:

53 (1) Such damages arise out of the person's commission,
54 attempted commission, or immediate flight from the commission
55 or attempted commission of a felony; and

56 (2) That the person's damages were suffered as a proximate
57 result of the commission, attempted commission, or immediate
58 flight from the commission or attempted commission of a felony.

59 (d) *Burden of proof.* — The burden of alleging and proving
60 comparative fault shall be upon the person who seeks to
61 establish such fault. The burden of alleging and proving the
62 defense set forth in subsection (c) of this section shall be upon
63 the person who seeks to assert such defense: *Provided*, That in
64 any civil action in which a person has been convicted or pleaded
65 guilty or no contest to a felony, the claim shall be dismissed if
66 the court determines as a matter of law that the person's damages
67 were suffered as a proximate result of the felonious conduct to
68 which the person pleaded guilty or no contest, or upon which the
69 person was convicted.

70 (e) *Damages.* — For purposes of this section, “damages”
71 includes all damages which may be recoverable for personal
72 injury, death, or loss of or damage to property, including those
73 recoverable in a wrongful death action.

74 (f) *Stay of action.* — Any civil action in which the defense
75 set forth in subsection (c) of this section is asserted shall be
76 stayed by the court on the motion of the defendant during the
77 pendency of any criminal action which forms the basis of the
78 defense, including appeals, unless the court finds that a
79 conviction in the criminal action would not constitute a valid
80 defense under said subsection.

81 (g) *Limitations.* — Nothing in this section creates a cause of
82 action. Nothing in this section alters, in any way, the immunity
83 of any person as established by statute or common law.

84 (h) *Applicability.* — This section applies to all causes of
85 action arising or accruing on or after the effective date of its
86 enactment. The amendments to this section enacted during the
87 2016 regular session of the Legislature shall apply to all causes
88 of action accruing on or after the effective date of those
89 amendments.

90 (i) *Severability.* — The provisions of this section are
91 severable from one another, so that if any provision of this
92 section is held void, the remaining provisions of this section
93 shall remain valid.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated; limitation on bad faith claims; filing of first party bad faith claims; when plaintiff’s criminal conduct bars recovery.

1 (a) In any medical professional liability action against a
2 health care provider no specific dollar amount or figure may be
3 included in the complaint, but the complaint may include a

4 statement reciting that the minimum jurisdictional amount
5 established for filing the action is satisfied. However, any party
6 defendant may at any time request a written statement setting
7 forth the nature and amount of damages being sought. The
8 request shall be served upon the plaintiff who shall serve a
9 responsive statement as to the damages sought within thirty days
10 thereafter. If no response is served within the thirty days, the
11 party defendant requesting the statement may petition the court
12 in which the action is pending to order the plaintiff to serve a
13 responsive statement.

14 (b) Notwithstanding any other provision of law, absent
15 privity of contract, no plaintiff who files a medical professional
16 liability action against a health care provider may file an
17 independent cause of action against any insurer of the health care
18 provider alleging the insurer has violated the provisions of
19 subdivision (9), section four, article eleven, chapter thirty-three
20 of this code. Insofar as the provisions of section three of said
21 article prohibit the conduct defined in subdivision (9), section
22 four of said article, no plaintiff who files a medical professional
23 liability action against a health care provider may file an
24 independent cause of action against any insurer of the health care
25 provider alleging the insurer has violated the provisions of
26 section three of said article.

27 (c) No health care provider may file a cause of action against
28 his or her insurer alleging the insurer has violated the provisions
29 of subdivision (9), section four, article eleven, chapter thirty-
30 three of this code until the jury has rendered a verdict in the
31 underlying medical professional liability action or the case has
32 otherwise been dismissed, resolved or disposed of.

33 (d) No action related to the prescription or dispensation of
34 controlled substances may be maintained against a health care
35 provider pursuant to this article by or on behalf of a person
36 whose damages arise as a proximate result of a violation of the
37 Uniform Controlled Substances Act, as set forth in chapter sixty-

38 a of this code, the commission of a felony, a violent crime which
39 is a misdemeanor, or any other state or federal law related to
40 controlled substances: *Provided*, That an action may be
41 maintained pursuant to this article if the plaintiff alleges and
42 proves by a preponderance of the evidence that the health care
43 provider dispensed or prescribed a controlled substance or
44 substances in violation of state or federal law, and that such
45 prescription or dispensation in violation of state or federal law
46 was a proximate cause of the injury or death.



CHAPTER 4

(S. B. 15 - By Senators Boso and Gaunch)

[Passed February 17, 2016; in effect 90 days from passage.]

[Approved by the Governor on February 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-30, relating generally to manufacturers and sellers of prescription drugs and medical devices and liability of those entities for alleged inadequate warning or instruction; and adopting the learned intermediary doctrine as defense to civil action based upon inadequate warnings or instructions.

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 §55-7-30, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-30. Adequate pharmaceutical warnings; limiting civil liability for manufacturers or sellers who provide warning to a learned intermediary.

1 (a) A manufacturer or seller of a prescription drug or
2 medical device may not be held liable in a product liability
3 action for a claim based upon inadequate warning or instruction
4 unless the claimant proves, among other elements, that:

5 (1) The manufacturer or seller of a prescription drug or
6 medical device acted unreasonably in failing to provide
7 reasonable instructions or warnings regarding foreseeable risks
8 of harm to prescribing or other health care providers who are in
9 a position to reduce the risks of harm in accordance with the
10 instructions or warnings; and

11 (2) Failure to provide reasonable instructions or warnings
12 was a proximate cause of harm.

13 (b) It is the intention of the Legislature in enacting this
14 section to adopt and allow the development of a learned
15 intermediary doctrine as a defense in cases based upon claims of
16 inadequate warning or instruction for prescription drugs or
17 medical devices.



CHAPTER 5

**(Com. Sub. for S. B. 14 - By Senators Trump, Boso,
Ferns, Leonhardt, Takubo and Blair)**

[Passed February 22, 2016; in effect 90 days from passage.]

[Approved by the Governor on March 2, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7I-1, §55-7I-2, §55-7I-3, §55-7I-4, §55-7I-5, §55-7I-6 and §55-7I-7, all relating to providing limits on successor corporation asbestos-related liabilities; setting forth legislative findings and purpose; defining terms; setting forth the applicability of article and certain

exclusions; limiting liability of successor corporations in successor asbestos-related liabilities; providing applicability of limitation in the case of prior merger or consolidation with prior transferor; setting forth guidelines for establishment of fair market value of total gross assets; requiring inclusion of intangible assets in calculation of fair market value; detailing how liability insurance is to be valued; providing for adjustment of fair market value of total gross assets; discontinuing adjustment of fair market value of total gross assets once certain conditions met; excluding liability insurance from annual adjustments; directing liberal construction of act with regard to successors; and setting forth applicability of act to certain claims.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7I-1, §55-7I-2, §55-7I-3, §55-7I-4, §55-7I-5, §55-7I-6 and §55-7I-7, all to read as follows:

ARTICLE 7I. SUCCESSOR ASBESTOS-RELATED LIABILITY.

§55-7I-1. Findings and purpose.

1 (a) The West Virginia Legislature finds that:

2 (1) Asbestos-related claims threaten the continued viability
3 of uniquely situated companies that have never manufactured,
4 sold or distributed asbestos or asbestos products and are liable
5 only as successor corporations.

6 (2) The viability of these businesses is threatened due solely
7 to their status as successor corporations by merger or
8 consolidation based on actions taken prior to the May 13, 1968,
9 American Conference of Governmental Industrial Hygienists
10 change in the recommended, longstanding threshold workplace-
11 exposure limit for asbestos.

12 (3) More than twenty other states have enacted legislation
13 similar to this article to provide limits on asbestos-related
14 liabilities for innocent successors.

15 (4) The public interest as a whole is best served by providing
16 relief to innocent successors so that they may remain viable.

17 (b) The purpose of this article is to limit the cumulative
18 recovery by all asbestos claimants from innocent successors.

§55-71-2. Definitions.

1 As used in this article:

2 (1) “Asbestos claim” means any claim, wherever or
3 whenever made, for damages, losses, indemnification,
4 contribution or other relief arising out of, based on, or in any
5 way related to asbestos, including:

6 (A) Property damage caused by the installation, presence or
7 removal of asbestos;

8 (B) The health effects of exposure to asbestos, including any
9 claim for:

10 (i) Personal injury or death;

11 (ii) Mental or emotional injury;

12 (iii) Risk of disease or other injury; or

13 (iv) The costs of medical monitoring or surveillance; and

14 (C) Any claim made by or on behalf of any person exposed
15 to asbestos, or a representative, spouse, parent, child or other
16 relative of the person.

17 (2) “Corporation” means a corporation for profit, including:

18 (A) A domestic corporation organized under the laws of this
19 state; or

20 (B) A foreign corporation organized under laws other than
21 the laws of this state.

22 (3) “Successor asbestos-related liabilities” means any
23 liabilities, whether known or unknown, asserted or unasserted,
24 absolute or contingent, accrued or unaccrued, liquidated or
25 unliquidated, or due or to become due, that are related in any
26 way to asbestos claims that were assumed or incurred by a
27 corporation as a result of or in connection with a merger or
28 consolidation, or the plan of merger or consolidation related to
29 the merger or consolidation, with or into another corporation or
30 that are related in any way to asbestos claims based on the
31 exercise of control or the ownership of stock of the corporation
32 before the merger or consolidation. The term includes liabilities
33 that, after the time of the merger or consolidation for which the
34 fair market value of total gross assets is determined under
35 section five of this article, were or are paid or otherwise
36 discharged, or committed to be paid or otherwise discharged, by
37 or on behalf of the corporation, or by a successor of the
38 corporation, or by or on behalf of a transferor, in connection with
39 settlements, judgments or other discharges in this state or
40 another jurisdiction.

41 (4) “Successor” means a corporation that assumes or incurs,
42 or has assumed or incurred, successor asbestos-related liabilities.

43 (5) “Transferor” means a corporation from which successor
44 asbestos-related liabilities are or were assumed or incurred.

§55-7I-3. Applicability.

1 (a) The limitations in section four of this article shall apply
2 to a domestic corporation or a foreign corporation that has had
3 a certificate of authority to transact business in this state or has
4 done business in this state and that is a successor which became
5 a successor prior to May 13, 1968, or which is any of that

6 successor corporation's successors, but in the latter case only to
7 the extent of the limitation of liability applied under subsection
8 (b), section four of this article and subject also to the limitations
9 found in this article, including those in subsection (b) of this
10 section.

11 (b) The limitations in section four of this article shall not
12 apply to:

13 (1) Workers' compensation benefits paid by or on behalf of
14 an employer to an employee under the provisions of chapter
15 twenty-three of this code or a comparable workers'
16 compensation law of another jurisdiction;

17 (2) Any claim against a corporation that does not constitute
18 a successor asbestos-related liability;

19 (3) An insurance corporation;

20 (4) Any obligation under the National Labor Relations Act,
21 29 U. S. C. Section 151, *et seq.*, as amended, or under any
22 collective bargaining agreement;

23 (5) A successor that, after a merger or consolidation,
24 continued in the business of mining asbestos or in the business of
25 selling or distributing asbestos fibers or in the business of
26 manufacturing, distributing, removing or installing asbestos-
27 containing products which were the same or substantially the
28 same as those products previously manufactured, distributed,
29 removed or installed by the transferor;

30 (6) A contractual obligation existing as of the effective date
31 of this article that was entered into with claimants or potential
32 claimants or their counsel and which resolves asbestos claims or
33 potential asbestos claims;

34 (7) Any claim made against the estate of a debtor in a
35 bankruptcy proceeding commenced prior to the effective date of

36 this article, under the United States Bankruptcy Code, 11 U. S.
37 C. Section 101, *et seq.*, by or against such debtor, or against a
38 bankruptcy trust established under 11 U. S. C. Section 524(g) or
39 similar provision of the United States Code in such a
40 bankruptcy; and

41 (8) A successor asbestos-related liability arising under
42 common law or statute for premises liability, or a cause of action
43 for premises liability, as applicable, but only if the successor
44 owned or controlled the premise or premises at issue after the
45 merger or consolidation.

§55-7I-4. Limitations on successor asbestos-related liabilities.

1 (a) Except as further limited in subsection (b) of this section,
2 the cumulative successor asbestos-related liabilities of a
3 corporation are limited to the fair market value of the total gross
4 assets of the transferor determined as of the time of the merger
5 or consolidation. The corporation does not have any
6 responsibility for successor asbestos-related liabilities in excess
7 of this limitation.

8 (b) If the transferor had assumed or incurred successor
9 asbestos-related liabilities in connection with a prior merger or
10 consolidation with a prior transferor, then the fair market value
11 of the total assets of the prior transferor, determined as of the
12 time of such earlier merger or consolidation, shall be substituted
13 for the limitation set forth in subsection (a) of this section, for
14 purposes of determining the limitation of liability of a
15 corporation.

§55-7I-5. Establishing fair market value of total gross assets.

1 (a) A corporation may establish the fair market value of total
2 gross assets for the purpose of the limitations under section four
3 of this article through any method reasonable under the
4 circumstances, including:

5 (1) By reference to the going concern value of the assets or
6 to the purchase price attributable to or paid for the assets in an
7 arms-length transaction; or

8 (2) In the absence of other readily available information
9 from which the fair market value can be determined, by
10 reference to the value of the assets recorded on a balance sheet.

11 (b) Total gross assets include intangible assets.

12 (c) Total gross assets include the aggregate coverage under
13 any applicable liability insurance that was issued to the
14 transferor whose assets are being valued for purposes of this
15 section and which insurance has been collected or is collectible
16 to cover successor asbestos-related liabilities (except
17 compensation for liabilities arising from workers' exposure to
18 asbestos solely during the course of their employment by the
19 transferor). A settlement of a dispute concerning such insurance
20 coverage entered into by a transferor or successor with the
21 insurers of the transferor 10 years or more before the enactment
22 of this article shall be determinative of the aggregate coverage
23 of such liability insurance to be included in the calculation of the
24 transferor's total gross assets.

25 (d) The fair market value of total gross assets shall reflect no
26 deduction for any liabilities arising from any asbestos claim.

§55-7I-6. Adjustment.

1 (a) Except as provided in subsections (b), (c) and (d) of this
2 section, the fair market value of total gross assets at the time of
3 the merger or consolidation increases annually at a rate equal to
4 the sum of:

5 (1) The prime rate as listed in the first edition of the Wall
6 Street Journal published for each calendar year since the merger
7 or consolidation; and

8 (2) One percent.

9 (b) The rate found in subsection (a) of this section is not
10 compounded.

11 (c) The adjustment of the fair market value of total gross
12 assets continues as provided in subsection (a) of this section until
13 the date the adjusted value is exceeded by the cumulative
14 amounts of successor asbestos-related liabilities paid or
15 committed to be paid by or on behalf of the corporation or a
16 predecessor, or by or on behalf of a transferor, after the time of
17 the merger or consolidation for which the fair market value of
18 total gross assets is determined.

19 (d) No adjustment of the fair market value of total gross
20 assets shall be applied to any liability insurance otherwise
21 included in the definition of total gross assets by subsection (c),
22 section five of this article.

§55-7I-7. Scope of article; application.

1 (a) This article shall be liberally construed with regard to
2 successors.

3 (b) This article applies to all asbestos claims filed against a
4 successor on or after the effective date of this article.



CHAPTER 6

(S. B. 387 - By Senator Karnes)

[Passed February 23, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 3, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1-7, relating to shared animal ownership agreements to consume raw milk;

permitting a responsible party to acquire a percentage ownership interest to consume raw milk; setting forth required provisions for shared animal ownership agreements; requiring responsible party to acquire percentage ownership interest in milk-producing animal; requiring payment for percentage ownership for care and boarding of milk-producing animal; providing for receipt of a share of raw milk pursuant to an agreement; requiring written document acknowledging the inherent dangers of consuming raw milk; providing immunity to herd seller for inherent dangers of consuming raw milk; providing no waiver of immunity to herd seller for dangers caused by negligence of herd seller; prohibiting responsible party from distributing, selling or reselling raw milk received pursuant to shared ownership agreement; requiring herd seller to file shared animal ownership agreement with Commissioner of Agriculture; requiring certain additional information be provided by herd seller to Commissioner of Agriculture; requiring herd seller meet animal health requirements established by state veterinarian; requiring parties and physicians to report illnesses related to consumption of raw milk; requiring parties to shared animal ownership agreement and physicians to report illnesses directly related to consuming raw milk; requiring Commissioner of Agriculture contact other parties consuming raw milk from same herd seller upon receipt of report of illness; providing administrative penalties; permitting a person against whom a penalty is imposed to administratively contest that penalty; 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 §19-1-7, to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-7. Shared animal ownership agreement to consume raw milk.

1 (a) Notwithstanding any other provision of the law to the
2 contrary, a responsible party may enter into a written shared
3 animal ownership agreement to consume raw milk in which he
4 or she:

5 (1) Acquires a percentage ownership interest in a milk-
6 producing animal;

7 (2) Agrees to pay another for the percentage ownership
8 interest for the care and boarding of the milk-producing animal
9 at the dairy farm;

10 (3) Is entitled to receive a fair share of the animal's raw milk
11 production as a condition of the contractual agreement;

12 (4) Agrees to sign a written document acknowledging the
13 inherent dangers of consuming raw milk that may contain
14 bacteria, such as Brucella, Campylobacter, Listeria, Salmonella
15 and E. Coli, that has not been pasteurized to remove bacteria and
16 that is particularly dangerous to children, pregnant women and
17 those with compromised immunity. The responsible party then
18 agrees to release the herd seller of liability for the inherent
19 dangers of consuming raw milk but not for those dangers that are
20 caused by negligent acts or omissions of the herd seller; and

21 (5) Agrees not to distribute raw milk. The sale or resale of
22 raw milk obtained from a herd share is strictly prohibited.

23 (b) The signed and executed shared animal ownership
24 agreement shall be filed by the herd seller with the
25 Commissioner of Agriculture and shall contain the names,
26 addresses and phone numbers of the herd seller and the
27 responsible party so that either party may be contacted in the
28 event of an illness.

29 (c) The herd seller shall meet the animal health requirements
30 for milk-producing animals established by the state veterinarian

31 in accordance with state and national standards including the
32 following:

33 (1) Raw milk from milk-producing animals intended for
34 consumption shall be from a herd that tested negative within the
35 previous twelve months for brucellosis, tuberculosis and other
36 diseases as required by the state veterinarian. Additions to the
37 herd shall test negative for the diseases within the previous thirty
38 days before introduction into the herd; and

39 (2) Milk-producing animals producing bloody, stringy or
40 abnormal milk, but with only slight inflammation of the udder,
41 shall be excluded from the milking herd until reexamination
42 shows that the milk has become normal. Milk-producing animals
43 showing chronic mastitis, whether producing abnormal milk or
44 not, shall be permanently excluded from the milking herd.

45 (d) Parties to a shared animal ownership agreement and
46 physicians who become aware of an illness directly related to
47 consuming raw milk shall report the illness to the local health
48 department and the Commissioner of Agriculture. Upon receipt
49 of such a report, the Commissioner of Agriculture or his or her
50 designee shall contact and warn other parties consuming raw
51 milk from the same herd seller.

52 (e) The Commissioner of Agriculture may impose an
53 administrative penalty not to exceed \$100 for a person who
54 violates the provisions of this section. Any penalty imposed
55 under this subsection may be contested by the person against
56 whom it is imposed pursuant to article five, chapter twenty-nine-
57 a of this code.

58 (f) The Commissioner of Agriculture, in consultation with
59 the Department of Health and Human Resources, may propose
60 rules for promulgation in accordance with the provisions of
61 article three, chapter twenty-nine-a of this code in compliance
62 with raw milk dairy industry standards.



CHAPTER 7

**(Com. Sub. for H. B. 4673 - By Delegates Anderson,
Kelly, Border, A. Evans, Phillips, Wagner,
Trecost, R. Smith, Shaffer, Ireland and Miller)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §19-2H-11 of the Code of West Virginia, 1931, as amended, relating to captive cervid; establishing a misdemeanor penalty to kill, injure, or take captive cervid; and setting forth fines and restitution.

Be it enacted by the Legislature of West Virginia:

That §19-2H-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2H. CAPTIVE CERVID FARMING ACT.

§19-2H-11. Prohibited conduct; criminal penalties.

- 1 (a) A person may not release or permit the release of any
- 2 captive cervids from a captive cervid farming facility.

- 3 (b) A person may not cause the entry or introduction of wild
- 4 cervids into a captive cervid farming facility.

- 5 (c) An owner may not cease operation of or abandon a
- 6 captive cervid farming facility without complying with the
- 7 requirements and rules promulgated under this article.

- 8 (d) Any person who violates subsection (a) or (b) of this
- 9 section is guilty of a misdemeanor and, upon conviction thereof,

10 shall be confined in jail for not more than ninety days, or fined
11 not more than \$300, or both fined and confined for a first
12 offense. Any person who violates subsection (a) or (b) of this
13 section for a second or subsequent offense is guilty of a
14 misdemeanor and, upon conviction thereof, shall be confined in
15 jail for not more than one year, or fined not more than \$1,000, or
16 both fined and confined.

17 (e) Any person who intentionally or knowingly violates
18 subsection (a), (b) or (c) of this section is guilty of a felony and,
19 upon conviction thereof, shall be imprisoned in a state
20 correctional facility not less than one nor more than three years,
21 or fined not more than \$1,000, or both fined and imprisoned.

22 (f) A person may not kill, injure, or take any captive cervid
23 that is the property of another. A person who violates this
24 subsection is guilty of a misdemeanor and, upon conviction
25 thereof, may be fined not more than \$500 and pay restitution
26 pursuant to sections four and five, article eleven-a, chapter sixty-
27 one of this code.



CHAPTER 8

(Com. Sub. for S. B. 39 - By Senators Stollings and Gaunch)

[Passed March 8, 2016; in effect 90 days from passage.]

[Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §17F-1-1 and §17F-1-9 of the Code of West Virginia, 1931, as amended, all relating to regulation of all-terrain vehicles; clarifying circumstances in which all-terrain vehicles may operate and travel; and defining motorcycles as all-terrain vehicles.

Be it enacted by the Legislature of West Virginia:

That §17F-1-1 and §17F-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. REGULATION OF ALL-TERRAIN VEHICLES.

§17F-1-1. Acts prohibited by operator; penalties for violations.

1 (a) No all-terrain vehicle may be operated in this state:

2 (1) On any interstate highway except by public safety
3 personnel responding to emergencies;

4 (2) On any road or highway with a center line or more than
5 two lanes except for the purpose of crossing the road, street or
6 highway, if:

7 (A) The crossing is made at an angle of approximately
8 ninety degrees to the direction of the highway and at a place
9 where no obstruction prevents a quick and safe crossing;

10 (B) The vehicle is brought to a complete stop before crossing
11 the shoulder or main traveled way of the highway;

12 (C) The operator yields his or her right-of-way to all
13 oncoming traffic that constitutes an immediate potential hazard;
14 and

15 (D) Both the headlight and taillight are illuminated when the
16 crossing is made if the vehicle is so equipped;

17 (3) With more than one passenger unless more passengers
18 are allowed under manufacturers' recommendations;

19 (4) With a passenger under the age of eighteen, unless the
20 operator has at a minimum a level two intermediate driver's
21 license or its equivalent or is eighteen years of age or older;

22 (5) Unless riders under the age of eighteen are wearing size
23 appropriate protective helmets that meet the current performance
24 specifications established by the American National Standards
25 Institute standard, z 90.1, the United States Department of
26 Transportation federal motor vehicle safety standard no. 218 or
27 Snell safety standards for protective headgear for vehicle users;

28 (6) Anytime from sunset to sunrise without an illuminated
29 headlight or lights and taillights;

30 (7) Without a manufacturer-installed or equivalent spark
31 arrester and a manufacturer-installed or equivalent muffler in
32 proper working order and properly connected to the vehicle's
33 exhaust system; or

34 (8) Unless operating in compliance with the provisions of
35 section two of this article.

36 (b) An all-terrain vehicle may be operated upon the shoulder,
37 or as far to the right on the pavement as possible when there is
38 not enough shoulder to safely operate, on any road, street or
39 highway referred to in subdivision (2), subsection (a) of this
40 section other than an interstate highway for a distance not to
41 exceed ten miles to travel between a residence or lodging and
42 off-road trails, fields and areas of operation, including stops for
43 food, fuel, supplies and restrooms, if:

44 (1) The vehicle is operated at speeds of twenty-five miles per
45 hour or less; and

46 (2) The vehicle is operated at any time from sunset to sunrise
47 the all-terrain vehicle must be equipped with headlights and
48 taillights which must be illuminated.

49 (c) Operation of an all-terrain vehicle in accordance with
50 subsection (b) shall not constitute operation of a motor vehicle

51 on a road or highway of this state as contemplated by the
52 provisions of section seven of this article.

53 (d) Notwithstanding any provision of this chapter to the
54 contrary, a municipality, county or other political subdivision of
55 the state may authorize the operation of all-terrain vehicles on
56 certain specified roads, streets or highways which are marked
57 with centerline pavement markings, other than interstate
58 highways, to allow participation in parades, exhibitions and
59 other special events, in emergencies or for specified purposes.

§17F-1-9. Definition of all-terrain and utility terrain vehicle.

1 (a) As used in this chapter:

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

9 (2) “Utility-terrain vehicle” means any motor vehicle with
10 four or more low-pressure tires designed for off-highway use
11 having bench or bucket seating for each occupant and a steering
12 wheel for control.

13 (3) “Motorcycle” means any motor vehicle manufactured
14 with no more than two wheels and having a seat or a saddle for
15 the use of the operator.

16 (b) As used in this article, “all-terrain vehicles” and
17 “vehicle”, or the plural, mean all-terrain vehicles, utility-terrain
18 vehicles and motorcycles.



CHAPTER 9

(S. B. 509 - By Senators Carmichael and Blair)

[Passed March 4, 2016; in effect 90 days from passage.]

[Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §21-10-6 of the Code of West Virginia, 1931, as amended, relating to Division of Labor inspection of amusement rides and amusement attractions.

Be it enacted by the Legislature of West Virginia:

That §21-10-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.

§21-10-6. Permits; application; annual inspection.

1 No operator or owner may knowingly permit the operation
 2 of an amusement ride or amusement attraction without a permit
 3 issued by the Division. Each year and at least fifteen days before
 4 the first time the amusement ride or amusement attraction is
 5 made available in this state for public use, an operator or owner
 6 shall apply for a permit to the Division on a form furnished by
 7 the Division and containing any information the Division may
 8 require. The Division shall, within thirty days of the first time in
 9 the calendar year the ride or attraction is made available in this
 10 state for public use, inspect all amusement rides and amusement
 11 attractions. The Division shall inspect all stationary rides and
 12 attractions at least once every year. The Division may inspect all
 13 mobile amusement rides and amusement attractions each time
 14 they are disassembled and reassembled for use in this state. The

15 Division may conduct inspections at any reasonable time without
16 prior notice: *Provided*, That in lieu of performing its own
17 inspection, the Division may accept inspection reports from
18 special inspectors certified by the Division.

CHAPTER 10

**(H. B. 4150 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed March 12, 2016; in effect from passage.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 8723, fiscal year 2016, organization 0506, and the Department of Health and Human Resources, Human Rights Commission, fund 8725, fiscal year 2016, organization 0510, and the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2016, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 8723, fiscal year 2016, organization 0506, be

supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF HEALTH AND HUMAN
4 RESOURCES

5 346 - Consolidated Medical Service Fund

6 (WV Code Chapter 16)

7 Fund 8723 FY 2016 Org 0506

8		Appro-		Federal
9		priation		Funds

10	1	Personal Services and			
11	2	Employee Benefits..	00100	\$	123,540

12 And, That the total appropriation for the fiscal year ending
13 June 30, 2016, to fund 8725, fiscal year 2016, organization 0510,
14 be supplemented and amended by increasing existing items of
15 appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF HEALTH AND HUMAN
4 RESOURCES

5 350 - Human Rights Commission

6 (WV Code Chapter 5)

30

APPROPRIATIONS

[Ch. 10

7

Fund 8725 FY 2016 Org 0510

8

Appro-

Federal

9

priation

Funds

10

1 Personal Services and

11

2 Employee Benefits..... 00100 \$ 75,522

12

4 Current Expenses..... 13000 50,000

13

And, That the total appropriation for the fiscal year ending

14

June 30, 2016, to fund 8722, fiscal year 2016, organization 0511,

15

be supplemented and amended by increasing existing items of

16

appropriation as follows:

1

TITLE II – APPROPRIATIONS.

2

Sec. 6. Appropriations of federal funds.

3

DEPARTMENT OF HEALTH

4

AND HUMAN RESOURCES

5

351 – Division of Human Services

6

(WV Code Chapters 9, 48 and 49)

7

Fund 8722 FY 2016 Org 0511

8

Appro-

Federal

9

priation

Funds

10

4 Current Expenses..... 13000 \$ 292,000

11

5 Medical Services..... 18900 290,000,000

32

APPROPRIATIONS

[Ch. 11

4

*336 – State Board of Education –
School Lunch Program*

5

6

(WV Code Chapters 18 and 18A)

7

Fund 8713 FY 2016 Org 0402

8

**Appro-
priation**

**Federal
Funds**

9

10 4 Current Expenses..... 13000 \$ 15,000,000

11 And, That the total appropriation for the fiscal year ending
12 June 30, 2016, to fund 8714, fiscal year 2016, organization 0402,
13 be supplemented and amended by increasing an existing item of
14 appropriation as follows:

1

TITLE II – APPROPRIATIONS.

2

Sec. 6. Appropriations of federal funds.

3

DEPARTMENT OF EDUCATION

4

*337 – State Board of Education –
Vocational Division*

5

6

(WV Code Chapters 18 and 18A)

7

Fund 8714 FY 2016 Org 0402

8

**Appro-
priation**

**Federal
Funds**

9

10 4 Current Expenses..... 13000 \$ 500,000

CHAPTER 12

**(H. B. 4152 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]**

[Passed March 12, 2016; in effect from passage.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Department of Environmental Protection, Division of Environmental Protection – Protect Our Water Fund, fund 3017, fiscal year 2016, organization 0313, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Environmental Protection, Division of Environmental Protection – Protect Our Water Fund, fund 3017, fiscal year 2016, organization 0313, that is available for expenditure during the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 3017, fiscal year 2016, organization 0313, be supplemented and amended by adding a new item of appropriation as follows:

- 1 TITLE II – APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

4 *181 – Division of Environmental Protection –*
 5 *Protect Our Water Fund*

6 (WV Code Chapter 22)

7 Fund 3017 FY 2016 Org 0313

8		Appro-		Other
9		priation		Funds
10	2 Personal Services and Employee			
11	Benefits.	00100	\$	218,562



CHAPTER 13

**(H. B. 4155 - By Mr. Speaker (Mr. Armstead)
 and Delegate Miley)
 [By Request of the Executive]**

[Passed March 12, 2016; in effect from passage.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2016, organization 0506, and the Department of Health and Human Resources, Division of Human Services — Medical Services Trust Fund, fund 5185, fiscal year 2016, organization 0511; and expiring funds to the Department of Health and Human Resources, Division of Human Services — Medical Services Trust Fund, fund 5185, organization 0511, for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first eight months of fiscal year 2016 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 \$176 million for the first eight months of fiscal year 2016, as compared to the monthly revenue estimates for the first eight months of the fiscal year 2016; and

Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax revenue collections, and shortfalls in Personal Income Tax and Consumers Sales and Use Tax revenue collections; 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 estimated at \$354 million; and

Whereas, On October 22, 2015, the Governor issued Executive Order 7-15 which directed a spending reduction for General Revenue appropriations for fiscal year 2016 totaling \$93,379,526; and

Whereas, The Legislature agreed to take voluntary action to effect a four percent spending reduction of its General Revenue appropriation for fiscal year 2016 totaling \$938,067; and

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2016, organization 0506, and in the Department of Health and Human Resources, Division of Human Services — Medical Services Trust Fund, fund 5185, fiscal year 2016, organization 0511, that is available for expenditure during the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; and

Whereas, The Legislature finds it necessary to expire funds to the balance of the Department of Health and Human Resources, Division of Human Services — Medical Services Trust Fund, fund 5185, organization 0511, to be available during the fiscal year ending June 30, 2016; and

Whereas, The Legislature finds that the account balances in the Attorney General – Consumer Protection Recovery Fund, fund 1509, fiscal year 2016, organization 1500; the Secretary of State, Motor Voter Registration Fund, fund 1606, fiscal year 2016, organization 1600; the Department of Administration, Risk and Insurance Management Board — Premium Tax Savings Fund, fund 2367, fiscal year 2016, organization 0218; the Department of Health and Human Resources, Division of Health – Infectious Medical Waste Program Fund, fund 5117, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Human Services – Medicaid Fraud Control Fund, fund 5141, fiscal year 2016, organization 0511; the Department of Health and Human Resources, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Health – Tobacco Control Special Fund, fund 5218, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Health — Department of Health and Human Resources Safety and Treatment Fund, fund 5228, fiscal year 2016, organization 0506; the Department of Health and Human

12 And, That the total appropriation for the fiscal year ending
 13 June 30, 2016, to fund 5185, fiscal year 2016, organization 0511,
 14 be supplemented and amended by increasing an existing item of
 15 appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF HEALTH AND**
 4 **HUMAN RESOURCES**

5 *213 – Division of Human Services –*
 6 *Medical Services Trust Fund*

7 (WV Code Chapter 9)

8 Fund 5185 FY 2016 Org 0511

9 10	Appro- p riation	Other Funds
11 1 Medical Services.	18900	\$ 4,000,000

12 And, That the balance of the funds available for expenditure
 13 in the fiscal year ending June 30, 2016, in the Attorney General
 14 – Consumer Protection Recovery Fund, fund 1509, fiscal year
 15 2016, organization 1500, be decreased by expiring the amount of
 16 \$5,000,000; the Secretary of State, Motor Voter Registration
 17 Fund, fund 1606, fiscal year 2016, organization 1600, be
 18 decreased by expiring the amount of \$500,000; the Department
 19 of Administration, Risk and Insurance Management Board —
 20 Premium Tax Savings Fund, fund 2367, fiscal year 2016,
 21 organization 0218, be decreased by expiring the amount of
 22 \$2,527,991.87; the Department of Health and Human Resources,
 23 Division of Health – Infectious Medical Waste Program Fund,
 24 fund 5117, fiscal year 2016, organization 0506, be decreased by

25 expiring the amount of \$500,000; the Department of Health and
26 Human Resources, Division of Human Services, Medicaid Fraud
27 Control Fund, fund 5141, fiscal year 2016, organization 0511, be
28 decreased by expiring the amount of \$500,000; the Department
29 of Health and Human Resources, Division of Health – Hospital
30 Services Revenue Account Special Fund Capital Improvement,
31 Renovation and Operations, fund 5156, fiscal year 2016,
32 organization 0506, be decreased by expiring the amount of
33 \$4,000,000; the Department of Health and Human Resources,
34 Division of Health – Tobacco Control Special Fund, fund 5218,
35 fiscal year 2016, organization 0506, be decreased by expiring the
36 amount of \$50,000; the Department of Health and Human
37 Resources, Division of Health — Department of Health and
38 Human Resources Safety and Treatment Fund, fund 5228, fiscal
39 year 2016, organization 0506, be decreased by expiring the
40 amount of \$500,000; the Department of Health and Human
41 Resources, West Virginia Health Care Authority — Health Care
42 Cost Review Authority Fund, fund 5375, fiscal year 2016,
43 organization 0507, be decreased by expiring the amount of
44 \$5,000,000; the Department of Health and Human Resources,
45 Division of Human Services – Marriage Education Fund, fund
46 5490, fiscal year 2016, organization 0511, be decreased by
47 expiring the amount of \$50,000; Miscellaneous Boards and
48 Commissions — Public Service Commission – Public Service
49 Commission Fund, fund 8623, fiscal year 2016, organization
50 0926, be decreased by expiring the amount of \$3,000,000 and the
51 West Virginia Economic Development Authority — Economic
52 Development Project Bridge Loan Fund, fund 9066, fiscal year
53 2016, organization 0944, be decreased by expiring the amount of
54 \$1,361,384.62 all to the balance of the Department of Health and
55 Human Resources, Division of Human Services — Medical
56 Services Trust Fund, fund 5185, organization 0511, to be
57 available during the fiscal year ending June 30, 2016.

CHAPTER 14

**(H. B. 4157 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]**

[Passed March 7, 2016; in effect from passage.]
[Approved by the Governor on March 10, 2016.]

AN ACT supplementing, amending, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2016, organization 0803, for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less regular appropriations for the fiscal year 2016; and

Whereas, It appears from the statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations for the fiscal year ending June 30, 2016, to fund 9017, fiscal year 2016, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 2. Appropriations from State Road Fund.**3 **DEPARTMENT OF TRANSPORTATION**4 *116 – Division of Highways –*

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2016 Org 0803

7					
8					State
9					Road
					Fund
10	2	Maintenance.	23700	\$	5,000,000
11	3	Maintenance, Contract			
12	4	Paving and Secondary			
13	5	Road Maintenance.	27200		20,000,000
14	6	Bridge Repair and			
15	7	Replacement.	27300		2,500,000
16	10	General Operations.	27700		5,000,000
17	11	Interstate Construction.	27800		30,000,000
18	12	Other Federal Aid Programs.	27900		30,000,000

4		<i>372 - WorkForce West Virginia –</i>		
5		<i>Workforce Investment Act</i>		
6		Fund <u>8749</u> FY <u>2016</u> Org <u>0323</u>		
7			Appro-	Federal
8			priation	Funds
9	1	Personal Services and		
10	2	Employee Benefits.	00100	\$ 750,000
11	4	Current Expenses.. . . .	13000	\$ 9,250,000



CHAPTER 16

**(H. B. 4159 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]**

 [Passed March 7, 2016; in effect from passage.]
 [Approved by the Governor on March 10, 2016.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Public Service Commission – Motor Carrier Division, fund 8743, fiscal year 2016, organization 0926, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 8743, fiscal year 2016, organization 0926, be supplemented and amended by increasing an existing item and adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **MISCELLANEOUS BOARDS AND COMMISSIONS**

4 *367 - Public Service Commission –*
 5 *Motor Carrier Division*

6 (WV Code Chapter 24A)

7 Fund 8743 FY 2016 Org 0926

8	9		Appro- p-riation		Federal Funds
10	3	Current Expenses.....	13000	\$	475,000
11	4a	Equipment.	07000		1,862,000

CHAPTER 17

**(H. B. 4160 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)**

[Passed March 7, 2016; in effect from passage.]
[Approved by the Governor on March 16, 2016.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Department of Revenue, Tax Division – Wine Tax Administration Fund, fund 7087, fiscal year 2016, organization 0702, and the Department of Revenue, Tax Division – Local Sales Tax and Excise Tax Administration Fund, fund 7099, fiscal year 2016, organization 0702, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Revenue, Tax Division – Wine Tax Administration Fund, fund 7087, fiscal year 2016, organization 0702, and in the Department of Revenue, Tax Division – Local Sales Tax and Excise Tax Administration Fund, fund 7099, fiscal year 2016, organization 0702, that is available for expenditure during the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 7087, fiscal year 2016, organization 0702, be supplemented and amended by increasing an existing item of appropriation as follows:

46

APPROPRIATIONS

[Ch. 17

1

TITLE II – APPROPRIATIONS.

2

Sec. 3. Appropriations from other funds.

3

DEPARTMENT OF REVENUE

4

239 – Tax Division –

5

Wine Tax Administration Fund

6

(WV Code Chapter 60)

7

Fund 7087 FY 2016 Org 0702

8

Appro-

Other

9

priation

Funds

10 1 Personal Services and

11 2 Employee Benefits. 00100 \$ 100,000

12 And, That the total appropriation for the fiscal year ending
13 June 30, 2016, to fund 7099, fiscal year 2016, organization 0702,
14 be supplemented and amended by increasing existing items of
15 appropriation as follows:

1

TITLE II – APPROPRIATIONS.

2

Sec. 3. Appropriations from other funds.

3

DEPARTMENT OF REVENUE

4

241 – Tax Division –

5

Local Sales Tax and Excise Tax

6

Administration Fund

7

(WV Code Chapter 11)

8

Fund 7099 FY 2016 Org 0702

9			Appro-		Other
10			priation		Funds
11	1	Personal Services and			
12	2	Employee Benefits.	00100	\$	600,000
13	4	Current Expenses.	13000		700,000



CHAPTER 18

**(S. B. 341 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed February 24, 2016; in effect from passage.]
[Approved by the Governor on March 1, 2016.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2016, in the amount of \$659,500 from the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the amount of \$26,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2016, organization 0704.

Whereas, The Governor finds that the account balances in the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2016, 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 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash

balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016, and further included recommended expirations to the surplus balance of the State Fund, General Revenue; 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, 2016; 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, 2016, in the Department of Revenue, Insurance Commission – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, be decreased by expiring the amount of \$659,500, and in the Department of Revenue, Insurance Commissioner — Insurance Commission Fund, fund 7152, fiscal year 2016, organization 0704, be decreased by expiring the amount of \$26,000,000, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2016.

CHAPTER 19

**(Com. Sub. for S. B. 342 - By Senators Cole (Mr. President)
and Kessler)**

[By Request of the Executive]

[Passed February 8, 2016; in effect from passage.]

[Approved by the Governor on February 11, 2016.]

AN ACT supplementing and amending by decreasing the appropriations of public moneys out of the Treasury in the State

Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2016, organization 0511, and to the Bureau of Senior Services, fund 0420, fiscal year 2016, organization 0508, by supplementing, amending and decreasing the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first six months of fiscal year 2016 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 \$158 million for the first six months of fiscal year 2016, as compared to the monthly revenue estimates for the first six months of the fiscal year 2016; and

Whereas, Current economic and fiscal trends will result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax, and shortfalls in Personal Income Tax and Consumers Sales and Use Tax; 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 estimated at \$354 million; and

Whereas, On October 22, 2015, the Governor issued Executive Order 7-15 which directed a spending reduction for General Revenue appropriations for fiscal year 2016 totaling \$93,379,526; and

Whereas, The Legislature agreed to take voluntary action to effect a four percent spending reduction of its General Revenue appropriation for fiscal year 2016 totaling \$938,067; and

Whereas, There are available cash balances in the Lottery and Excess Lottery funds that can be utilized in order to decrease the appropriations from the State Fund, General Revenue; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 0403, fiscal year 2016, organization 0511, be supplemented and amended by decreasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 66 – Division of Human Services

4 (WV Code Chapters 9, 48 and 49)

5 Fund 0403 FY 2016 Org 0511

6			General
7			Revenue
8			Fund
9	8	Medical Services.	18900 \$ 44,090,000
10	20	Title XIX Waiver for Seniors. . .	53300 2,215,746

11 And, That the total appropriation for the fiscal year ending
12 June 30, 2016, to fund 0420, fiscal year 2016, organization 0508,

13 be supplemented and amended by decreasing an existing item of
14 appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 90 – Bureau of Senior Services

4 (WV Code Chapter 29)

5 Fund 0420 FY 2016 Org 0508

6	7	8	9	10	11	12	13	14
							Appro-	Revenue
							priation	Fund
9	1	Transfer to Division of Human						
10	2	Services for Health Care						
11	3	and Title XIX Waiver for						
12	4	Senior Citizens.	53900	\$	7,594,254			



CHAPTER 20

(S. B. 357 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed February 8, 2016; in effect from passage.]
[Approved by the Governor on February 11, 2016.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2016, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 13, 2016, which included a Statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less regular appropriations for fiscal year 2016; and

Whereas, It appears from the Governor’s Statement of the Lottery Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 5405, fiscal year 2016, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Sec. 4. Appropriations from Lottery Net Profits.**

3 294 – Bureau of Senior Services –
4 Lottery Senior Citizens Fund

5 (WV Code Chapter 29)

6 Fund 5405 FY 2016 Org 0508

7	8	9	10	11	12	13	14	15
						Appro-		Lottery
						priation		Funds
9	8	Transfer to Division of Human						
10	9	Services for Health Care						
11	10	and Title XIX Waiver for						
12	11	Senior Citizens.	53900	\$	9,810,000			

CHAPTER 21

**(S. B. 360 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed February 8, 2016; in effect from passage.]

[Approved by the Governor on February 11, 2016.]

AN ACT making a supplementary appropriation from the balance of moneys remaining as an unappropriated balance from the State Fund, State Excess Lottery Revenue Fund, to the Department of Health and Human Resources, Division of Human Services, fund 5365, fiscal year 2016, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 13, 2016, which included a Statement of the State Excess Lottery Revenue Fund setting forth therein the unappropriated cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less regular appropriations for fiscal year 2016; 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, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 5365, fiscal year 2016, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

1

TITLE II – APPROPRIATIONS.

2

**Sec. 5. Appropriations from State Excess
Lottery Revenue Fund.**

3

4

315 – Division of Human Services

5

(WV Code Chapters 9, 48 and 49)

6

Fund 5365 FY 2016 Org 0511

7

Excess

8

Appro-

Lottery

9

priation

Funds

10

1 Medical Services. 18900 \$ 10,090,000



CHAPTER 22

**(S. B. 364 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed February 2, 2016; in effect from passage.]

[Approved by the Governor on February 4, 2016.]

AN ACT expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2016, in the amount of \$51,800,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2016, organization 0701, in the amount of \$1,940,500 from the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the amount of \$4,800,000 from the Department of Revenue, Insurance Commissioner, WV

Health Insurance Plan Fund, fund 7161, fiscal year 2016, organization 0704.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first six months of fiscal year 2016 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 \$158 million for the first six months of fiscal year 2016, as compared to the monthly revenue estimates for the first six months of the fiscal year 2016; and

Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax, and shortfalls in Personal Income Tax and Consumers Sales and Use Tax; 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 estimated at \$354 million; and

Whereas, On October 22, 2015, the Governor issued Executive Order 7-15 which directed a spending reduction for General Revenue appropriations for fiscal year 2016 totaling \$93,379,526; and

Whereas, The Legislature agreed to take voluntary action to effect a four percent spending reduction of its General Revenue appropriation for fiscal year 2016 totaling \$938,067; and

Whereas, The Revenue Shortfall Reserve Fund may be drawn on in the event of a revenue shortfall in lieu of imposing additional reductions in appropriations; and

Whereas, The Governor finds that the account balances in the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the Department of Revenue, Insurance Commissioner, WV Health Insurance Plan Fund, fund 7161, fiscal year 2016, organization 0704, exceed that which is necessary for the purposes for which the accounts were established; 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, 2016, in the Department of Revenue, Office of the Secretary - Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2016, organization 0701, be decreased by expiring the amount of \$51,800,000, and in the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704 be decreased by expiring the amount of \$1,940,500, and in the Department of Revenue, Insurance Commissioner, WV Health Insurance Plan Fund , fund 7161, fiscal year 2016, organization 0704, be decreased by expiring the amount of \$4,800,000, all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2016.

CHAPTER 23

**(S. B. 427 - By Senators Cole (Mr. President) And Kessler)
[By Request of the Executive]**

[Passed March 12, 2016; in effect from passage.]

AN ACT supplementing and amending by decreasing an appropriation and making a supplementary appropriation from the balance of moneys remaining as an unappropriated balance from the State Fund, State Excess Lottery Revenue Fund, to the Department of Revenue, Lottery Commission – Distributions to Statutory Funds and Purposes, fund 7213, fiscal year 2016, organization 0705, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 13, 2016, which included a Statement of the State Excess Lottery Revenue Fund setting forth therein the unappropriated cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less regular appropriations for fiscal year 2016; and

Whereas, It appears from the Governor's Statement of the State Excess Lottery Revenue Fund, and this legislation, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 7213, fiscal year 2016, organization 0705, be supplemented and amended by decreasing an existing item of appropriation as follows:

58

APPROPRIATIONS

[Ch. 23

1

TITLE II – APPROPRIATIONS.

2

**Sec. 5. Appropriations from state
excess lottery revenue fund.**

3

4

*309 – Lottery Commission –
Distributions to Statutory Funds and Purposes*

5

6

Fund 7213 FY 2016 Org 0705

7

Excess

8

Appro-

Lottery

9

priation

Funds

10 27 Historic Resort Hotel Fund. 70013 \$ 20,289

11 And, That the total appropriation for the fiscal year ending
12 June 30, 2016, to fund 7213, fiscal year 2016, organization 0705,
13 be supplemented and amended by increasing an existing item of
14 appropriation as follows:

1

TITLE II – APPROPRIATIONS.

2

**Sec. 5. Appropriations from state excess
lottery revenue fund.**

3

4

*309 – Lottery Commission –
Distributions to Statutory Funds and Purposes*

5

6

Fund 7213 FY 2016 Org 0705

7

Excess

8

Appro-

Lottery

9

priation

Funds

10 22 General Revenue Fund –
11 23 Transfer. 70011 \$ 20,289

CHAPTER 24

**(S. B. 449 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed February 24, 2016; in effect from passage.]

[Approved by the Governor on March 1, 2016.]

AN ACT 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 2016, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016 and further included recommended expirations to the surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and the passage of Senate Bill 341 during the 2016 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 0226, fiscal year 2016, organization 0221, be

supplemented and amended by increasing an existing item of appropriation as follows:

1	TITLE II – APPROPRIATIONS.		
2	Section 1. Appropriations from General Revenue.		
3	DEPARTMENT OF ADMINISTRATION		
4	<i>27 – Public Defender Services</i>		
5	(WV Code Chapter 29)		
6	Fund <u>0226</u> FY <u>2016</u> Org <u>0221</u>		
7			General
8		Appro-	Revenue
9		priation	Fund
10	6	Appointed Counsel Fees –	
11		Surplus.....	43500 \$ 15,300,000



CHAPTER 25

**(S. B. 450 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed February 24, 2016; in effect from passage.]
[Approved by the Governor on March 1, 2016.]

AN ACT 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 Health and Human Resources, Division of Health, fund 0407, fiscal year 2016, organization 0506,

62

APPROPRIATIONS

[Ch. 25

7

(WV Code Chapter 16)

8

Fund 0407 FY 2016 Org 0506

9			General
10			Revenue
11			Fund
	Appropriation		
12	11 Early Intervention – Surplus. . . .	22399	\$ 3,200,000

13 And, that the total appropriation for the fiscal year ending
 14 June 30, 2016, to fund 0403, fiscal year 2016, organization 0511,
 15 be supplemented and amended by increasing an existing item of
 16 appropriation as follows:

1

TITLE II – APPROPRIATIONS.

2

Section 1. Appropriations from General Revenue.

3

**DEPARTMENT OF HEALTH AND HUMAN
RESOURCES**

4

5

66 – Division of Human Services

6

(WV Code Chapter 9, 48 and 49)

7

Fund 0403 FY 2016 Org 0511

8			General
9			Revenue
10			Fund
	Appropriation		
11	3 Unclassified - Surplus.	09700	\$ 1,192,000

CHAPTER 26

**(S. B. 451 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed February 24, 2016; in effect from passage.]
[Approved by the Governor on March 1, 2016.]

AN ACT 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 Military Affairs and Public Safety, West Virginia Parole Board, fund 0440, fiscal year 2016, organization 0605, and to the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2016, organization 0621, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016, and further included recommended expirations to the surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and the passage of Senate Bill 341 during the 2016 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2016; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2016, to fund 0440, fiscal year 2016, organization 0605, be supplemented and amended by adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from General Revenue.**

3 **DEPARTMENT OF MILITARY AFFAIRS**
4 **AND PUBLIC SAFETY**

5 *70 – West Virginia Parole Board*

6 (WV Code Chapter 62)

7 Fund 0440 FY 2016 Org 0605

8				General
9				Revenue
10				Fund
11	5a	Operating Expenses – Surplus...	77900	\$ 50,000

12 And, That the total appropriation for the fiscal year ending
13 June 30, 2016, to fund 0570, fiscal year 2016, organization 0621,
14 be supplemented and amended by adding a new item of
15 appropriation and increasing existing items of appropriation as
16 follows:

1 TITLE II – APPROPRIATIONS.

2 **Section 1. Appropriations from General Revenue.**

3 **DEPARTMENT OF MILITARY AFFAIRS**
4 **AND PUBLIC SAFETY**

5	<i>77 – Division of Juvenile Services</i>		
6	(WV Code Chapter 49)		
7	Fund <u>0570</u> FY <u>2016</u> Org <u>0621</u>		
8			General
9		Appro-	Revenue
10		priation	Fund
11	1	Statewide Reporting Centers –	
12		Surplus.....	26299 \$ 867,500
13	2a	Resident Medical Expenses –	
14		Surplus.....	53599 5,000,000
15	12	Northern Regional	
16	13	Juvenile Center – Surplus. . . .	98299 1,300,000



CHAPTER 27

**(Com. Sub. for H. B. 4007 - By Delegates Cowles,
Rohrbach, Weld, Espinosa, Cooper, Butler, Waxman,
Moffatt, Arvon, Hill and Anderson)**

[Amended and again passed March 3, 2016;
as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2016.]

AN ACT to amend and reenact §5-3-3 and §5-3-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-3-3a, all relating generally to appointment of attorneys to assist the Attorney General; authorizing the Attorney General to appoint special assistant attorneys general; establishing when special assistant attorneys general can be appointed; establishing competitive bidding process for the use of private attorneys on a contingency fee basis by the

Attorney General; requiring written determinations for the Attorney General's selection of private attorneys to represent the state on a contingency fee basis; setting fees for contingency fee legal arrangements or contracts between private attorneys and the Attorney General; requiring appointed private attorneys to accept an award of attorney fees in accordance with, and no greater than, the established fee limitations; establishing supervision requirements for private lawyers representing the state on a contingency fee basis; requiring the posting of certain documents relating to the Attorney General's retention of private attorneys to represent the state on a contingency fee basis; providing for the designation as a special assistant attorney general upon appointment; requiring Attorney General reports on certain legal causes and matters to the Governor, President of the Senate and Speaker of the House; outlining contents of those reports; updating and removing outdated provisions; defining terms; clarifying that the appointment of a special assistant attorney general shall not be construed to alter, inhibit or expand the attorney-client relationship between the Attorney General and the state in the control or conduct of a cause of action; and providing that these new provisions are inapplicable to and shall not impair any contingency fee legal arrangement or contract awarded prior to the effective date.

Be it enacted by the Legislature of West Virginia:

That §5-3-3 and §5-3-4 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 §5-3-3a, all to read as follows:

ARTICLE 3. ATTORNEY GENERAL.

§5-3-3. Assistants to Attorney General.

- 1 (a) The Attorney General may appoint such deputy or
- 2 assistant attorneys general as may be necessary to properly
- 3 perform the duties of his or her office. The total compensation of

4 all such deputies or assistants shall be within the limits of the
5 amounts appropriated by the Legislature for personal services.
6 All deputy or assistant attorneys general so appointed shall serve
7 at the will and pleasure of the Attorney General and shall
8 perform such duties as the Attorney General may require of
9 them.

10 (b) The Attorney General may appoint such special assistant
11 attorneys general as may be necessary to properly perform the
12 duties of his or her office: *Provided*, That if the appointment
13 relates to a contingency fee legal arrangement or contract as
14 defined in W. Va. Code §5-3-3a(a)(1), then the appointment
15 must be in accordance with the procedures and compensation set
16 forth in W.Va. Code §5-3-3a. All special assistant attorneys
17 general appointed shall serve at the will and pleasure of the
18 Attorney General and shall perform such duties as the Attorney
19 General may require of them: *Provided, however*, That the
20 appointment of a special assistant Attorney General under this
21 section shall not be construed to alter, inhibit or expand the
22 attorney-client relationship set forth in this article between the
23 Attorney General and the state in the control or conduct of a
24 cause of action.

25 (c) All laws or parts of laws inconsistent with the provisions
26 hereof are hereby amended to be in harmony with the provisions
27 of this section.

**§5-3-3a. Competitive bidding required for private attorneys,
special assistant attorneys general.**

1 (a) The following terms, wherever used or referred to in this
2 section, have the following meanings:

3 (1) “Contingency fee legal arrangement or contract” means
4 any legal fee arrangement that provides for a private attorney or
5 special assistant Attorney General to be paid a percentage of any

6 recovery associated with any claims brought by the private
7 attorney or special assistant Attorney General on behalf of the
8 state or to be paid through a court-approved award of attorney's
9 fees.

10 (2) "Deputy or assistant Attorney General" means an
11 attorney employed by the state as a staff attorney in the Attorney
12 General's office.

13 (3) "Private attorney" means any attorney who is neither an
14 assistant Attorney General on the Attorney General's staff nor an
15 employee of another state agency.

16 (4) "Special assistant Attorney General" means an attorney
17 that has been retained or appointed by the Attorney General to
18 assist in the legal representation of the state.

19 (5) "State" means the State of West Virginia, including state
20 officers, departments, boards, commissions, divisions, bureaus,
21 councils and units of organization, however designated, of the
22 executive branch of state government and any of its agents.

23 (b) The state may not enter into any contingency fee legal
24 arrangement or contract with a private attorney unless the
25 Attorney General, or his or her designee, makes a written
26 determination prior to entering into such a contract that the legal
27 representation is both cost-effective and in the best interest of the
28 public. Any written determination shall include specific findings
29 for each of the following factors:

30 (1) Whether sufficient and appropriate legal and financial
31 resources exist within the Attorney General's office to handle the
32 matter;

33 (2) The time and labor required; the novelty, complexity and
34 difficulty of the questions involved; and the skill requisite to
35 perform the attorney services properly;

36 (3) The geographic area where the attorney services are to be
37 provided, as well as any potential costs associated with
38 providing legal services in that geographic area; and

39 (4) The amount of experience desired for the particular kind
40 of legal services to be provided and the need for a private
41 attorney's experience with similar issues or cases.

42 (c) If the Attorney General, or his or her designee, makes
43 the written determination described in subsection (b) of this
44 section, the Attorney General shall request proposals from
45 private attorneys to represent the state accordingly on the basis
46 of a fee arrangement as set forth in subsection (h) of this section,
47 unless the Attorney General, or his or her designee, makes a
48 written determination that one of the following factors applies:

49 (1) An emergency situation exists that requires time-
50 sensitive legal services that cannot be adequately provided by the
51 Office of Attorney General and for which insufficient time exists
52 to complete the customary competitive bidding process;

53 (2) An appointment, or the continuation of an appointment,
54 is necessary to avoid disruption in pending legal matters by
55 allowing previously appointed outside counsel to continue
56 providing legal representation; or

57 (3) The legal services are to be provided on a pro bono basis
58 and, therefore, will not benefit from a competitive bidding
59 process.

60 (d) Any requests for proposal shall be posted to the website
61 of the Office of the Attorney General. The time period under
62 which the proposal is open should be clearly stated.

63 (e) When soliciting proposals from private attorneys to
64 represent the state on the basis of a fee arrangement as set forth
65 in subsection (h) of this section, the Attorney General, or his or

66 her designee, shall consider the following factors when
67 determining the most competitive proposal for legal services and
68 make a written determination as to the application of these
69 factors, prior to entering into any contract for outside legal
70 services:

71 (1) Whether the private attorneys possess the requisite skills
72 and expertise needed to handle the legal matters in question;

73 (2) Whether the private attorneys possess requisite staffing
74 and support to handle the scope of the litigation or matter;

75 (3) Whether the private attorneys or any members of the
76 private attorneys' law firm have been subject to discipline by the
77 West Virginia State Bar, or other entities, for unethical conduct;

78 (4) Whether the private attorneys have been peer rated and,
79 if so, what peer ratings they have received, along with any other
80 recognitions or awards for legal services;

81 (5) The estimated fees, costs and expenses of the private
82 attorneys to perform the legal services requested;

83 (6) The willingness of the private attorneys to enter into
84 alternative billing arrangements;

85 (7) Whether the private attorneys are in compliance with all
86 applicable laws of the State of West Virginia;

87 (8) Any potential disqualifying conflicts of interest between
88 the private attorneys and the state;

89 (9) Any relevant input from the state entity client, if
90 applicable, regarding the needed legal services; and

91 (10) Any such other relevant factors as may be identified by
92 the Attorney General or his or her designee.

93 (f) If, after soliciting proposals for legal services, the
94 Attorney General, or his or her designee, determines that the
95 proposals received are insufficient based on an application of the
96 factors set forth in subsection (e) of this section, additional
97 proposals may be solicited pursuant to subsections (b), (c) and
98 (e) of this section.

99 (g) The state shall not enter into a contingency fee legal
100 arrangement or contract as defined herein for private attorney
101 services unless the following requirements are met throughout
102 the contract period and any extensions thereof:

103 (1) The Attorney General, or the deputy or assistant Attorney
104 General involved in the case, shall retain management and
105 supervisory authority over the private attorney;

106 (2) The Attorney General, or the deputy or assistant Attorney
107 General with supervisory authority, is personally involved in
108 overseeing the litigation;

109 (3) Decisions regarding settlement of the case are reserved
110 exclusively to the discretion of the state or other client entity. An
111 appropriate representative of the Attorney General's office shall
112 attend settlement conferences whenever possible.

113 (h) The state may not enter into any fee arrangement that
114 provides for the private attorney to receive an aggregate fee in
115 excess of:

116 (1) Twenty-five percent of the first \$10 million recovered;
117 plus

118 (2) Twenty percent of any portion of the recovery between
119 \$10 million and \$15 million; plus

120 (3) Fifteen percent of any portion of the recovery between
121 \$15 million and \$20 million; plus

122 (4) Ten percent of any portion of the recovery between \$20
123 million and \$25 million; plus

124 (5) Five percent of any portion of the recovery exceeding
125 \$25 million.

126 In no event shall the aggregate fee for any legal matter
127 exceed \$50 million for any matters arising from a single event or
128 occurrence, exclusive of reasonable costs and expenses, and
129 irrespective of the number of lawsuits filed or the number of
130 private attorneys retained to achieve the recovery. Any legal fees
131 shall not be based on penalties or fines awarded or any amounts
132 attributable to penalties or fines.

133 To the extent that any private attorneys are to be paid
134 through a court-approved award of attorney's fees, their
135 appointment to represent the state is contingent upon the
136 acceptance of the fee limitations set forth herein. To the extent
137 that any award of attorney fees is subject to judicial discretion,
138 the private attorneys appointed pursuant to this section may not
139 accept an award of attorney fees greater than the fee limitations
140 outlined in this subsection.

141 (i) The Attorney General shall develop a standard addendum
142 to every contract for private attorney services that shall be used
143 in all cases, describing in detail what is expected of both the
144 contracted private attorney and the Attorney General's office,
145 including, without limitation, the requirements listed in
146 subsection (h) of this section.

147 (j) Subject to the provisions of subsection (l) of this section,
148 the Attorney General's written determination to enter into any
149 legal arrangement or contract with a private attorney shall be
150 posted on the Attorney General's website for public inspection
151 within ten business days after the selection of a private attorney
152 and shall remain posted on the website for the duration of the

153 contract for legal services, including any extensions or
154 amendments thereto. Any and all written determinations made
155 pursuant to subsection (b) or (c) of this section shall also be
156 posted on the Attorney General's website for public inspection
157 within ten business days after the issuance of the written
158 determination. Any payment of fees as set forth in subsection (h)
159 of this section shall be posted on the Attorney General's website
160 within thirty calendar days after the payment of such fees to the
161 private attorney and shall remain posted on the website for at
162 least three hundred sixty-five calendar days thereafter.

163 (k) Any private attorney under contract to provide services
164 to the state shall, from the inception of the contract until at least
165 four years after the contract expires or is terminated, maintain
166 detailed current records, including documentation of all
167 expenses, disbursements, charges, credits, underlying receipts
168 and invoices, and other financial transactions that concern the
169 provision of such legal services. In conjunction with the
170 Attorney General's office, the private attorney shall make all
171 such records that are not covered by the attorney-client privilege
172 or otherwise confidential in nature available for inspection and
173 copying upon request in accordance with the West Virginia
174 Freedom of Information Act, sections one through seven,
175 inclusive, article one, chapter twenty-nine-b of this code. In
176 addition, the private attorney shall maintain detailed
177 contemporaneous time records for the attorneys, other
178 professionals and paraprofessionals working on the matter for a
179 period of at least four years and shall promptly provide these
180 records to the Attorney General upon request.

181 (l) The Attorney General retains the right to temporarily
182 waive the disclosure requirements set forth in subsection (j) of
183 this section upon making a written determination that:

184 (1) A waiver is necessary to protect attorney-client or
185 privileged information; or

186 (2) Immediate disclosure of the existence of an arrangement
187 or contract with a private attorney, or any other sensitive
188 information, could compromise the initiation, handling or
189 conclusion of any investigation or case matter handled by the
190 office of Attorney General.

191 Once any risks to the attorney-client privilege or confidential
192 work product are no longer present, the office of Attorney
193 General shall make any and all suspended disclosures as soon as
194 possible and all subsequent disclosures in accordance with the
195 time frame and manner set forth by subsection (j) of this section.

196 (m) Once a private attorney is appointed pursuant to this
197 section, he or she may thereafter be designated as a special
198 assistant Attorney General, and, upon such appointment, shall
199 provide representation subject to the terms contained in
200 subsection (g) of this section.

201 (n) If the Attorney General's office chooses to not be
202 involved in a legal matter as a result of a conflict of interest, and
203 thus cannot implement in good faith the provisions of this
204 section as a result of the conflict, then the process set forth
205 herein shall be implemented by the client state entity needing
206 representation, with the assistance of the Department of
207 Administration if necessary.

208 (o) Nothing in this section expands the authority of any state
209 agency or state agent to enter into contracts nor shall it be
210 deemed to change any existing law that authorizes a state agency
211 or state agent to employ its own counsel or enter into contracts
212 for legal services.

213 (p) The requirements and procedures established in this
214 section are inapplicable to and shall not impair any contingency
215 fee legal arrangement or contract awarded prior to the effective
216 date of this section.

217 (q) The appointment of a special assistant Attorney General
218 under this section shall not be construed to alter, inhibit or
219 expand the attorney-client relationship set forth in this article
220 between the Attorney General and the state in the control or
221 conduct of a cause of action.

**§5-3-4. Annual report to Governor, President of the Senate and
Speaker of the House.**

1 (a) The Attorney General shall annually, on or before
2 November 1, deliver to the Governor, President of the Senate
3 and Speaker of the House a report detailing:

4 (1) The state and condition of the several causes, in which
5 the state is a party, pending in courts mentioned in section two
6 of this article.

7 (2) The use of any fee arrangements as provided in
8 subsection (h), section three-a of this article with private
9 attorneys in the preceding year. At a minimum, the report shall:

10 (A) Identify all new fee arrangements entered into during the
11 year and all previously executed fee arrangements that remain
12 current during any part of the year and for each contract
13 describe:

14 (i) The name of the private attorney with whom the state has
15 contracted, including the name of the attorney's law firm;

16 (ii) The nature and status of the legal matter;

17 (iii) The name of the parties to the legal matter;

18 (iv) The amount of the recovery; and

19 (v) The amount of any legal fees paid.

20 (B) Include copies of any written determinations made
21 pursuant to section three-a of this article during the year.

22 (b) The Attorney General's annual report shall be posted on
23 the Attorney General's website within thirty days of submitting
24 the report to the Governor, President of the Senate and Speaker
25 of the House and shall remain posted on the website for at least
26 two years thereafter.

27 (c) Nothing in this section shall be considered to require the
28 Attorney General to report or disclose any information protected
29 by the attorney-client or other privilege.



CHAPTER 28

**(Com. Sub. for H. B. 4245 - By Delegates Walters,
Frich, Westfall, McCuskey, Manchin,
Skinner, Rowe, Flanigan, Waxman, Perry
and B. White)**

[Passed February 19, 2016; in effect ninety days from passage.]

[Approved by the Governor on February 25, 2016.]

AN ACT to amend and reenact §31A-4-20 of the Code of West Virginia, 1931, as amended, relating to requirements for the review of the financial condition of state chartered banks; requiring the cashier or executive officer of a state banking institution to provide shareholders with the institution's most recent fiscal year audited financial statement; authorizing alternative delivery to shareholders and consolidated or combined statements; requiring that the board of directors of a bank, or its controlling bank holding company, appoint an outside independent auditing firm; eliminating the requirement that a bank transmit a copy of an audit report of its financial condition to the division of financial institutions; eliminating the approval required for a shareholder committee to utilize or employ registered or certified public

accountants; and eliminating the division examiner's ability to require the presence of the examining committee or executive committee during an examination.

Be it enacted by the Legislature of West Virginia:

That §31A-4-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

**§31A-4-20. Stockholders' annual meeting; financial statement;
appointment, duties and report of outside auditing
firm.**

1 (a) The stockholders of each state banking institution shall
2 meet annually. At the annual meeting it is the duty of the cashier
3 or other executive officer of the banking institution to prepare
4 and submit to the stockholders a copy of the institution's most
5 recent fiscal year audited financial statements. This requirement
6 is satisfied if the banking institution mails or otherwise delivers
7 to its shareholders annual audited financial statements, which
8 may be consolidated or combined statements of the banking
9 institution, its holding company and any subsidiaries, that
10 include a balance sheet as of the end of the fiscal year, an
11 income statement for that year and a statement of changes in
12 shareholders' equity for the year, within one hundred twenty
13 days of the close of the fiscal year.

14 (b) The board of directors of the banking institution or, if
15 such banking institution is controlled by a bank holding
16 company, the bank holding company shall appoint an outside
17 auditing firm on an annual basis to serve as the banking
18 institution's auditor for the year.

19 (c) At such time or times as it may be directed to do so by
20 the written request of the board of directors or the Commissioner

21 of Financial Institutions, such outside independent auditing firm
22 shall immediately proceed to examine the condition of the bank
23 and, upon completion of such examination, shall file its report in
24 writing with the board of directors. Such report shall set forth in
25 detail all items included in the assets of the bank which the firm
26 has reason to believe are not of the value at which they appear on
27 the books and records of the bank, and shall give the value of
28 each of such items according to its judgment. The board of
29 directors shall cause such report to be retained as a part of the
30 records of the bank.

31 (d) The workpapers of any audit, including any materials
32 associated with an audit of the bank’s electronic data procedures,
33 shall be made available to the commissioner or to the examiners
34 of the Division of Financial Institutions upon request, and will
35 be accorded confidentiality in conformity with section four,
36 article two of this chapter.

CHAPTER 29

(S. B. 613 - By Senators Gaunch, Ashley and Plymale)

[Passed March 10, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to defining “unimpaired capital” and “unimpaired surplus” for purposes of calculating the lending limit of a state-chartered bank.

Be it enacted by the Legislature of West Virginia:

That §31A-4-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

**§31A-4-26. Limitation on loans and extensions of credit; limitation
on investments; loans to executive officers and
directors of banks and employees of the banking
department; exceptions; valuation of securities.**

1 (a) (1) The total loans and extensions of credit made by a
2 state-chartered banking institution to any one person or common
3 enterprise and not fully secured, as determined in a manner
4 consistent with subdivision (2) of this subsection, may not
5 exceed fifteen percent of the unimpaired capital and unimpaired
6 surplus of that state-chartered banking institution initially
7 determined for the period such loan or extension of credit is
8 made.

9 (2) Where the total loans and extensions of credit by a state-
10 chartered banking institution to any one person or common
11 enterprise are fully secured by readily marketable collateral
12 having a market value, as determined by reliable and
13 continuously available price quotations, at least equal to the
14 outstanding amount of such loans and extensions, then the bank
15 may provide such loans or extensions of up to ten percent of the
16 unimpaired capital and unimpaired surplus of that state-chartered
17 banking institution initially determined for the period such loan
18 or extension is made. This limitation shall be separate from and
19 in addition to the limitation contained in subdivision (1) of this
20 subsection.

21 (3) For the purposes of this subsection:

22 (A) The term “loans and extensions of credit” includes all
23 direct or indirect advances of funds to a person made on the
24 basis of any obligation of that person to repay the funds or
25 repayable from specific property pledged by or on behalf of the
26 person and to the extent specified by the Commissioner of

27 Financial Institutions; the terms also include any liability of a
28 state-chartered banking institution to advance funds to or on
29 behalf of a person pursuant to a contractual commitment;

30 (B) The term “person” includes an individual, partnership,
31 sole proprietorship, society, association, firm, institution,
32 company, public or private corporation, not-for-profit
33 corporation, state, governmental agency, bureau, department,
34 division or instrumentality, political subdivision, county
35 commission, municipality, trust, syndicate, estate or any other
36 legal entity whatsoever, formed, created or existing under the
37 laws of this state or any other jurisdiction;

38 (C) The term “unimpaired capital and unimpaired surplus”
39 means the amount of tier 1 (core) capital, as defined in federal
40 regulations, that is outstanding as indicated in the bank’s most
41 recent quarterly report of condition and income as filed with the
42 Commissioner of Financial Institutions pursuant to section
43 nineteen of this article, plus the amount of the allowance for loan
44 losses; and

45 (D) The term “common enterprise” includes, but is not
46 limited to, persons and entities who are so related by business or
47 otherwise that the expected source of repayment on the loan or
48 extension of credit is substantially the same for each person or
49 entity.

50 (4) The limitations contained in this subsection are subject
51 to the following exceptions:

52 (A) Loans or extensions of credit arising from the discount
53 of commercial or business paper evidencing an obligation to the
54 person negotiating it with recourse are not subject to any
55 limitation based on capital and surplus;

56 (B) The purchase of bankers’ acceptances of the kind
57 described in Section 13 of the Federal Reserve Act and issued by

58 other banks are not subject to any limitation based on capital and
59 surplus;

60 (C) Loans and extensions of credit having a term of ten
61 months or less and secured by bills of lading, warehouse receipts
62 or similar documents transferring or securing title to readily
63 marketable staples are subject to a limitation of twenty percent
64 of unimpaired capital and unimpaired surplus in addition to the
65 general limitations set forth in subdivision (1) of this subsection,
66 provided the market value of the staples securing each additional
67 loan or extension of credit at all times equals or exceeds one
68 hundred fifteen percent of the outstanding amount of such loan
69 or extension of credit. The staples shall be fully covered by
70 insurance whenever it is customary to insure the staples. If
71 collateral values of the staples fall below the levels required
72 herein, to the extent that the loan is no longer in conformance
73 with its collateral requirements and exceeds the general fifteen
74 percent limitation, the loan must be brought into conformance
75 within five business days, except where judicial proceedings,
76 regulatory actions or other extraordinary occurrences prevent the
77 bank from taking action;

78 (D) Loans or extensions of credit secured by bonds, notes,
79 certificates of indebtedness or treasury bills of the United States
80 or by other such obligations fully guaranteed as to principal and
81 interest by the United States or by bonds, notes, certificates of
82 indebtedness which are general obligations of the State of West
83 Virginia or by other such obligations fully guaranteed as to
84 principal and interest by the State of West Virginia are not
85 subject to any limitation based on capital and surplus;

86 (E) Loans or extensions of credit to or secured by
87 unconditional takeout commitments or guarantees of any
88 department, agency, bureau, board, commission or establishment
89 of the United States or of the State of West Virginia or any
90 corporation wholly owned directly or indirectly by the United

91 States are not subject to any limitation based on capital and
92 surplus;

93 (F) Loans or extensions of credit secured by a segregated
94 deposit account in the lending bank are not subject to any
95 limitation based on capital and surplus;

96 (G) Loans or extensions of credit to any banking institution
97 or to any receiver, conservator or other agent in charge of the
98 business and property of such banking institution or other
99 federally insured depository institution, when the loans or
100 extensions of credit are approved by the Commissioner of
101 Financial Institutions, are not subject to any limitation based on
102 capital and surplus;

103 (H) (i) Loans and extensions of credit arising from the
104 discount of negotiable or nonnegotiable installment consumer
105 paper which carries a full recourse endorsement or unconditional
106 guarantee by the person or common enterprise transferring the
107 paper are subject under this section to a maximum limitation
108 equal to twenty-five percent of such unimpaired capital and
109 unimpaired surplus, notwithstanding the collateral requirements
110 set forth in subdivision (2) of this subsection;

111 (ii) If the bank's files or the knowledge of its officers of the
112 financial condition of each maker of consumer paper is
113 reasonably adequate and an officer of the bank designated for
114 that purpose by the board of directors of the bank certifies in
115 writing that the bank is relying primarily upon the responsibility
116 of each maker for payment of such loans or extensions of credit
117 and not upon any full or partial recourse endorsement or
118 guarantee by the transferor, the limitations of this section as to
119 the loans or extensions of credit of each such maker are the sole
120 applicable loan limitations;

121 (I) (i) Loans and extensions of credit secured by shipping
122 documents or instruments transferring or securing title covering

123 livestock or giving a lien on livestock when the market value of
124 the livestock securing the obligation is not at any time less than
125 one hundred fifteen percent of the face amount of the note
126 covered shall be subject under this section to a maximum
127 limitation equal to twenty-five percent of the unimpaired capital
128 and unimpaired surplus, notwithstanding the collateral
129 requirements set forth in subdivision (2) of this subsection;

130 (ii) Loans and extensions of credit which arise from the
131 discount by dealers in livestock of paper given in payment for
132 livestock, which paper carries a full recourse endorsement or
133 unconditional guarantee of the seller and which are secured by
134 the livestock being sold, are subject under this section to a
135 limitation of twenty-five percent of the unimpaired capital and
136 unimpaired surplus, notwithstanding the collateral requirements
137 set forth in subdivision (2) of this subsection;

138 (iii) If collateral values of the livestock documents,
139 instruments or discount paper fall below the levels required
140 herein, to the extent that the loan is no longer in conformance
141 with its collateral requirements and exceeds the general fifteen
142 percent limitation, the loan must be brought into conformance
143 within thirty business days, except where judicial proceedings,
144 regulatory actions or other extraordinary occurrences prevent the
145 bank from taking action;

146 (J) Loans or extensions of credit to the Student Loan
147 Marketing Association are not subject to any limitation based on
148 capital and surplus; and

149 (K) Loans or extensions of credit to a corporation owning
150 the property in which that state-chartered banking institution is
151 located, when that state-chartered banking institution has an
152 unimpaired capital and surplus of not less than \$1 million or
153 when approved in writing by the Commissioner of Financial
154 Institutions, are not subject to any limitation based on capital and
155 surplus.

156 (5) (A) The Commissioner of Financial Institutions may
157 prescribe rules to administer and carry out the purposes of this
158 subsection including rules to define or further define terms used
159 in this subsection and to establish limits or requirements other
160 than those specified in this subsection for particular classes or
161 categories of loans or extensions of credit;

162 (B) The Commissioner of Financial Institutions may also
163 prescribe rules to deal with loans or extensions of credit, which
164 were not in violation of this section prior to the effective date of
165 this article, but which will be in violation of this section upon the
166 effective date of this article; and

167 (C) The Commissioner of Financial Institutions may also
168 determine when a loan putatively made to a person is, for
169 purposes of this subsection, attributed to another person.

170 (b) (1) Except as hereinafter provided or otherwise permitted
171 by law, nothing herein contained authorizes the purchase by a
172 state-chartered banking institution for its own account of any
173 shares of stock of any corporation: *Provided*, That a state-
174 chartered banking institution may purchase and sell securities
175 and stock without recourse, solely upon the order and for the
176 account of customers.

177 (2) The total amount of investment securities of any one
178 obligor or maker held by a state-chartered banking institution for
179 its own account may not exceed that percentage of the
180 unimpaired capital and unimpaired surplus of that state-chartered
181 banking institution as is permitted for investment by national
182 banks or for any federally insured depository institution.

183 (3) For purposes of this subsection:

184 (A) The term “investment securities” means a marketable
185 obligation in the form of a stock, bond, note or debenture
186 commonly regarded as an investment security and that is salable

187 under ordinary circumstances with reasonable promptness at a
188 fair value. “Derivative security” means a type of investment
189 security involving a financial contract whose value depends on
190 the values of one or more underlying assets or indexes of asset
191 values. The term “derivative” refers inter alia to financial
192 contracts such as collateralized mortgage obligations, forwards,
193 futures, forward rate agreements, swaps, options and
194 caps/floors/collars whose primary purpose is to transfer price
195 risks associated with fluctuations in asset values;

196 (B) The term “person” includes any individual, partnership,
197 sole proprietorship, society, association, firm, institution,
198 company, public or private corporation, not-for-profit
199 corporation, state, governmental agency, bureau, department,
200 division or instrumentality, political subdivision, county
201 commission, municipality, trust, syndicate, estate or any other
202 legal entity whatsoever, formed, created or existing under the
203 laws of this state or any other jurisdiction; and

204 (C) The term “unimpaired capital and unimpaired surplus”
205 has the same meaning as set forth in subsection (a) of this
206 section.

207 (4) Notwithstanding any other provision of this subsection,
208 a state-chartered banking institution may invest its funds in any
209 investment authorized for national banking associations or for
210 any other federally insured depository institution. The
211 investments by state-chartered banking institutions shall be on
212 the same terms and conditions applicable to national banking
213 associations or any other federally insured depository institution:
214 *Provided, That:* (i) The purchase of investment securities under
215 this subdivision may be made only when in the bank’s prudent
216 judgment, which judgment may be based in part on estimates
217 which it believes to be reliable, there is adequate evidence that
218 the obligor will be able to perform all it undertakes to perform
219 in connection with the securities, including all debt service

220 requirements, and that the securities may be sold with reasonable
221 promptness at a price that corresponds to their fair value; and (ii)
222 the purchase conforms to the requirement of subdivision (5) of
223 this subsection. The Commissioner of Financial Institutions may,
224 from time to time, provide notice to state-chartered banking
225 institutions of authorized investments under this paragraph.

226 (5) The purchase of investment securities, including
227 derivative securities, in which the investment characteristics are
228 considered distinctly or predominantly speculative, or the
229 purchase of such securities that are in default, whether as to
230 principal or interest, is prohibited. The proper management of
231 interest rate risk through the use of derivative or other
232 investment securities may not be held a speculative purpose.

233 (6) The Commissioner of Financial Institutions may
234 prescribe rules to administer and carry out the purposes of this
235 subsection, including rules to define or further define terms used
236 in this subsection and to establish limits or requirements other
237 than those specified in this subsection for particular classes or
238 categories of investment securities.

239 (c) If there is a material decline of unimpaired capital and
240 unimpaired surplus of a state-chartered bank during any
241 quarterly reporting period of more than twenty percent from that
242 amount reported in the bank's most recent report of income and
243 condition, or where there is a decrease of more than thirty
244 percent in any twelve-month period, the bank shall review its
245 outstanding loans, extensions of credit and investments and
246 report to the Commissioner of Financial Institutions those loans,
247 extensions and investments that exceed the limitations of this
248 section using the bank's current reevaluated unimpaired capital
249 and unimpaired surplus. The report shall detail the bank's
250 position in each such loan, extension of credit and investment.
251 The commissioner may, within his or her discretion, require that
252 such loans, extensions of credit and investments be brought into

253 conformity with the bank's current reevaluated legal lending and
254 investment limitation.

255 (d) Notwithstanding any other provision of this section, in
256 order to ensure a bank's safety and soundness, the Commissioner
257 of Financial Institutions retains the authority to direct any state-
258 chartered bank to recalculate its lending and investment limits at
259 more frequent intervals than otherwise provided herein and to
260 require all outstanding loans, extensions of credit and
261 investments be brought into conformance with the reevaluated
262 limitations. In such cases, the commissioner will provide the
263 bank a written notice explaining briefly the specific reasons why
264 the determination was made to require the more frequent
265 calculations.

266 (e) Loans to directors or executive officers are subject to the
267 following limitations:

268 (1) A director or executive officer of any banking institution
269 may not borrow, directly or indirectly, from a banking institution
270 with which he or she is connected any sum of money without the
271 prior approval of a majority of the board of directors or discount
272 committee of the banking institution, or of any duly constituted
273 committee whose duties include those usually performed by a
274 discount committee. The approval shall be by resolution adopted
275 by a majority vote of the board or committee, exclusive of the
276 director or executive officer to whom the loan is made.

277 (2) If any director or executive officer of any bank owns or
278 controls a majority of the stock of any corporation, or is a partner
279 in any partnership, a loan to the corporation or partnership
280 constitutes a loan to the director or officer.

281 (3) For purposes of this subsection, an "executive officer"
282 means:

283 (A) A person who participates or has authority to participate,
284 other than in the capacity of a director, in major policy-making

285 functions of the company or bank, regardless of any official title,
286 salary or other compensation. The chairman of the board, the
287 president, every vice president, the cashier, the secretary and the
288 treasurer of a company or bank are considered executive officers
289 unless the officer is excluded, by resolution of the board of
290 directors or by the bylaws of the bank or company from
291 participation, other than in the capacity of director, in major
292 policy-making functions of the bank or company and the officer
293 does not actually participate therein.

294 (B) An executive officer of a company of which the bank is
295 a subsidiary, and any other subsidiary of that company, unless
296 the executive officer of the subsidiary is excluded, by name or
297 by title, from participation in major policy-making functions of
298 the bank by resolutions of the boards of directors of both the
299 subsidiary and the bank and does not actually participate in such
300 major policy-making functions.

301 (4) Prior approval under subdivision (1) of this subsection is
302 not required for:

303 (A) Payments of overdrafts pursuant to: (i) A written,
304 preauthorized, interest-bearing extension of credit plan that has
305 been approved by the board of directors or an appropriate
306 committee and that specifies a method of repayment; or (ii) a
307 written, preauthorized transfer of funds from another account of
308 the account holder at the bank; or

309 (B) Payments of inadvertent overdrafts on an account in an
310 aggregate amount of \$1,000 or less: *Provided*, That: (i) The
311 account is not overdrawn for more than five consecutive
312 business days; and (ii) the bank charges the director or executive
313 officer the same fee charged to any other customer of the bank
314 in similar circumstances.

315 (f) An employee of the Division of Financial Institutions
316 whose regulatory activities involve participation in an

317 examination, audit, visitation, review, investigation or any other
318 particular matter involving depository institutions chartered by
319 the division may not borrow, directly or indirectly, any sum of
320 money from a state-chartered bank or state-chartered credit
321 union. An employee of the Division of Financial Institutions
322 whose regulatory activities involve participation in an
323 examination, audit, visitation, review, investigation or any other
324 particular matter involving nondepository institutions licensed
325 by the division may not borrow, directly or indirectly, any sum
326 of money from a nondepository entity that is licensed by the
327 division. The commissioner, deputy commissioner and in-house
328 legal counsel of the Division of Financial Institutions may not
329 borrow, directly or indirectly, any sum of money from any entity
330 that is under the jurisdiction of the division.

331 (g) Securities purchased by a state-chartered banking
332 institution shall be entered upon the books of the bank at actual
333 cost. For the purpose of calculating the undivided profits
334 applicable to the payment of dividends, securities may not be
335 valued at a valuation exceeding their present cost as determined
336 by amortization of premiums and accretion of discounts pursuant
337 to generally accepted accounting principles, that is, by charging
338 to profit and loss a sum sufficient to bring them to par at
339 maturity: *Provided*, That securities held for trade or permissible
340 marketable equity securities and any other types of debt
341 securities which pursuant to generally accepted accounting
342 principles are to be carried on the bank's books at fair market
343 value shall have the unrealized market appreciation and
344 depreciation included in the income and capital as permitted by
345 generally accepted accounting principles.

346 (h) The market value of securities purchased and loans
347 extended by a state-chartered banking institution shall be
348 reported in all public reports and quarterly reports to the
349 commissioner pursuant to section nineteen of this article in
350 accordance with generally accepted accounting principles and
351 any applicable state or federal law, rule or regulation.

CHAPTER 30

**(S. B. 329 - By Senators Trump, Kessler, Woelfel,
Palumbo, Romano, Plymale, Stollings and Unger)**

[Passed March 8, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §49-1-207 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-2-125 of said code; and to amend and reenact §49-4-502, §49-4-604, §49-4-605, §49-4-607, §49-4-701 and §49-4-709 of said code, all relating to defining “juvenile referee”; eliminating sunset provision for the commission to study residential placement of children; clarifying that prosecuting attorneys are not required to represent any party other than Department of Health and Human Resources in child abuse and neglect cases; clarifying that Department of Health and Human Resources is required to make an effort to terminate parental rights when parent has committed sexual assault or sexual abuse; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §49-1-207 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §49-2-125 of said code be amended and reenacted; and that §49-4-502, §49-4-604, §49-4-605, §49-4-607, §49-4-701 and §49-4-709 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-207. Definitions related to court actions.

- 1 When used in this chapter, terms defined in this section have
- 2 the meanings ascribed to them that relate to, but are not limited

3 to, court actions, except in those instances where a different
4 meaning is provided or the context in which the word is used
5 clearly indicates that a different meaning is intended.

6 “Court” means the circuit court of the county with
7 jurisdiction of the case or the judge in vacation unless otherwise
8 specifically provided.

9 “Court appointed special advocate (CASA) program” means
10 a community organization that screens, trains and supervises
11 CASA volunteers to advocate for the best interests of children
12 who are involved in abuse and neglect proceedings section one
13 hundred two, article three of this chapter.

14 “Extrajudicial Statement” means any utterance, written or
15 oral, which was made outside of court.

16 “Juvenile referee” means a magistrate appointed by the
17 circuit court to perform the functions expressly prescribed for a
18 referee under the provisions of this chapter.

19 “Multidisciplinary team” means a group of professionals and
20 paraprofessionals representing a variety of disciplines who
21 interact and coordinate their efforts to identify, diagnose and
22 treat specific cases of child abuse and neglect. Multidisciplinary
23 teams may include, but are not limited to, medical, educational,
24 child care and law-enforcement personnel, social workers,
25 psychologists and psychiatrists. Their goal is to pool their
26 respective skills in order to formulate accurate diagnoses and to
27 provide comprehensive coordinated treatment with continuity
28 and follow-up for both parents and children.

29 “Community team” means a multidisciplinary group which
30 addresses the general problem of child abuse and neglect in a
31 given community and may consist of several multidisciplinary
32 teams with different functions.

33 “Res gestae” means a spontaneous declaration made by a
34 person immediately after an event and before the person has had
35 an opportunity to conjure a falsehood.

36 “Valid court order” means an order issued by a court of
37 competent jurisdiction relating to a child brought before the
38 court and who is the subject of that order. Prior to the entry of
39 the order the child shall have received the full due process rights
40 guaranteed to that child or juvenile by the Constitutions of the
41 United States and the State of West Virginia.

42 “Violation of a traffic law of West Virginia” means a
43 violation of chapter seventeen-a, seventeen-b, seventeen-c or
44 seventeen-d of this code except a violation of section one or two,
45 article four, chapter seventeen-c of this code relating to hit and
46 run or section one, two or three, article five of that chapter,
47 relating, respectively, to negligent homicide, driving under the
48 influence of alcohol, controlled substances or drugs and reckless
49 driving.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-125. Commission to Study Residential Placement of Children; findings; requirements; reports; recommendations.

1 (a) The Legislature finds that the state’s current system of
2 serving children and families in need of or at risk of needing
3 social, emotional and behavioral health services is fragmented.
4 The existing categorical structure of government programs and
5 their funding streams discourages collaboration, resulting in
6 duplication of efforts and a waste of limited resources. Children
7 are usually involved in multiple child-serving systems, including
8 child welfare, juvenile justice and special education. More than
9 ten percent of children presently in care are presently in out-of-
10 state placements. Earlier efforts at reform have focused on quick

11 fixes for individual components of the system at the expense of
12 the whole. It is the purpose of this section to establish a
13 mechanism to achieve systemic reform by which all of the
14 state's child-serving agencies involved in the residential
15 placement of at-risk youth jointly and continually study and
16 improve upon this system and make recommendations to their
17 respective agencies and to the Legislature regarding funding and
18 statutory, regulatory and policy changes. It is further the
19 Legislature's intent to build upon these recommendations to
20 establish an integrated system of care for at-risk youth and
21 families that makes prudent and cost-effective use of limited
22 state resources by drawing upon the experience of successful
23 models and best practices in this and other jurisdictions, which
24 focuses on delivering services in the least restrictive setting
25 appropriate to the needs of the child, and which produces better
26 outcomes for children, families and the state.

27 (b) There is created within the Department of Health and
28 Human Resources the Commission to Study the Residential
29 Placement of Children. The commission consists of the Secretary
30 of the Department of Health and Human Resources, the
31 Commissioner of the Bureau for Children and Families, the
32 Commissioner for the Bureau for Behavioral Health and Health
33 Facilities, the Commissioner for the Bureau for Medical
34 Services, the State Superintendent of Schools, a representative
35 of local educational agencies, the Director of the Office of
36 Institutional Educational Programs, the Director of the Office of
37 Special Education Programs and Assurance, the Director of the
38 Division of Juvenile Services and the Executive Director of the
39 Prosecuting Attorney's Institute. At the discretion of the West
40 Virginia Supreme Court of Appeals, circuit and family court
41 judges and other court personnel, including the Administrator of
42 the Supreme Court of Appeals and the Director of the Juvenile
43 Probation Services Division, may serve on the commission.
44 These statutory members may further designate additional

45 persons in their respective offices who may attend the meetings
46 of the commission if they are the administrative head of the
47 office or division whose functions necessitate their inclusion in
48 this process. In its deliberations, the commission shall also
49 consult and solicit input from families and service providers.

50 (c) The Secretary of the Department of Health and Human
51 Resources shall serve as chair of the commission, which shall
52 meet on a quarterly basis at the call of the chair.

53 (d) At a minimum, the commission shall study:

54 (1) The current practices of placing children out-of-home
55 and into in-residential placements, with special emphasis on out-
56 of-state placements;

57 (2) The adequacy, capacity, availability and utilization of
58 existing in-state facilities to serve the needs of children requiring
59 residential placements;

60 (3) Strategies and methods to reduce the number of children
61 who must be placed in out-of-state facilities and to return
62 children from existing out-of-state placements, initially targeting
63 older youth who have been adjudicated delinquent;

64 (4) Staffing, facilitation and oversight of multidisciplinary
65 treatment planning teams;

66 (5) The availability of and investment in community-based,
67 less restrictive and less costly alternatives to residential
68 placements;

69 (6) Ways in which up-to-date information about in-state
70 placement availability may be made readily accessible to state
71 agency and court personnel, including an interactive secure web
72 site;

73 (7) Strategies and methods to promote and sustain
74 cooperation and collaboration between the courts, state and local
75 agencies, families and service providers, including the use of
76 inter-agency memoranda of understanding, pooled funding
77 arrangements and sharing of information and staff resources;

78 (8) The advisability of including no-refusal clauses in
79 contracts with in-state providers for placement of children whose
80 treatment needs match the level of licensure held by the
81 provider;

82 (9) Identification of in-state service gaps and the feasibility
83 of developing services to fill those gaps, including funding;

84 (10) Identification of fiscal, statutory and regulatory barriers
85 to developing needed services in-state in a timely and responsive
86 way;

87 (11) Ways to promote and protect the rights and
88 participation of parents, foster parents and children involved in
89 out-of-home care;

90 (12) Ways to certify out-of-state providers to ensure that
91 children who must be placed out-of-state receive high quality
92 services consistent with this state's standards of licensure and
93 rules of operation; and

94 (13) Any other ancillary issue relative to foster care
95 placement.

96 (e) The commission shall report annually to the Legislative
97 Oversight Commission on Health and Human Resources
98 Accountability its conclusions and recommendations, including
99 an implementation plan whereby:

100 (1) Out-of-state placements shall be reduced by at least ten
101 percent per year and by at least fifty percent within three years;

102 (2) Child-serving agencies shall develop joint operating and
103 funding proposals to serve the needs of children and families that
104 cross their jurisdictional boundaries in a more seamless way;

105 (3) Steps shall be taken to obtain all necessary federal plan
106 waivers or amendments in order for agencies to work
107 collaboratively while maximizing the availability of federal
108 funds;

109 (4) Agencies shall enter into memoranda of understanding to
110 assume joint responsibilities;

111 (5) System of care components and cooperative relationships
112 shall be incrementally established at the local, state and regional
113 levels, with links to existing resources, such as family resource
114 networks and regional summits, wherever possible; and

115 (6) Recommendations for changes in fiscal, statutory and
116 regulatory provisions are included for legislative action.

ARTICLE 4. COURT ACTIONS.

§49-4-502. Prosecuting attorney to cooperate with persons other than the department in child abuse and neglect matters; duties.

1 It is the duty of every prosecuting attorney to cooperate fully
2 and promptly with persons seeking to apply for relief, including
3 copetitioners with the department, under this article in all cases
4 of suspected child abuse and neglect; to promptly prepare
5 applications and petitions for relief requested by those persons,
6 to investigate reported cases of suspected child abuse and neglect
7 for possible criminal activity; and to report at least annually to
8 the grand jury regarding the discharge of his or her duties with
9 respect thereto.

§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

1 (a) *Child and family case plans.* — Following a
2 determination pursuant to section six hundred two of this article
3 wherein the court finds a child to be abused or neglected, the
4 department shall file with the court a copy of the child’s case
5 plan, including the permanency plan for the child. The term
6 “case plan” means a written document that includes, where
7 applicable, the requirements of the family case plan as provided
8 in section four hundred eight of this article and that also
9 includes, at a minimum, the following:

10 (1) A description of the type of home or institution in which
11 the child is to be placed, including a discussion of the
12 appropriateness of the placement and how the agency which is
13 responsible for the child plans to assure that the child receives
14 proper care and that services are provided to the parents, child,
15 and foster parents in order to improve the conditions that made
16 the child unsafe in the care of his or her parent(s), including any
17 reasonable accommodations in accordance with the Americans
18 with Disabilities Act of 1990, 42 U. S. C. §12101, *et seq.*, to
19 parents with disabilities in order to allow them meaningful
20 access to reunification and family preservation services;

21 (2) A plan to facilitate the return of the child to his or her
22 own home or the concurrent permanent placement of the child;
23 and address the needs of the child while in relative or foster care,
24 including a discussion of the appropriateness of the services that
25 have been provided to the child.

26 The term “permanency plan” refers to that part of the case
27 plan which is designed to achieve a permanent home for the
28 child in the least restrictive setting available. The plan must
29 document efforts to ensure that the child is returned home within

30 approximate time lines for reunification as set out in the plan.
31 Reasonable efforts to place a child for adoption or with a legal
32 guardian should be made at the same time, or concurrent with,
33 reasonable efforts to prevent removal or to make it possible for
34 a child to return to the care of his or her parent(s) safely. If
35 reunification is not the permanency plan for the child, the plan
36 must state why reunification is not appropriate and detail the
37 alternative, concurrent permanent placement plans for the child
38 to include approximate time lines for when the placement is
39 expected to become a permanent placement. This case plan shall
40 serve as the family case plan for parents of abused or neglected
41 children. Copies of the child's case plan shall be sent to the
42 child's attorney and parent, guardian or custodian or their
43 counsel at least five days prior to the dispositional hearing. The
44 court shall forthwith proceed to disposition giving both the
45 petitioner and respondents an opportunity to be heard.

46 (b) *Disposition decisions.*—The court shall give precedence
47 to dispositions in the following sequence:

48 (1) Dismiss the petition;

49 (2) Refer the child, the abusing parent, the battered parent or
50 other family members to a community agency for needed
51 assistance and dismiss the petition;

52 (3) Return the child to his or her own home under
53 supervision of the department;

54 (4) Order terms of supervision calculated to assist the child
55 and any abusing parent or battered parent or parents or custodian
56 which prescribe the manner of supervision and care of the child
57 and which are within the ability of any parent or parents or
58 custodian to perform;

59 (5) Upon a finding that the abusing parent or battered parent
60 or parents are presently unwilling or unable to provide

61 adequately for the child's needs, commit the child temporarily
62 to the care, custody, and control of the state department, a
63 licensed private child welfare agency, or a suitable person who
64 may be appointed guardian by the court. The court order shall
65 state:

66 (A) That continuation in the home is contrary to the best
67 interests of the child and why;

68 (B) Whether or not the department has made reasonable
69 efforts, with the child's health and safety being the paramount
70 concern, to preserve the family, or some portion thereof, and to
71 prevent or eliminate the need for removing the child from the
72 child's home and to make it possible for the child to safely return
73 home;

74 (C) Whether the department has made reasonable
75 accommodations in accordance with the Americans with
76 Disabilities Act of 1990, 42 U. S. C. §12101, *et seq.*, to parents
77 with disabilities in order to allow them meaningful access to
78 reunification and family preservation services;

79 (D) What efforts were made or that the emergency situation
80 made those efforts unreasonable or impossible; and

81 (E) The specific circumstances of the situation which made
82 those efforts unreasonable if services were not offered by the
83 department. The court order shall also determine under what
84 circumstances the child's commitment to the department are to
85 continue. Considerations pertinent to the determination include
86 whether the child should:

87 (i) Be considered for legal guardianship;

88 (ii) Be considered for permanent placement with a fit and
89 willing relative; or

90 (iii) Be placed in another planned permanent living
91 arrangement, but only in cases where the child has attained 16
92 years of age and the department has documented to the circuit
93 court a compelling reason for determining that it would not be in
94 the best interests of the child to follow one of the options set
95 forth in subparagraphs (i) or (ii) of this paragraph. The court may
96 order services to meet the special needs of the child. Whenever
97 the court transfers custody of a youth to the department, an
98 appropriate order of financial support by the parents or guardians
99 shall be entered in accordance with part eight of this article;

100 (6) Upon a finding that there is no reasonable likelihood that
101 the conditions of neglect or abuse can be substantially corrected
102 in the near future and, when necessary for the welfare of the
103 child, terminate the parental, custodial and guardianship rights
104 and responsibilities of the abusing parent and commit the child
105 to the permanent sole custody of the nonabusing parent, if there
106 be one, or, if not, to either the permanent guardianship of the
107 department or a licensed child welfare agency. The court may
108 award sole custody of the child to a nonabusing battered parent.
109 If the court shall so find, then in fixing its dispositional order the
110 court shall consider the following factors:

111 (A) The child's need for continuity of care and caretakers;

112 (B) The amount of time required for the child to be
113 integrated into a stable and permanent home environment; and

114 (C) Other factors as the court considers necessary and
115 proper. Notwithstanding any other provision of this article, the
116 court shall give consideration to the wishes of a child fourteen
117 years of age or older or otherwise of an age of discretion as
118 determined by the court regarding the permanent termination of
119 parental rights. No adoption of a child shall take place until all
120 proceedings for termination of parental rights under this article

121 and appeals thereof are final. In determining whether or not
122 parental rights should be terminated, the court shall consider the
123 efforts made by the department to provide remedial and
124 reunification services to the parent. The court order shall state:

125 (i) That continuation in the home is not in the best interest of
126 the child and why;

127 (ii) Why reunification is not in the best interests of the child;

128 (iii) Whether or not the department made reasonable efforts,
129 with the child's health and safety being the paramount concern,
130 to preserve the family, or some portion thereof, and to prevent
131 the placement or to eliminate the need for removing the child
132 from the child's home and to make it possible for the child to
133 safely return home, or that the emergency situation made those
134 efforts unreasonable or impossible; and

135 (iv) Whether or not the department made reasonable efforts
136 to preserve and reunify the family, or some portion thereof,
137 including a description of what efforts were made or that those
138 efforts were unreasonable due to specific circumstances;

139 (7) For purposes of the court's consideration of the
140 disposition custody of a child pursuant to this subsection, the
141 department is not required to make reasonable efforts to preserve
142 the family if the court determines:

143 (A) The parent has subjected the child, another child of the
144 parent or any other child residing in the same household or under
145 the temporary or permanent custody of the parent to aggravated
146 circumstances which include, but are not limited to,
147 abandonment, torture, chronic abuse and sexual abuse;

148 (B) The parent has:

149 (i) Committed murder of the child's other parent, guardian
150 or custodian, another child of the parent or any other child
151 residing in the same household or under the temporary or
152 permanent custody of the parent;

153 (ii) Committed voluntary manslaughter of the child's other
154 parent, guardian or custodian, another child of the parent or any
155 other child residing in the same household or under the
156 temporary or permanent custody of the parent;

157 (iii) Attempted or conspired to commit murder or voluntary
158 manslaughter or been an accessory before or after the fact to
159 either crime;

160 (iv) Committed a malicious assault that results in serious
161 bodily injury to the child, the child's other parent, guardian or
162 custodian, to another child of the parent or any other child
163 residing in the same household or under the temporary or
164 permanent custody of the parent; or

165 (v) Committed sexual assault or sexual abuse of the child,
166 the child's other parent, guardian or custodian, another child of
167 the parent or any other child residing in the same household or
168 under the temporary or permanent custody of the parent;

169 (C) The parental rights of the parent to another child have
170 been terminated involuntarily;

171 (D) A parent has been required by state or federal law to
172 register with a sex offender registry, and the court has
173 determined in consideration of the nature and circumstances
174 surrounding the prior charges against that parent, that the child's
175 interests would not be promoted by a preservation of the family.

176 (c) As used in this section, "no reasonable likelihood that
177 conditions of neglect or abuse can be substantially corrected"

178 means that, based upon the evidence before the court, the
179 abusing adult or adults have demonstrated an inadequate
180 capacity to solve the problems of abuse or neglect on their own
181 or with help. Those conditions exist in the following
182 circumstances, which are not exclusive:

183 (1) The abusing parent or parents have habitually abused or
184 are addicted to alcohol, controlled substances or drugs, to the
185 extent that proper parenting skills have been seriously impaired
186 and the person or persons have not responded to or followed
187 through the recommended and appropriate treatment which
188 could have improved the capacity for adequate parental
189 functioning;

190 (2) The abusing parent or parents have willfully refused or
191 are presently unwilling to cooperate in the development of a
192 reasonable family case plan designed to lead to the child's return
193 to their care, custody and control;

194 (3) The abusing parent or parents have not responded to or
195 followed through with a reasonable family case plan or other
196 rehabilitative efforts of social, medical, mental health or other
197 rehabilitative agencies designed to reduce or prevent the abuse
198 or neglect of the child, as evidenced by the continuation or
199 insubstantial diminution of conditions which threatened the
200 health, welfare or life of the child;

201 (4) The abusing parent or parents have abandoned the child;

202 (5) The abusing parent or parents have repeatedly or
203 seriously injured the child physically or emotionally, or have
204 sexually abused or sexually exploited the child, and the degree
205 of family stress and the potential for further abuse and neglect
206 are so great as to preclude the use of resources to mitigate or
207 resolve family problems or assist the abusing parent or parents
208 in fulfilling their responsibilities to the child;

209 (6) The battered parent's parenting skills have been seriously
210 impaired and the person has willfully refused or is presently
211 unwilling or unable to cooperate in the development of a
212 reasonable treatment plan or has not adequately responded to or
213 followed through with the recommended and appropriate
214 treatment plan.

215 (d) The court may, as an alternative disposition, allow the
216 parents or custodians an improvement period not to exceed six
217 months. During this period the court shall require the parent to
218 rectify the conditions upon which the determination was based.
219 The court may order the child to be placed with the parents, or
220 any person found to be a fit and proper person, for the temporary
221 care of the child during the period. At the end of the period, the
222 court shall hold a hearing to determine whether the conditions
223 have been adequately improved and at the conclusion of the
224 hearing shall make a further dispositional order in accordance
225 with this section.

**§49-4-605. When department efforts to terminate parental rights
are required.**

1 (a) Except as provided in subsection (b) of this section, the
2 department shall file or join in a petition or otherwise seek a
3 ruling in any pending proceeding to terminate parental rights:

4 (1) If a child has been in foster care for fifteen of the most
5 recent twenty-two months as determined by the earlier of the
6 date of the first judicial finding that the child is subjected to
7 abuse or neglect or the date which is sixty days after the child is
8 removed from the home;

9 (2) If a court has determined the child is abandoned,
10 tortured, sexually abused, or chronically abused; or

11 (3) If a court has determined the parent has committed
12 murder or voluntary manslaughter of another of his or her

13 children, another child in the household, or the other parent of
14 his or her children; has attempted or conspired to commit murder
15 or voluntary manslaughter or has been an accessory before or
16 after the fact of either crime; has committed unlawful or
17 malicious wounding resulting in serious bodily injury to the
18 child or to another of his or her children, another child in the
19 household, has committed sexual assault or sexual abuse of the
20 child, the child's other parent, guardian or custodian, another
21 child of the parent, or any other child residing in the same
22 household or under the temporary or permanent custody of the
23 parent; or to the other parent of his or her children; or the
24 parental rights of the parent to another child have been
25 terminated involuntarily.

26 (b) The department may determine not to file a petition to
27 terminate parental rights when:

28 (1) At the option of the department, the child has been
29 placed permanently with a relative by court order;

30 (2) The department has documented in the case plan made
31 available for court review a compelling reason, including, but
32 not limited to, the child's age and preference regarding
33 termination or the child's placement in custody of the
34 department based on any proceedings initiated under part seven
35 of this article, that filing the petition would not be in the best
36 interests of the child; or

37 (3) The department has not provided, when reasonable
38 efforts to return a child to the family are required, the services to
39 the child's family as the department deems necessary for the safe
40 return of the child to the home.

§49-4-607. Consensual termination of parental rights.

1 An agreement of a natural parent in termination of parental
2 rights is valid if made by a duly acknowledged writing, and

3 entered into under circumstances free from duress and fraud.
4 Where during the pendency of an abuse and neglect proceeding,
5 a parent offers voluntarily to relinquish of his or her parental
6 rights, and the relinquishment is accepted by the circuit court,
7 the relinquishment may, without further evidence, be used as the
8 basis of an order of adjudication of abuse and neglect by that
9 parent of his or her children.

PART VII. JUVENILE PROCEEDINGS

§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; Constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts.

1 (a) The circuit court has original jurisdiction of proceedings
2 brought under this article. A person under the age of eighteen
3 years who appears before the circuit court in proceedings under
4 this article is a ward of the court and protected accordingly.

5 (b) If during a criminal proceeding in any court it is
6 ascertained or appears that the defendant is under the age of
7 nineteen years and was under the age of eighteen years at the
8 time of the alleged offense, the matter shall be immediately
9 certified to the juvenile jurisdiction of the circuit court. The
10 circuit court shall assume jurisdiction of the case in the same
11 manner as cases which are originally instituted in the circuit
12 court by petition.

13 (c) Notwithstanding any other provision of this article,
14 magistrate courts have concurrent juvenile jurisdiction with the
15 circuit court for a violation of a traffic law of West Virginia, for
16 a violation of section nine, article six, chapter sixty, section three
17 or section four, article nine-a, chapter sixteen, or section
18 nineteen, article sixteen, chapter eleven of this code, or for any
19 violation of chapter twenty of this code. Juveniles are liable for

20 punishment for violations of these laws in the same manner as
21 adults except that magistrate courts have no jurisdiction to
22 impose a sentence of incarceration for the violation of these
23 laws.

24 (d) Notwithstanding any other provision of this article,
25 municipal courts have concurrent juvenile jurisdiction with the
26 circuit court for a violation of any municipal ordinance
27 regulating traffic, for any municipal curfew ordinance which is
28 enforceable or for any municipal ordinance regulating or
29 prohibiting public intoxication, drinking or possessing alcoholic
30 liquor or nonintoxicating beer in public places, any other act
31 prohibited by section nine, article six, chapter sixty or section
32 nineteen, article sixteen, chapter eleven of this code or underage
33 possession or use of tobacco or tobacco products, as provided in
34 article nine-a, chapter sixteen of this code. Municipal courts may
35 impose the same punishment for these violations as a circuit
36 court exercising its juvenile jurisdiction could properly impose,
37 except that municipal courts have no jurisdiction to impose a
38 sentence of incarceration for the violation of these laws.

39 (e) A juvenile may be brought before the circuit court for
40 proceedings under this article only by the following means:

41 (1) By a juvenile petition requesting that the juvenile be
42 adjudicated as a status offender or a juvenile delinquent; or

43 (2) By certification or transfer to the juvenile jurisdiction of
44 the circuit court from the criminal jurisdiction of the circuit
45 court, from any foreign court, or from any magistrate court or
46 municipal court in West Virginia.

47 (f)(1) If a juvenile commits an act which would be a crime
48 if committed by an adult, and the juvenile is adjudicated
49 delinquent for that act, the jurisdiction of the court which
50 adjudged the juvenile delinquent continues until the juvenile
51 becomes twenty-one years of age. The court has the same power

52 over that person that it had before he or she became an adult, and
53 has the power to sentence that person to a term of incarceration:
54 *Provided*, That any term of incarceration may not exceed six
55 months. This authority does not preclude the court from
56 exercising criminal jurisdiction over that person if he or she
57 violates the law after becoming an adult or if the proceedings
58 have been transferred to the court's criminal jurisdiction
59 pursuant to section seven hundred four of this article.

60 (2) If a juvenile is adjudicated as a status offender because
61 he or she is habitually absent from school without good cause,
62 the jurisdiction of the court which adjudged the juvenile a status
63 offender continues until either the juvenile becomes twenty-one
64 years of age, completes high school, completes a high school
65 equivalent or other education plan approved by the court, or the
66 court otherwise voluntarily relinquishes jurisdiction, whichever
67 occurs first. If the jurisdiction of the court is extended pursuant
68 to this subdivision, the court has the same power over that
69 person that it had before he or she became an adult. No person
70 so adjudicated who has attained the age of nineteen may be
71 ordered to attend school in a regular, nonalternative setting.

72 (g) A juvenile is entitled to be admitted to bail or
73 recognizance in the same manner as an adult and be afforded the
74 protection guaranteed by Article III of the West Virginia
75 Constitution.

76 (h) A juvenile has the right to be effectively represented by
77 counsel at all stages of proceedings under this article, including
78 participation in multidisciplinary team meetings, until the child
79 is no longer under the jurisdiction of the court. If the juvenile or
80 the juvenile's parent or custodian executes an affidavit showing
81 that the juvenile cannot afford an attorney, the court shall
82 appoint an attorney, who shall be paid in accordance with article
83 twenty-one, chapter twenty-nine of this code.

84 (i)(1) In all proceedings under this article, the juvenile will
85 be afforded a meaningful opportunity to be heard. This includes
86 the opportunity to testify and to present and cross-examine
87 witnesses. The general public shall be excluded from all
88 proceedings under this article except that persons whose
89 presence is requested by the parties and other persons whom the
90 circuit court determines have a legitimate interest in the
91 proceedings may attend.

92 (2) In cases in which a juvenile is accused of committing
93 what would be a felony if the juvenile were an adult, an alleged
94 victim or his or her representative may attend any related
95 juvenile proceedings, at the discretion of the presiding judicial
96 officer.

97 (3) In any case in which the alleged victim is a juvenile, he
98 or she may be accompanied by his or her parents or
99 representative, at the discretion of the presiding judicial officer.

100 (j) At all adjudicatory hearings held under this article, all
101 procedural rights afforded to adults in criminal proceedings shall
102 be afforded the juvenile unless specifically provided otherwise
103 in this chapter.

104 (k) At all adjudicatory hearings held under this article, the
105 rules of evidence applicable in criminal cases apply, including
106 the rule against written reports based upon hearsay.

107 (l) Except for res gestae, extrajudicial statements made by a
108 juvenile who has not attained fourteen years of age to law-
109 enforcement officials or while in custody are not admissible
110 unless those statements were made in the presence of the
111 juvenile's counsel. Except for res gestae, extrajudicial statements
112 made by a juvenile who has not attained sixteen years of age but
113 who is at least fourteen years of age to law-enforcement officers
114 or while in custody, are not admissible unless made in the

115 presence of the juvenile's counsel or made in the presence of,
116 and with the consent of, the juvenile's parent or custodian, and
117 the parent or custodian has been fully informed regarding the
118 juvenile's right to a prompt detention hearing, the juvenile's
119 right to counsel, including appointed counsel if the juvenile
120 cannot afford counsel, and the juvenile's privilege against self-
121 incrimination.

122 (m) A transcript or recording shall be made of all transfer,
123 adjudicatory and dispositional hearings held in circuit court. At
124 the conclusion of each of these hearings, the circuit court shall
125 make findings of fact and conclusions of law, both of which shall
126 appear on the record. The court reporter shall furnish a transcript
127 of the proceedings at no charge to any indigent juvenile who
128 seeks review of any proceeding under this article if an affidavit
129 is filed stating that neither the juvenile nor the juvenile's parents
130 or custodian have the ability to pay for the transcript.

§49-4-709. Right to jury trial for juveniles; inapplicability.

1 (a) In a proceeding under this article, the juvenile, the
2 juvenile's counsel or the juvenile's parent or guardian may
3 demand, or the judge on his or her own motion may order a jury
4 trial on any question of fact, in which the juvenile is accused of
5 any act or acts of delinquency which, if committed by an adult
6 would expose the adult to incarceration.

7 (b) A juvenile who is charged with a status offense or other
8 offense where incarceration is not a possibility due either to the
9 statutory penalty or where the court rules pretrial that a sentence
10 of incarceration will not be imposed upon adjudication is not
11 entitled to a trial by jury.

12 (c) This section is inapplicable to proceedings held pursuant
13 to section seven hundred sixteen of this article.

14 (d) Juries consist of twelve members.

CHAPTER 31

(Com. Sub. for S. B. 309 - By Senator Blair)

[Passed February 19, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 1, 2016.]

AN ACT to amend and reenact §49-2-113 of the Code of West Virginia, 1931, as amended, relating to child-care center licensing requirements; and exempting county parks and recreation commissions, boards and municipalities from licensure.

Be it enacted by the Legislature of West Virginia:

That §49-2-113 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

PART 1. GENERAL AUTHORITY AND DUTIES OF THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES.

§49-2-113. Residential child-care centers; licensure, certification, approval and registration; requirements.

1 (a) Any person, corporation or child welfare agency, other
2 than a state agency, which operates a residential child-care
3 center shall obtain a license from the department.

4 (b) Any residential child-care facility, day-care center or any
5 child-placing agency operated by the state shall obtain approval
6 of its operations from the secretary.

7 (c) Any family day-care facility which operates in this state,
8 including family day-care facilities approved by the department

9 for receipt of funding, shall obtain a statement of certification
10 from the department.

11 (d) Every family day-care home which operates in this state,
12 including family day-care homes approved by the department for
13 receipt of funding, shall obtain a certificate of registration from
14 the department. The facilities and placing agencies shall
15 maintain the same standards of care applicable to licensed
16 facilities, centers or placing agencies of the same category.

17 (e) This section does not apply to:

18 (1) A kindergarten, preschool or school education program
19 which is operated by a public school or which is accredited by
20 the state Department of Education or any other kindergarten,
21 preschool or school programs which operate with sessions not
22 exceeding four hours per day for any child;

23 (2) An individual or facility which offers occasional care of
24 children for brief periods while parents are shopping, engaging
25 in recreational activities, attending religious services or engaging
26 in other business or personal affairs;

27 (3) Summer recreation camps operated for children attending
28 sessions for periods not exceeding thirty days;

29 (4) Hospitals or other medical facilities which are primarily
30 used for temporary residential care of children for treatment,
31 convalescence or testing;

32 (5) Persons providing family day care solely for children
33 related to them;

34 (6) Any juvenile detention facility or juvenile correctional
35 facility operated by or under contract with the Division of
36 Juvenile Services for the secure housing or holding of juveniles
37 committed to its custody;

38 (7) Any out-of-school time program that has been awarded
39 a grant by the West Virginia Department of Education to provide
40 out-of-school time programs to kindergarten through twelfth
41 grade students when the program is monitored by the West
42 Virginia Department of Education; or

43 (8) Any out-of-school time program serving children six
44 years of age or older and meets all of the following
45 requirements, or is an out-of-school time program that is
46 affiliated and in good standing with a national congressionally
47 chartered organization or is operated by a county parks and
48 recreation commission, boards and municipalities and meets all
49 of the following requirements:

50 (A) The program is located in a facility that meets all fire
51 and health codes;

52 (B) The program performs state and federal background
53 checks on all volunteers and staff;

54 (C) The programs' primary source of funding is not from
55 fees for service except for programs operated by county parks
56 and recreation commissions, boards and municipalities;

57 (D) The program has a formalized monitoring system in
58 place.

59 (f) The secretary is authorized to issue an emergency rule
60 relating to conducting a survey of existing facilities in this state
61 in which children reside on a temporary basis in order to
62 ascertain whether they should be subject to licensing under this
63 article or applicable licensing provisions relating to behavioral
64 health treatment providers.

65 (g) Any informal family child-care home or relative family
66 child-care home may voluntarily register and obtain a certificate
67 of registration from the department.

68 (h) All facilities or programs that provide out-of-school time
69 care shall register with the department upon commencement of
70 operations and on an annual basis thereafter. The department
71 shall obtain information, such as the name of the facility or
72 program, the description of the services provided and any other
73 information relevant to the determination by the department as
74 to whether the facility or program meets the criteria for
75 exemption under this section.

76 (i) Any child-care service that is licensed or receives a
77 certificate of registration shall have a written plan for evacuation
78 in the event of fire, natural disaster or other threatening situation
79 that may pose a health or safety hazard to the children in the
80 child-care service.

81 (1) The plan shall include, but not be limited to:

82 (A) A designated relocation site and evacuation;

83 (B) Procedures for notifying parents of the relocation and
84 ensuring family reunification;

85 (C) Procedures to address the needs of individual children
86 including children with special needs;

87 (D) Instructions relating to the training of staff or the
88 reassignment of staff duties, as appropriate;

89 (E) Coordination with local emergency management
90 officials; and

91 (F) A program to ensure that appropriate staff are familiar
92 with the components of the plan.

93 (2) A child-care service shall update the evacuation plan by
94 December 31 of each year. If a child-care service fails to update
95 the plan, no action shall be taken against the child-care services

96 license or registration until notice is provided and the child-care
97 service is given thirty days after the receipt of notice to provide
98 an updated plan.

99 (3) A child-care service shall retain an updated copy of the
100 plan for evacuation and shall provide notice of the plan and
101 notification that a copy of the plan will be provided upon request
102 to any parent, custodian or guardian of each child at the time of
103 the child's enrollment in the child-care service and when the
104 plan is updated.

105 (4) All child-care centers and family child-care facilities
106 shall provide the plan and each updated copy of the plan to the
107 Director of the Office of Emergency Services in the county
108 where the center or facility is located.

CHAPTER 32

**(Com. Sub. for S. B. 326 - By Senators Trump, Kessler,
Woelfel, Palumbo, Romano and Plymale)**

[Passed March 10, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to repeal §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-8D-10, all relating to repealing the criminal offense of contributing to the delinquency or neglect of a child; relating to repealing providing the court or the judge discretion to suspend the sentence and allow a child to remain in the custody of the convicted person with certain conditions; creating the criminal offense of contributing to the delinquency of a child; defining delinquency; providing for

penalties; authorizing restitution; allowing for additional terms and conditions to be imposed upon conviction; providing that delinquency of a child does not apply to a parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of the parent, guardian, or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized religious denomination or order which parent, guardian or custodian is an adherent or member; establishing that it is not an essential element of the offense that the minor actually be delinquent; providing for certain conditions of bond upon conviction and suspension of the sentence by the court; providing that a bond given upon suspension of a sentence which becomes forfeited is recoverable without separate suit; providing procedure for recovery of bond by principal or surety; providing that any money collected or paid upon execution, or upon the bond, shall be deposited with the clerk and applied to court costs then to treatment, care, or maintenance of the child; and permitting the child to remain in the custody of the convicted person with certain conditions.

Be it enacted by the Legislature of West Virginia:

That §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §61-8D-10, all to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-10. Contributing to delinquency of a child; penalties; payment of medical costs; proof; court discretion; other payments; suspended sentence; maintenance and care; temporary custody.

- 1 (a) Any person eighteen years of age or older who
- 2 knowingly contributes to or encourages the delinquency of a

3 child is guilty of a misdemeanor and, upon conviction thereof,
4 shall be fined not less than \$50 nor more than \$500 or confined
5 for a period not exceeding one year or both.

6 (b) As used in this section, “delinquency” means the
7 violation or attempted violation of any federal or state statute,
8 county or municipal ordinance, or a court order, or the habitual
9 or continual refusal to comply, without just cause, with the
10 lawful supervision or direction of a parent, guardian or
11 custodian.

12 (c) In addition to any penalty provided under this section
13 and any restitution which may be ordered by the court pursuant
14 to section five, article eleven-a of this chapter the court may
15 order any person convicted of a violation of subsection (a) of this
16 section to pay all or any portion of the cost of medical,
17 psychological or psychiatric treatment provided the child
18 resulting from the acts for which the person is convicted.

19 (d) This section does not apply to any parent, guardian or
20 custodian who fails or refuses, or allows another person to fail or
21 refuse, to supply a child under the care, custody, or control of the
22 parent, guardian, or custodian with necessary medical care, when
23 medical care conflicts with the tenets and practices of a
24 recognized religious denomination or order of which parent,
25 guardian or custodian is an adherent or member.

26 (e) It is not an essential element of the offense created by
27 this section that the minor actually be delinquent.

28 (f) Upon conviction, the court may suspend the sentence of
29 a person found guilty under this section. A suspended sentence
30 may be subjected to the following terms and conditions:

31 (1) That offender pay for any and all treatment, support, and
32 maintenance while the child is in the custody of the state or

33 person that the court determines reasonable and necessary for the
34 welfare of the child;

35 (2) That the offender post a sufficient bond to secure the
36 payment for all sums ordered to be paid under this section, as
37 long as the bond does not exceed \$5,000; and

38 (3) That the offender participate in any program or training
39 that will assist the child in correcting the delinquent behavior or,
40 in the case of neglect, that will assist the offender in correcting
41 his or her behavior that led to violation of this section.

42 (g)(1) The penalty of a bond given upon suspension of a
43 sentence which becomes forfeited is recoverable without a
44 separate suit. The court may cause a citation or a summons to
45 issue to the principal and surety, requiring that they appear at a
46 time named by the court, not less than ten days, from the
47 issuance of the summons, and show cause why a judgment
48 should not be entered for the penalty of the bond and execution
49 issued against the property of the principal and the surety.

50 (2) Any money collected or paid upon an execution, or upon
51 the bond, shall be deposited with the clerk of the court in which
52 the bond was given. The money shall be applied first to the
53 payment of all court costs and then to the treatment, care, or
54 maintenance of the child who was at issue when the offender
55 was convicted of this section.

56 (h) If the guilty person had custody of the child prior to
57 conviction, the court or judge may, on suspending sentence,
58 permit the child to remain in the custody of the person, and make
59 it a condition of suspending sentence that the person provides
60 whatever treatment and care may be required for the welfare of
61 the child, and shall do whatever may be calculated to secure
62 obedience to the law or to remove the cause of the delinquency.

CHAPTER 33

**(Com. Sub. for S. B. 504 - By Senators Ashley,
Laird, Maynard, Miller, Romano, Walters
and Plymale)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §62-6B-2 of said code; and to amend said code by adding thereto a new section, designated §62-6B-6, all relating to confidentiality of records; providing that a recorded interview of a minor in a criminal or abuse or neglect case is generally confidential and exempt from disclosure; defining terms, including “interviewed child” and “recorded interview”; providing that recorded interviews of children in criminal and administrative proceedings are confidential and subject to disclosure only pursuant to a court order; providing that all written documentation related to the recorded interviews of children in criminal and administrative proceedings are confidential; providing for certain individuals to have access to the recorded interview of a child prior to the commencement of formal proceedings and providing for limitations and conditions for certain individuals to have such access; requesting Supreme Court of Appeals promulgate rules regulating the publication and duplication of recorded interviews in the courts of this state, including use, duplication and publication by counsel, and to include in any such rule limitations upon the publication, duplication, distribution or use of the recorded statements of a child; creating the criminal offense of knowingly and willfully duplicating or publishing a recorded interview in violation of the terms of a court order or the general confidentiality provisions; and establishing penalties therefor.

Be it enacted by the Legislature of West Virginia:

That §49-5-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §62-6B-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §62-6B-6, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. RECORDKEEPING AND DATABASE.

§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.

1 (a) Except as otherwise provided in this chapter or by order
2 of the court, all records and information concerning a child or
3 juvenile which are maintained by the Division of Juvenile
4 Services, the Department of Health and Human Resources, a
5 child agency or facility, court or law-enforcement agency are
6 confidential and shall not be released or disclosed to anyone,
7 including any federal or state agency.

8 (b) Notwithstanding the provisions of subsection (a) of this
9 section or any other provision of this code to the contrary,
10 records concerning a child or juvenile, except adoption records
11 and records disclosing the identity of a person making a
12 complaint of child abuse or neglect, may be made available:

13 (1) Where otherwise authorized by this chapter;

14 (2) To:

15 (A) The child;

16 (B) A parent whose parental rights have not been terminated;
17 or

18 (C) The attorney of the child or parent;

19 (3) With the written consent of the child or of someone
20 authorized to act on the child's behalf; or

21 (4) Pursuant to an order of a court of record. However, the
22 court shall review the record or records for relevancy and
23 materiality to the issues in the proceeding and safety, and may
24 issue an order to limit the examination and use of the records or
25 any part thereof.

26 (c) In addition to those persons or entities to whom
27 information may be disclosed under subsection (b) of this
28 section, information related to child abuse or neglect
29 proceedings, except information relating to the identity of the
30 person reporting or making a complaint of child abuse or
31 neglect, shall be made available, upon request, to:

32 (1) Federal, state or local government entities, or any agent
33 of those entities, including law-enforcement agencies and
34 prosecuting attorneys, having a need for that information in
35 order to carry out its responsibilities under law to protect
36 children from abuse and neglect;

37 (2) The child fatality review team;

38 (3) Child abuse citizen review panels;

39 (4) Multidisciplinary investigative and treatment teams; or

40 (5) A grand jury, circuit court or family court, upon a finding
41 that information in the records is necessary for the determination
42 of an issue before the grand jury, circuit court or family court.

43 (d) In the event of a child fatality or near fatality due to child
44 abuse and neglect, information relating to a fatality or near
45 fatality shall be made public by the Department of Health and
46 Human Resources and to the entities described in subsection (c)
47 of this section, all under the circumstances described in that

48 subsection. However, information released by the Department of
49 Health and Human Resources pursuant to this subsection may
50 not include the identity of a person reporting or making a
51 complaint of child abuse or neglect. For purposes of this
52 subsection, “near fatality” means any medical condition of the
53 child which is certified by the attending physician to be life
54 threatening.

55 (e) Except in juvenile proceedings which are transferred to
56 criminal proceedings, law-enforcement records and files
57 concerning a child or juvenile shall be kept separate from the
58 records and files of adults and not included within the court files.
59 Law-enforcement records and files concerning a child or
60 juvenile shall only be open to inspection pursuant to section one
61 hundred three of this article.

62 (f) Any person who willfully violates this section is guilty of
63 a misdemeanor and, upon conviction, shall be fined not more
64 than \$1,000, or confined in jail for not more than six months, or
65 both fined and confined. A person convicted of violating this
66 section is also liable for damages in the amount of \$300 or actual
67 damages, whichever is greater.

68 (g) Notwithstanding the provisions of this section, or any
69 other provision of this code to the contrary, the name and
70 identity of any juvenile adjudicated or convicted of a violent or
71 felonious crime shall be made available to the public;

72 (h)(1) Notwithstanding the provisions of this section or any
73 other provision of this code to the contrary, the Division of
74 Juvenile Services may provide access to and the confidential use
75 of a treatment plan, court records or other records of a juvenile
76 to an agency in another state which:

77 (A) Performs the same functions in that state that are
78 performed by the Division of Juvenile Services in this state;

79 (B) Has a reciprocal agreement with this state; and

80 (C) Has legal custody of the juvenile.

81 (2) A record which is shared under this subsection may only
82 provide information which is relevant to the supervision, care,
83 custody and treatment of the juvenile.

84 (3) The Division of Juvenile Services is authorized to enter
85 into reciprocal agreements with other states and to propose rules
86 for legislative approval in accordance with article three, chapter
87 twenty-nine-a of this code to implement this subsection.

88 (4) Other than the authorization explicitly given in this
89 subsection, this subsection may not be construed to enlarge or
90 restrict access to juvenile records as provided elsewhere in this
91 code.

92 (i) The records subject to disclosure pursuant to subsection
93 (b) of this section shall not include a recorded/videotaped
94 interview, as defined in subdivision (6), section two, article six-
95 b, chapter sixty-two of this code, the disclosure of which is
96 exclusively subject to the provisions of section six of said article.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.

§62-6B-2. Definitions.

1 For the purposes of this article, the words or terms defined
2 in this section, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this section. These definitions are applicable unless a different
5 meaning clearly appears from the context.

6 (1) "Child witness" means a person under the age of sixteen
7 years of age who is or will be called to testify in a criminal
8 matter concerning an alleged violation of the provisions of
9 sections three, four, five and seven, article eight-b, chapter sixty-
10 one of this code in which the child is the alleged victim.

11 (2) "Live, closed-circuit television" means a simultaneous
12 transmission, by closed-circuit television or other electronic
13 means, between the courtroom and the testimonial room.

14 (3) "Operator" means the individual authorized by the court
15 to operate the closed-circuit television equipment used in
16 accordance with the provisions of this article.

17 (4) "Testimonial room" means a room within the courthouse
18 other than the courtroom from which the testimony of a child
19 witness or the defendant is transmitted to the courtroom by
20 means of live, closed-circuit television.

21 (5) "Interviewed child" shall mean any person under the age
22 of eighteen who has been interviewed by means of any type of
23 recording equipment in connection with alleged criminal
24 behavior or allegations of abuse or neglect of any child under the
25 age of eighteen.

26 (6) "Recorded interview" means any electronic recording of
27 the interview, and any transcript thereof, of an interviewed child
28 conducted by: (1) An employee or representative of a child
29 advocacy center as that term is defined in section one hundred
30 one, article three, chapter forty-nine of this code; (2) any
31 psychologist, psychiatrist, physician, nurse, social worker or
32 other person appointed by the court to interview the interviewed
33 child as provided in subsection (c), section three of this article;
34 or (3) a child protective services worker, law-enforcement
35 officer, prosecuting attorney or any representative of his or her
36 office, or any other person investigating allegations of criminal

37 behavior or behavior alleged to constitute abuse or neglect of a
38 child.

§62-6B-6. Confidentiality of recorded interviews of children.

1 (a) Except as provided by the provisions of this article,
2 recorded interviews of an interviewed child in any judicial or
3 administrative proceeding shall not be published or duplicated
4 except pursuant to the terms of an order of a court of competent
5 jurisdiction. All written documentation in any form that is
6 related to the recorded interview shall also be deemed
7 confidential.

8 (b) Prior to the commencement of formal proceedings as
9 contemplated in subsection (a) of this section, the persons or
10 agencies listed in subdivision (6), section two of this article shall
11 be entitled to access to or copies of the recorded interview of an
12 interviewed child: *Provided*, That such persons or agencies may
13 provide access to the recorded interview of a child to a legal
14 parent, guardian or custodian of such child when: (1) Such
15 parent, guardian or custodian is not alleged to have been
16 involved or engaged in conduct that may give rise to a judicial
17 or administrative proceeding; and (2) it would not undermine or
18 frustrate an ongoing investigation: *Provided, however*, That prior
19 to the commencement of formal proceedings only psychologists,
20 psychiatrists, physicians, nurses and social workers who are
21 providing services to the interviewed child may be afforded
22 reasonable access to the recorded interview.

23 (c) The Supreme Court of Appeals is requested to
24 promulgate a rule or rules regulating in the courts of this state
25 the publication and duplication of recorded interviews, including
26 use, duplication and publication by counsel, and to include in
27 any such rule limitations upon the publication, duplication,
28 distribution or use of the recorded statements of a child.

29 (d) Any person who knowingly and willfully duplicates or
30 publishes a recorded interview in violation of the terms of an
31 order entered by a court of competent jurisdiction or in violation
32 of the provisions of subsection (b) of this section shall be guilty
33 of a misdemeanor and, upon conviction, shall be confined in jail
34 for not less than ten days nor more than one year or fined not
35 less than \$2,000 nor more than \$10,000, or both fined and
36 confined.

CHAPTER 34

**(Com. Sub. for H. B. 4237 - By Delegates O’Neal, Arvon,
Storch, Azinger, Butler, Hamrick, Kessinger, Rowan,
P. Smith, Ferro and Longstreth)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5 and §49-8-6, all relating to the temporary delegation of certain custodial powers by a parent or legal custodian; setting forth legislative findings and purpose; defining terms; requiring qualified nonprofit organizations to register with Department of Health and Human Resources; requiring qualified nonprofit organizations to provide quarterly reports to Department of Health and Human Resources concerning child placements; permitting the delegation of certain custodial powers; limiting scope of delegation; permitting parent or legal custodian to revoke or withdraw power of attorney at any time; clarifying that scope of delegation of power of attorney only extends to the extent, and so long as, the parent, guardian or legal custodian retains custody; providing that power of attorney shall be revoked if parental rights

terminated; directing court to notify person assuming parental rights under power of attorney; permitting child to retain with person assuming parental rights under power of attorney until court finalizes subsequent placement of child; clarifying that period of placement with person shall not be considered as a factor in custody hearing in which family member seeks to be awarded custody of child; providing that execution of power of attorney does not, without other evidence, constitute abandonment, abuse or neglect; creating exception under certain circumstances; reaffirming authority of Bureau for Children and Families and law enforcement to investigate allegations of abuse, abandonment, neglect or other mistreatment of child; requiring qualified nonprofit organization to conduct criminal history and background checks prior to execution of power of attorney; providing for payment of criminal history and background checks; requiring qualified nonprofit organization to train the designee on rights, duties and limitations associated with providing care for a child, including preventing and reporting of suspected child abuse or neglect; prohibiting designee from moving without written approval of parent or legal custodian; making persons who accept custody under this article mandatory reporters of suspected child abuse and neglect; providing for circumstances in which parent or legal custodian dies or becomes incapacitated; clarifying that temporary delegation of certain custodial powers does not restrict certain other rights; creating a form for delegation of parental or legal custody; making legally sufficient a power of attorney that substantially complies with form contains acknowledged signatures of the parties; mandating certain disclosures by child investigative personnel; and clarifying applicability of licensing and other requirements of childcare facilities.

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 §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5 and §49-8-6, all to read as follows:

**ARTICLE 8. SUPPORTING AND STRENGTHENING
FAMILIES ACT.**

§49-8-1. Legislative findings; statement of legislative purpose.

1 (a) The Legislature finds that in certain circumstances where
2 a parent, guardian or legal custodian of a child is temporarily
3 unable to care for the child due to a crisis or other circumstances,
4 a less intrusive alternative to guardianship or the Department of
5 Health and Human Resources taking custody of the child should
6 be available. In such circumstances, a parent, guardian or legal
7 custodian may benefit from the assistance of charitable
8 organizations in their community that assist families by
9 providing safe, temporary care for children and support for
10 families during difficult times.

11 (b) It is the purpose of this article to ensure that a parent,
12 guardian or legal guardian has the right to provide for the
13 temporary care of their child with the assistance of a qualified
14 nonprofit organization as set forth in this article.

§49-8-2. Definitions.

1 For purposes of this article:

2 (1) “Child” means an individual under eighteen years of
3 age;

4 (2) “Qualified nonprofit organization” means a charitable or
5 religious institution that is exempt from federal income taxation
6 under Section 501(a) of the Internal Revenue Code of 1986, as
7 an organization described by Section 501(c)(3) of that code,
8 which assists the parent or legal guardian of a child with the
9 process of providing for the temporary care of a child through
10 the execution of a power of attorney as described in this section.

§49-8-3. Delegation of care and custody of a child

1 (a) The following shall apply only to situations where a
2 parent, guardian or legal custodian of a child provides for the
3 temporary care and custody of a child with the assistance of a
4 qualified nonprofit organization. Nothing in this section shall be
5 interpreted to restrict the rights of parents, guardians or legal
6 custodians providing for the care of children by power of
7 attorney in other contexts.

8 (b) A parent, guardian or legal custodian of a child may, by
9 a properly executed power of attorney, delegate to a person, for
10 a period not to exceed one year, the care and custody of the
11 child.

12 (c) A parent, guardian or legal custodian may not delegate:

13 (1) The power to consent to marriage or adoption of the
14 child;

15 (2) The performance or inducement of an abortion on or for
16 the child; or

17 (3) The termination of parental rights to the child.

18 (d) A delegation of care and custody of a child, under this
19 article, does not change or modify any parental or legal rights,
20 obligations, or authority established by an existing court order,
21 or deprive the parent, guardian or legal custodian of any parental
22 or legal rights, obligations, or authority regarding the custody,
23 visitation, or support of the child.

24 (e) The parent, guardian or legal custodian of the child may
25 revoke or withdraw this power of attorney at any time. Upon the
26 termination, expiration, or revocation of the power of attorney
27 the child shall be returned to the custody of the parent, guardian
28 or legal custodian within forty-eight hours.

29 (f) Unless the authority is revoked or withdrawn by the
30 parent, guardian or legal custodian, the designee shall exercise
31 parental or legal authority on a continuous basis without
32 compensation for the duration of the power of attorney.

33 (g) The care and custody of a child may only be delegated to
34 the extent, and so long as, the parent, guardian or legal custodian
35 retains care and custody. If the rights of the parent, guardian or
36 custodian of the child are terminated, the power of attorney shall
37 be deemed to be revoked. A court that revokes the care and
38 custody rights of a parent, guardian or legal custodian shall
39 notify the person to whom those parental rights has been
40 delegated, and the child may remain with that person until the
41 court shall finalize the subsequent placement of the child:
42 *Provided*, That no period of placement with a person pursuant to
43 the provisions of this article shall be considered as a factor in a
44 custody hearing in which a family member seeks to be awarded
45 custody of the child.

46 (h) The execution of a power of attorney by a parent,
47 guardian or legal custodian does not, without other evidence,
48 constitute abandonment, abuse or neglect unless the parent,
49 guardian or legal custodian fails to either take custody of the
50 child or execute a new power of attorney after the one year time
51 limit has elapsed: *Provided*, That nothing in this article may be
52 interpreted to prevent the West Virginia Bureau for Children and
53 Families or law enforcement from investigating allegations of
54 abuse, abandonment, neglect or other mistreatment of a child.

55 (i) If a parent, guardian or legal custodian of a child wishes
56 to utilize the power of attorney authorized by this section to
57 delegate any powers regarding the care and custody of the child
58 to another person, the qualified nonprofit organization shall
59 conduct a criminal history and federal and state background
60 check on the person to whom powers are delegated prior to the
61 execution of the power of attorney. The criminal history and

62 federal and state background check shall be paid for by the
63 qualified nonprofit organization, the parent, guardian or legal
64 custodian, or the parent's designee. Additionally, the qualified
65 nonprofit organization shall train the designee in the rights,
66 duties, and limitations associated with providing care for a child
67 under this section, including the prevention and reporting of
68 suspected child abuse or neglect.

69 (j) The designee may not move from the address listed on the
70 parental rights form without written approval of the parent,
71 guardian or legal custodian.

72 (k) Any person who accepts care and custody of a child
73 pursuant to the provisions of this article shall be deemed a
74 person mandated to report suspected abuse and neglect pursuant
75 to the provisions of section eight hundred three, article two,
76 chapter forty-nine of this code.

77 (l) If a parent, guardian or legal custodian dies or becomes
78 incapacitated, then the provisions of article ten, chapter forty-
79 four of this code shall apply.

80 (m) Nothing in this section is intended, nor shall anything
81 herein be interpreted, to otherwise restrict the rights of custodial
82 parents or non-custodial parents to temporarily delegate or
83 provide for the care and custody of a child, or to assert their right
84 to request custody, in accordance with other provisions of West
85 Virginia law.

§49-8-4. Delegation of parental rights form.

1 (a) The following statutory form of power of attorney to
2 delegate parental or legal custody may be used:

3 STATE OF WEST VIRGINIA

4 STATUTORY FORM FOR POWER OF ATTORNEY TO
5 DELEGATE PARENTAL OR LEGAL CUSTODIAN POWERS

6 (1) "I, _____, certify that I am the parent or
7 legal custodian of:

8 _____

9 (Full name of minor child) (Date of birth)

10 _____

11 (Full name of minor child) (Date of birth)

12 _____

13 (Full name of minor child) (Date of birth)

14 who is/are minor children."

15 (2) "I designate _____ (Full name
16 of designee),

17 _____

18 (Street address, city, state and zip code of designee)

19 _____

20 (Home phone of designee) (Work phone of designee) as the
21 designee of each minor child named above."

22 (3) "I delegate to the designee all of my power and authority
23 regarding the care, custody and property of each minor child
24 named above, including but not limited to the right to enroll the
25 child in school, inspect and obtain copies of education records
26 and other records concerning the child, the right to attend school
27 activities and other functions concerning the child, and the right
28 to give or withhold any consent or waiver with respect to school
29 activities, medical and dental treatment, and any other activity,
30 function or treatment that may concern the child. This delegation

31 does not include the power or authority to consent to marriage or
32 adoption of the child, the performance or inducement of an
33 abortion on or for the child, or the termination of parental rights
34 to the child.”

35 Or

36 (4) “I delegate to the designee the following specific powers
37 and responsibilities

38 (write in): _____

39 (In the event paragraph four is completed paragraph three
40 does not apply).

41 This delegation does not include the power or authority to
42 consent to marriage or adoption of the child, the performance or
43 inducement of an abortion on or for the child, or the termination
44 of parental rights to the child.”

45 (5) “This power of attorney is effective for a period not to
46 exceed one year, beginning,

47 _____, ____, and ending _____, _____. I
48 reserve the right to revoke this authority at any time.”

49 By: _____
50 (Parent/Legal Custodian signature)

51 (6) “I hereby accept my designation as designee for the
52 minor child/children specified in this power of attorney.

53 By: _____
54 (Designee signature)

55 State of _____

56 County of _____

57 ACKNOWLEDGMENT

58 Before me, the undersigned, a Notary Public, in and for said
59 County and State on this ____ day of _____, _____,
60 personally appeared _____ (Name
61 of Parent/Legal Custodian) and _____ (Name
62 of designee), to me known to be the identical persons who
63 executed this instrument and acknowledged to me that each
64 executed the same as his or her free and voluntary act and deed
65 for the uses and purposes set forth in the instrument.

66 Witness my hand and official seal the day and year above
67 written.

68 _____ (Signature of notarial
69 officer)

70 _____ (Title and Rank)

71 My commission expires: _____”

72 (b) A power of attorney is legally sufficient under this article
73 if the wording of the form substantially complies with this
74 section, the form is properly completed, and the signatures of the
75 parties are acknowledged.

76 (c) A copy of each power of attorney executed pursuant to
77 this article shall be retained by the qualified nonprofit
78 organization for a period of three years following the conclusion
79 of the power of attorney. The qualified nonprofit organization
80 shall, upon request, make these records available to the
81 Department of Health and Human Resources.

§49-8-5. Mandatory disclosures by child investigative personnel.

1 During a child protective investigation that does not result in
2 an out-of-home placement, a child protective investigator shall

- 3 provide information to the parent, guardian or legal custodian
- 4 about community service programs that provide respite care,
- 5 voluntary guardianship or other support services for families in
- 6 crisis.

**§49-8-6. Applicability of licensing and other requirements of
childcare facilities.**

- 1 (a) A delegation under this article by a parent, guardian or
- 2 legal custodian is not subject to the requirements of the child
- 3 care facility licensing statutes or foster care licensing statutes,
- 4 and does not constitute an out of home child placement under
- 5 this code.

- 6 (b) A qualified nonprofit organization as defined herein shall
- 7 not be considered a child care center, child placing agency, or
- 8 child welfare agency as defined in section two hundred six of
- 9 article one, chapter forty-nine of this Code, unless such
- 10 organization also pursues these activities in addition to providing
- 11 services outlined under this section.

CHAPTER 35

**(Com. Sub. for H. B. 4366 - By Delegates Canterbury,
E. Nelson, Frich, Westfall, Guthrie and Longstreth)**

[Passed February 29, 2016; in effect from passage.]

[Approved by the Governor on March 3, 2016.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE

§1. Finding and declaring certain claims against the Department of Health and Human Resources to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact that the
2 state has received the benefit of the commodities received and/or
3 services rendered by certain claimants herein and has considered
4 these claims against the state, and agency thereof, which have
5 arisen due to overexpenditures of the departmental
6 appropriations by officers of the state spending units, the claims
7 having been previously considered by the Court of Claims which
8 also found that the state has received the benefit of the
9 commodities received and/or services rendered by the claimants,
10 but were denied by the Court of Claims on the purely statutory
11 grounds that to allow the claims would be condoning illegal acts
12 contrary to the laws of the state. The Legislature, pursuant to its
13 findings of fact and also by the adoption of the findings of fact
14 by the Court of Claims as its own, while not condoning such
15 illegal acts, hereby declares it to be the moral obligation of the
16 state to pay these claims in the amounts specified below and
17 directs the Auditor to issue warrants upon receipt of properly
18 executed requisitions supported by itemized invoices, statements
19 or other satisfactory documents as required by section ten, article
20 three, chapter twelve of the Code of West Virginia, 1931, as
21 amended, for the payments thereof out of any fund appropriated
22 and available for the purpose.

23 *Claims against the Department Of Health and Human*
24 *Resources:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26 (1) Basagic Funeral Home..... \$3,700.00

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27	(2) Field Funeral Home.....	\$3,750.00
28	(3) Ford Funeral Home Inc..	\$2,500.00
29	(4) Fort Henry Realty Inc. dba Advanced	
30	Communications Company	\$6,570.00
31	(5) Greco-Hertnick Funeral Home.	\$2,500.00
32	(6) Handley Funeral Home Inc..	\$8,750.00
33	(7) Harding Funerals & Cremations.....	\$3,750.00
34	(8) J.G. Lampkin Funeral Home.....	\$1,250.00
35	(9) Klingel Carpenter Mortuary.	\$3,750.00
36	(10) Leavitt Funeral Home Inc.....	\$2,500.00
37	(11) Memorial Funeral Directory Inc.....	\$9,500.00
38	(12) Mounts Funeral Home Inc..	\$1,250.00
39	(13) Reasner Funeral Home.	\$6,150.00
40	(14) Tyler Mountain Funeral Home.	\$2,500.00



CHAPTER 36

(S. B. 515 - By Senators Hall, Walters and Plymale)

[Passed March 8, 2016; in effect from passage.]
 [Approved by the Governor on March 15, 2016.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Administration; Department of Education; Division of Corrections; Division of Highways; Division of Juvenile Services; Division of Labor; Office of the Chief Medical Examiner; Regional Jail Authority; State Fire Commission; and State of West Virginia to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the Court of Claims
3 concerning various claims against the state and agencies thereof
4 and in respect to each of the following claims, the Legislature
5 adopts those findings of fact as its own and in respect of certain
6 claims herein, the Legislature has independently made findings
7 of fact and determinations of award and hereby declares it to be
8 the moral obligation of the state to pay each such claim in the
9 amount specified below and directs the Auditor to issue warrants
10 for the payment thereof out of any fund appropriated and
11 available for the purpose.

12 (a) *Claim against the Department of Administration:*

13 (TO BE PAID FROM SPECIAL REVENUE FUND)

14 Emmanuel Tsitsilianos, dba International
15 Restoration Specialists. \$36,500.00

16 (b) *Claim against the Department of Education:*

17 (TO BE PAID FROM GENERAL REVENUE FUND)

18 Colyar Consulting Group. \$2,000.00

19 (c) *Claims against the Division of Corrections:*

20		(TO BE PAID FROM GENERAL REVENUE FUND)	
21	(1)	Wilton Frederick Bland.	\$510.52
22	(2)	Floyd Dale Buckhannon.	\$341.47
23	(3)	Kenneth E. Chance Jr..	\$7.08
24	(4)	Stephen Fielder.	\$508.36
25	(5)	Mark F. Hanna.	\$364.81
26	(6)	Richard Kartman.	\$203.38
27	(7)	Charles Latimer.	\$180.00
28	(8)	William W. McCallister.	\$130.00
29	(9)	Lawrence Stuckey.	\$200.00
30	(10)	Danny Summerfield.	\$21.00
31	(11)	Edwin L. Wright.	\$7.99
32	(d)	<i>Claims against the Division of Highways:</i>	
33		(TO BE PAID FROM STATE ROAD FUND)	
34	(1)	Christopher Aaron.	\$132.45
35	(2)	Mateen J. Abdul-Aziz.	\$500.00
36	(3)	Kulangara P. Abraham.	\$500.00
37	(4)	Karen S. Adams.	\$2,015.33
38	(5)	Jeannette Adkins.	\$500.00
39	(6)	Linda K. Adkins and Craig Adkins.	\$245.92
40	(7)	Sandra Adams.	\$250.00

140		CLAIMS AGAINST THE STATE	[Ch. 36
41	(8)	Wilma Adkins.	\$155.50
42	(9)	Dorsel R. Adkins II.	\$250.00
43	(10)	Jamil Ahmed.	\$221.00
44	(11)	Carol Albertson.	\$250.00
45	(12)	Steve Albright.	\$310.48
46	(13)	Catherine J. Alderman.	\$98.58
47	(14)	Doreen Allen.	\$136.74
48	(15)	Marilyn Allen.	\$376.30
49	(16)	Stephen H. Allen.	\$172.76
50	(17)	David C. Allman.	\$295.89
51	(18)	Bethany Allred.	\$354.89
52	(19)	Eman Ayash and Osama Al-Omar.	\$817.84
53	(20)	Ryan B. Alt and Nicole Alt.	\$116.79
54	(21)	Nancy Altizer.	\$165.89
55	(22)	Arnold Amos Sr. and Barbara Amos.	\$100.00
56	(23)	James L. Anderson and	
57		Martha Anderson.	\$86.70
58	(24)	Robert Todd Ankrom.	\$142.57
59	(25)	Chelsea M. Aprea and Richard Aprea.	\$241.34
60	(26)	Lisa M. Armes and Gary L. Lawson.	\$387.97
61	(27)	Charles Armstead.	\$279.47

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62	(28)	Marilyn G. Armstrong.	\$500.00
63	(29)	Michael Brent Armstrong and	
64		Brenda Armstrong.	\$423.21
65	(30)	Anthony J. Arn.	\$481.14
66	(31)	Brenda Blake Klarr and Susan Arnett.	\$756.75
67	(32)	Everett A. Arthur.	\$81.62
68	(33)	Debra Asbury.	\$473.04
69	(34)	Rodney L. Asbury and Nancy Asbury.	\$500.00
70	(35)	James Ash.	\$349.08
71	(36)	Vincent L. Ash.	\$535.11
72	(37)	Mary C. Ashby.	\$430.70
73	(38)	Amie M. Ashcraft.	\$284.12
74	(39)	Terrence Asken.	\$310.54
75	(40)	Cortnie M. Atkins and Heath Atkins.	\$125.00
76	(41)	Kristy Atkins.	\$251.58
77	(42)	William L. Atkins Jr..	\$500.00
78	(43)	Jessica K. Ayersman.	\$500.00
79	(44)	Evan L. Bailey.	\$293.61
80	(45)	Paul Bailey.	\$379.85
81	(46)	Wendy D. Bailey.	\$228.43
82	(47)	Bryanna Baker.	\$281.91

142		CLAIMS AGAINST THE STATE	[Ch. 36
83	(48)	Christopher Baker.	\$276.23
84	(49)	Corey Baker.	\$272.95
85	(50)	Jason Baker and Carly Baker.	\$447.04
86	(51)	Karla Baker.	\$330.72
87	(52)	Paul W. Baker.	\$231.22
88	(53)	Sharon Baker and Homer Baker.	\$500.00
89	(54)	Wade E. Balis and Amanda Balis.	\$214.60
90	(55)	Thomas V. Ballock.	\$74.20
91	(56)	Jeffrey A. Barber.	\$250.00
92	(57)	Robert Barber III.	\$158.22
93	(58)	Gary Barcinas and Jennifer Barcinas.	\$345.20
94	(59)	Triscella Bare and Bobby Bare.	\$977.32
95	(60)	Cynthia B. Baria and William Baria.	\$306.82
96	(61)	James R. Barker and	
97		Christina D. Barker.	\$136.93
98	(62)	Jesse L. Barker.	\$169.60
99	(63)	David Michael Barlow.	\$109.80
100	(64)	Gary Trent and Stacey Barnes.	\$288.80
101	(65)	Sharon Barnett.	\$70.52
102	(66)	Anderson L. Barnette.	\$689.49
103	(67)	Rebecca Barnette.	\$380.23

Ch. 36]		CLAIMS AGAINST THE STATE	143
104	(68)	Jonathan Bartlett and Janell Bartlett.	\$245.38
105	(69)	Wendy Bartlett.	\$250.00
106	(70)	James E. Barton Sr..	\$234.32
107	(71)	Cindy L. Bates and David Bates.	\$392.16
108	(72)	John M. Bates.	\$114.88
109	(73)	Velma E. Bates.	\$250.34
110	(74)	Emily Batten.	\$334.99
111	(75)	Lindsay Bays.	\$500.00
112	(76)	Kimberly Beach.	\$150.00
113	(77)	Elida Beatty.	\$302.41
114	(78)	Andrew E. Becker.	\$386.91
115	(79)	Ronald A. Beckner and	
116		Kelly C. Beckner.	\$250.00
117	(80)	Edward J. Beech.	\$500.00
118	(81)	Robin Ann Beegle.	\$32.71
119	(82)	Sharon Belcher and Arthur Belcher. . .	\$30,000.00
120	(83)	Andrew D. Bell and Trinity Bell.	\$118.00
121	(84)	Jessica Bellish.	\$500.00
122	(85)	Katherine S. Bennett.	\$268.23
123	(86)	Kerry L. Bennett and	
124		Michael R. Bennett.	\$250.00
125	(87)	Lukas Benton.	\$615.56

144		CLAIMS AGAINST THE STATE	[Ch. 36
126	(88)	Donna Bever and Warren Bever.	\$492.56
127	(89)	Kimberly Bias.	\$115.00
128	(90)	Jerrie D. Biddle.	\$500.00
129	(91)	William Biggins and Regina Biggins.	\$140.45
130	(92)	Jeremy M. Bilotta and	
131		Brianna M. Bilotta.	\$107.74
132	(93)	Ashley N. Binegar.	\$149.46
133	(94)	Lance Binegar.	\$106.00
134	(95)	John W. Bintrim.	\$156.73
135	(96)	Leonard Bird and Emma Bird.	\$298.82
136	(97)	John A. Bishop.	\$166.93
137	(98)	Mary C. Black.	\$95.40
138	(99)	Brian Blake.	\$1,207.72
139	(100)	Julie L. Bland.	\$134.67
140	(101)	Karen L. Blaney.	\$500.00
141	(102)	Briana Patton and Brandon Blosser.	\$209.00
142	(103)	Linda Blower.	\$170.81
143	(104)	Paul Bodine and Mary Bodine.	\$74.73
144	(105)	Tonia Boggs.	\$100.00
145	(106)	Mary Bolyard.	\$137.80
146	(107)	Paul Bradley Bonar.	\$1,237.44

Ch. 36]		CLAIMS AGAINST THE STATE	145
147	(108)	Jeffrey Bonaventura.	\$366.50
148	(109)	Janet K. Boord.	\$402.00
149	(110)	Samantha A. Booth.	\$65.72
150	(111)	Goldie L. Bostic.	\$117.12
151	(112)	Richard Botkins.	\$500.00
152	(113)	Debra Bowman and Larry Bowman.	\$250.00
153	(114)	George E. Bowman.	\$351.77
154	(115)	Beth Boyd and Jeff Boyd.	\$1,000.00
155	(116)	Mark Edward Boyle.	\$179.43
156	(117)	Terrance R. Brabham and	
157		Mary Ann Brabham.	\$209.44
158	(118)	Terry Braddy.	\$250.68
159	(119)	Cozette Bradfield and John Bradfield.	\$63.60
160	(120)	Daniel L. Bradford and	
161		Brittany May Bradford.	\$434.63
162	(121)	Paula Bradley.	\$457.34
163	(122)	Joshua S. Bradshaw.	\$250.00
164	(123)	Sabra D. Brady.	\$250.00
165	(124)	Margaret L. Bragg.	\$106.00
166	(125)	Jeannine L. Branch.	\$245.95
167	(126)	Mark Braskey.	\$497.76
168	(127)	Jack Brisendine.	\$136.94

146		CLAIMS AGAINST THE STATE	[Ch. 36
169	(128)	Douglas S. Britvec.	\$500.00
170	(129)	Janet Brobst and Donald Brobst.	\$309.52
171	(130)	James K. Brock.	\$154.23
172	(131)	Michelle Brock.	\$202.60
173	(132)	David M. Brooks.	\$200.29
174	(133)	Bonnie J. Brown.	\$186.34
175	(134)	Donna Brown.	\$362.48
176	(135)	E. Keith Brown and Lisa D. Brown.	\$334.32
177	(136)	Jason D. Brown.	\$500.00
178	(137)	Jeremy D. Brown.	\$125.68
179	(138)	Paula Hall Brown.	\$250.00
180	(139)	Tammy Mullins and Laura Brown.	\$500.00
181	(140)	Kathy Browning and Tim Browning.	\$100.00
182	(141)	Robert Browning.	\$70.00
183	(142)	Roger D. Browning.	\$1,200.00
184	(143)	Susan G. Browning.	\$533.63
185	(144)	Brittany Bruce.	\$107.25
186	(145)	Melissa L.M. Brumfield.	\$369.37
187	(146)	Cynthia A. Bryant and Jack Bryant.	\$271.89
188	(147)	Jonathan Buehl.	\$250.00
189	(148)	Ramona F. Burcham.	\$176.32

Ch. 36]		CLAIMS AGAINST THE STATE	147
190	(149)	Beth Anne Burd and Stephen Burd.	\$180.20
191	(150)	Jennifer Burford.	\$657.10
192	(151)	William John Burgess.	\$250.00
193	(152)	Waylon P. Burke and	
194		Priscilla J. Burke.	\$250.00
195	(153)	Jordan Burnette.	\$90.63
196	(154)	Latricia Burns.	\$222.27
197	(155)	Sharon Burns.	\$126.25
198	(156)	Greg Burnside and Cathy Burnside.	\$450.30
199	(157)	Michael Burnside and	
200		Angela Burnside.	\$171.72
201	(158)	Robert R. Burrows.	\$66.78
202	(159)	Richard Burwell.	\$500.00
203	(160)	Casey B. Bustle.	\$100.00
204	(161)	Michael H. Butcher.	\$237.00
205	(162)	Gary K. Butler.	\$500.00
206	(163)	Marvin B. Byard.	\$190.75
207	(164)	Michael O. Cadle.	\$326.48
208	(165)	Oscar Cain.	\$171.06
209	(166)	Crystal Caldwell.	\$105.00
210	(167)	Mark Douglas Calvert.	\$115.54
211	(168)	Arlie Campbell.	\$809.63

148		CLAIMS AGAINST THE STATE	[Ch. 36
212	(169)	Arlie Campbell and	
213		Tammy Campbell.....	\$313.02
214	(170)	Bruce L. Campbell.....	\$500.00
215	(171)	Christopher S. Campbell and	
216		Tisha M. Campbell.....	\$206.30
217	(172)	Stacey Campbell.....	\$434.19
218	(173)	Harold L. Campbell Jr.....	\$250.00
219	(174)	Kristy D. Canada.....	\$500.00
220	(175)	Caitlin M. Cannon.....	\$499.01
221	(176)	Heather Cantley.....	\$254.30
222	(177)	Jeremy Cantley.....	\$69.96
223	(178)	Donald F. Cantrell.....	\$47.70
224	(179)	Evan Carfagna.....	\$711.00
225	(180)	Anastasia Carmen.....	\$445.10
226	(181)	Gary L. Carper.....	\$240.00
227	(182)	Lorrinda Carr and Eric Carr.....	\$100.00
228	(183)	Jerry D. Carroll.....	\$1,907.55
229	(184)	Jeremy Carte.....	\$199.39
230	(185)	Michell Carter Adkins and	
231		Tabitha Carter.....	\$289.45
232	(186)	Amber Carver and Michael Carver.....	\$96.42
233	(187)	Wesley K. Cassidy.....	\$92.11

Ch. 36]		CLAIMS AGAINST THE STATE	149
234	(188)	Curtis Casto.	\$500.00
235	(189)	David C. Casto and Traci Casto.	\$198.22
236	(190)	John A. Cavender.	\$1,000.00
237	(191)	Candice Caviness.	\$368.22
238	(192)	Bobby J. Cayton.	\$148.40
239	(193)	Eric S. Cayton.	\$500.00
240	(194)	James Cecil.	\$1,000.00
241	(195)	Bruno Celaschi.	\$219.95
242	(196)	Chafin Trucking Inc..	\$1,000.00
243	(197)	Emily Chamberlain.	\$2,219.89
244	(198)	Craig A. Chambers and	
245		Anne C. Chambers.	\$500.00
246	(199)	Mark Chambers.	\$399.30
247	(200)	Laura L. Chance and Everett Chance.	\$252.21
248	(201)	Alicia Renee Chandler.	\$491.11
249	(202)	Billie Ann Chandler.	\$190.78
250	(203)	Jamarr T. Chandler.	\$811.00
251	(204)	Christopher S. Chapman.	\$1,000.00
252	(205)	Donna Chatman.	\$500.00
253	(206)	Thejo K. Chipinapi.	\$211.03
254	(207)	John J. Cicalese.	\$770.95

150		CLAIMS AGAINST THE STATE	[Ch. 36
255	(208)	Ashley Clark.....	\$123.05
256	(209)	Jackie D. Clark.....	\$240.10
257	(210)	Jonathan Randall Clark.	\$1,000.00
258	(211)	Lindsay M. Clark.	\$235.43
259	(212)	Charles W. Clausing.....	\$1,000.00
260	(213)	William Clay.	\$500.00
261	(214)	Timothy L. Clemens.....	\$211.30
262	(215)	William C. Clendenin.....	\$250.00
263	(216)	Ashley D. Clevenger.	\$201.40
264	(217)	Jeremy Cobb.....	\$331.94
265	(218)	Brian David Cochran.	\$500.00
266	(219)	Jami L. Cochran.	\$2,500.00
267	(220)	Steven Cohen.	\$136.25
268	(221)	Stephen Coladonato.	\$1,384.27
269	(222)	Ruth Ann Colby Martin.	\$108.12
270	(223)	David Coleman.....	\$200.50
271	(224)	Tamera D. Coleman.	\$1,000.00
272	(225)	Brandon Collins.	\$169.49
273	(226)	Juanita L. Collins.	\$180.20
274	(227)	Diana Coltelli.....	\$208.53
275	(228)	Patricia Compston.	\$1,500.00

Ch. 36]		CLAIMS AGAINST THE STATE	151
276	(229)	Hope Compton.	\$169.45
277	(230)	Laken Conn.	\$1,034.28
278	(231)	Beverly Conner.	\$332.47
279	(232)	Douglas J. Cooper and	
280		Nancy E. Cooper.	\$1,000.00
281	(233)	James B. Cooper and Ada Cooper.	\$1,000.00
282	(234)	Denzil Copen.	\$125.40
283	(235)	Tarena Copley and William Copley.	\$196.10
284	(236)	Linda Copning.	\$500.00
285	(237)	Jeffery S. Corder and Holly Corder.	\$301.92
286	(238)	Phillip A. Correll.	\$304.15
287	(239)	Dorothy Corvi.	\$200.00
288	(240)	Shirley P. Cottingham.	\$100.00
289	(241)	Jeffrey Cottrell and Trina Cottrell.	\$75.79
290	(242)	Elba L. Coulter Jr..	\$250.00
291	(243)	Debra A. Crawford.	\$223.70
292	(244)	Karin L. Creech.	\$365.52
293	(245)	Gary D. Cremeans.	\$183.38
294	(246)	John M. Criado and Betsy A. Criado.	\$680.00
295	(247)	Fabio Crichigno.	\$339.20
296	(248)	Danny Crider.	\$104.89

152		CLAIMS AGAINST THE STATE	[Ch. 36
297	(249)	Mike Critchfield.....	\$250.00
298	(250)	Samantha Crites.....	\$188.00
299	(251)	Derek A. Cross.....	\$204.93
300	(252)	John Crouch III.....	\$79.50
301	(253)	Bradley Crouser and Sally Crouser.	\$767.48
302	(254)	Barbara S. Crowe.....	\$187.92
303	(255)	William T. Cruey Jr. and	
304		Jeanine M. Cruey.....	\$158.05
305	(256)	William T. Cruey Jr.....	\$163.24
306	(257)	Keenan Christopher Cummings and	
307		Stephanie Cummings.....	\$170.66
308	(258)	Maria Cumpston.....	\$148.48
309	(259)	Deborah E. Cunningham.	\$465.57
310	(260)	Robert T. Cupp Jr.	\$276.05
311	(261)	Edward A. Currey.....	\$191.01
312	(262)	June A. Curry and Michael Curry.	\$500.00
313	(263)	Sharon Curry.	\$643.52
314	(264)	Amy Daddysman.	\$175.38
315	(265)	Kevin S. Dadey.....	\$487.18
316	(266)	Jeannie Dailey.	\$500.00
317	(267)	Donald Dalton.	\$103.88

Ch. 36]		CLAIMS AGAINST THE STATE	153
318	(268)	Michelle L. Dalton and	
319		Derek E. Dalton.	\$1,000.00
320	(269)	Brenda K. Damron and	
321		Douglas E. Damron.	\$500.00
322	(270)	JoAnna Daniel.	\$500.00
323	(271)	Lisa Dannemiller.	\$429.40
324	(272)	Darla Davidson and Donald Davidson.	\$106.45
325	(273)	Ashleigh Davis and Scott Davis.	\$99.99
326	(274)	Fred L. Davis and Sherri Davis.	\$487.57
327	(275)	Jeff Davis and Tiny Davis.	\$111.47
328	(276)	Richard B. Davis.	\$750.00
329	(277)	Sarah Davis.	\$91.16
330	(278)	Steve Davis and Anna C. Davis.	\$145.00
331	(279)	Ginger Davis-Rhodes.	\$79.50
332	(280)	Bayleigh Davisson.	\$95.39
333	(281)	Doug Day.	\$150.00
334	(282)	Joseph H. Deacon III.	\$500.00
335	(283)	Dinah Deal.	\$578.00
336	(284)	Russ Dean.	\$150.00
337	(285)	James Deavers.	\$2,703.74
338	(286)	Lauren Deckelbaum.	\$42.50
339	(287)	Debra L. Deem.	\$250.00

154		CLAIMS AGAINST THE STATE	[Ch. 36
340	(288)	Jeri L. DeFelice.	\$500.00
341	(289)	Shelia DeLauder.	\$137.80
342	(290)	Clarence R. Delay and	
343		Wilda M. Delay.	\$822.32
344	(291)	Melinda Beth Dellinger.	\$106.95
345	(292)	Chris Delsibnore.	\$166.10
346	(293)	Jennifer E. Derrick.	\$209.59
347	(294)	Anthony DiBello.	\$356.04
348	(295)	Charles M. Dicataldo.	\$232.73
349	(296)	Brittany Dick.	\$222.03
350	(297)	Andrew J. Dimitroff.	\$216.74
351	(298)	Jason Dingeldein.	\$160.00
352	(299)	Robert W. Dinsmore.	\$890.35
353	(300)	Daniel DiOrio and Jackie DiOrio.	\$278.43
354	(301)	Barry Doak and Michelle Doak.	\$250.00
355	(302)	Jeremy J. Donai and Tara Donai.	\$623.91
356	(303)	Melissa Dorsch.	\$244.81
357	(304)	Sabrina Doubroff and	
358		Peter Doubroff.	\$500.00
359	(305)	Courtney Dove and James Dove.	\$176.17
360	(306)	Deborah Dowler.	\$20,716.54
361	(307)	DSI Inc..	\$500.00

Ch. 36]		CLAIMS AGAINST THE STATE	155
362	(308)	Amanda D. Duckworth and	
363		William H. Duckworth.....	\$456.22
364	(309)	Lisa R. Duckworth.....	\$186.56
365	(310)	Ronald E. Dugan.....	\$112.34
366	(311)	Zachary Duley.....	\$121.35
367	(312)	William K. Dulin and	
368		Sharoy D. Dulin.....	\$1,000.00
369	(313)	Jill L. Duncan and Carol J. Duncan.....	\$134.50
370	(314)	Linda L. Duncan.....	\$149.37
371	(315)	Michael S. Duncan.....	\$230.00
372	(316)	Tammy L. Duncan.....	\$146.81
373	(317)	Amber N. Dunn and	
374		Marcus Ray Dunn.....	\$232.13
375	(318)	Jerry Edward Dunn and	
376		Charlotte R. Dunn.....	\$800.00
377	(319)	Kristina Johnston Dunn and	
378		Shane F. Dunn.....	\$277.72
379	(320)	Shelli L. Dutton.....	\$114.48
380	(321)	Edith L. Dye.....	\$246.26
381	(322)	Lora D. Graves and Brian D. Dye.....	\$443.08
382	(323)	Harvey Ealy.....	\$170.65
383	(324)	Rebecca Earls.....	\$80.00
384	(325)	Heather Cook and Robert Ebbecke.....	\$241.08

156		CLAIMS AGAINST THE STATE	[Ch. 36
385	(326)	Angela B. Eddy.	\$159.00
386	(327)	Jennifer Eddy.	\$91.58
387	(328)	Judith A. Eddy.	\$250.00
388	(329)	David M. Edmonds.	\$331.58
389	(330)	Cindy L. Edwards.	\$250.00
390	(331)	Tracy Elder.	\$678.58
391	(332)	Roger Dow Elkins.	\$500.00
392	(333)	Ernest H. Elliott.	\$305.98
393	(334)	Jennifer Elliott.	\$275.60
394	(335)	Nancy Elliott.	\$1,000.00
395	(336)	Sheila Elliott.	\$242.00
396	(337)	Gabriel Ellis.	\$1,699.18
397	(338)	Jamie S. Ellis.	\$716.24
398	(339)	Linda M. Elsea.	\$232.63
399	(340)	Barry R. Engle.	\$768.41
400	(341)	Richard Entler.	\$100.00
401	(342)	James R. Epperly II.	\$330.62
402	(343)	Anthony A. Ervolina.	\$250.00
403	(344)	Alix Evans.	\$200.00
404	(345)	Milton T. Evans and Eloise Evans.	\$155.35
405	(346)	John M. Everly.	\$279.66

Ch. 36]	CLAIMS AGAINST THE STATE	157
406	(347) David A. Fabry.....	\$130.94
407	(348) Barbara Facemyre.	\$191.86
408	(349) Richard Farber.	\$106.00
409	(350) Brian K. Farley and Cora N. Farley.....	\$219.42
410	(351) Whitney N. Fast.	\$214.29
411	(352) Larry S. Fernandez.....	\$132.40
412	(353) Arthur Fields Jr. and Gypsy Fields.	\$91.16
413	(354) Patricia A. Filer.	\$309.51
414	(355) Kittye Fink and Donnie Fink.	\$137.80
415	(356) Barry L. Fisher and Crystal L. Fisher.	\$82.66
416	(357) Michael Fisher.	\$249.10
417	(358) Vera G. Fitchett.	\$252.78
418	(359) Carlyle L. Fitzgerald.	\$560.46
419	(360) Carolyn Fitzpatrick.....	\$152.50
420	(361) William M. Flanagan.....	\$250.00
421	(362) Brian L. Flanery and Karen Flanery.....	\$186.56
422	(363) Ronnie L. Flanigan.....	\$243.80
423	(364) Richard Fleshman and	
424	Shirley Fleshman.	\$50.00
425	(365) Ashley N. Flowers.	\$500.00
426	(366) Bryan Flowers, dba Flowers and	
427	Associates.....	\$222.60

158		CLAIMS AGAINST THE STATE	[Ch. 36
428	(367)	Pamela J. Foley.	\$233.20
429	(368)	Stephanie Footer.	\$434.29
430	(369)	Brian W. Fordyce.	\$213.39
431	(370)	Brian Forinash.	\$199.13
432	(371)	Julie Francis.	\$248.03
433	(372)	Tammy Frazie.	\$272.50
434	(373)	Sondra Frazier.	\$112.00
435	(374)	Stan Freeland.	\$100.70
436	(375)	David M. Freeman.	\$353.00
437	(376)	Melody L. Freeman.	\$93.28
438	(377)	Rachel Freeman.	\$200.17
439	(378)	Arnold L. French.	\$500.00
440	(379)	Kimberly Furner.	\$159.00
441	(380)	Cynthia M. Gagnon.	\$261.00
442	(381)	David Gant.	\$526.80
443	(382)	Chris Garner.	\$250.00
444	(383)	Thomas R. Garrett and Lena Garrett.	\$500.00
445	(384)	Helen C. Garshaw.	\$123.62
446	(385)	Douglas Garten and Sharon Garten.	\$250.00
447	(386)	Ateah Geiger.	\$235.09
448	(387)	Hatice Ghulamani and Amin	
449		Ghulamani.	\$133.03

Ch. 36]	CLAIMS AGAINST THE STATE	159
450	(388) Misty Lynn Gibson.....	\$3,656.14
451	(389) Misty Lynn Gibson as Parent and	
452	Guardian of Drake Allen Gibson.	\$500.00
453	(390) Thomas Gieseey.....	\$295.25
454	(391) Steve Giessler and Lisa Giessler.	\$615.29
455	(392) Frank Gilbert.	\$201.40
456	(393) Jack D. Gilbert II and Kelly Gilbert.....	\$149.99
457	(394) Melissa Gilbert.....	\$500.00
458	(395) Brandi Gillian and Carla M. Gillian.....	\$107.60
459	(396) Danny Gilmore and Angela Gilmore.....	\$131.42
460	(397) Kimberly Gissy.	\$270.83
461	(398) Chris J. Giuliani.	\$244.71
462	(399) Judith L. Glatz and John T. Glatz Jr.....	\$186.87
463	(400) Ceateetra Goard.	\$500.00
464	(401) Mark A. Godbey.....	\$6,700.00
465	(402) Linda Goddard.	\$93.34
466	(403) Dennis Godfrey.	\$263.89
467	(404) Marvin Goff and Gwen Goff.	\$190.00
468	(405) Heather Golden and John Golden.	\$250.00
469	(406) Sherri Melinda Good.	\$214.12
470	(407) Ronald Goodman.	\$500.00

160		CLAIMS AGAINST THE STATE	[Ch. 36
471	(408)	Britney Goodwin.	\$130.37
472	(409)	Beverly J. Gouer.	\$1,000.00
473	(410)	Ronald A. Grace.	\$533.00
474	(411)	Timothy G. Graley.	\$250.00
475	(412)	Letishia Grapes.	\$250.00
476	(413)	Tyler J. Graves.	\$250.00
477	(414)	Linda C. Gray.	\$250.00
478	(415)	Vanessa F. Gray.	\$500.00
479	(416)	Judy Graybeal.	\$66.95
480	(417)	Beatrice B. Greathouse.	\$52.47
481	(418)	Cherie Renee Greathouse and	
482		Jeffrey Greathouse.	\$235.79
483	(419)	Robert C. Cody and	
484		Briana Greathouse.	\$958.77
485	(420)	Alexander J. Green.	\$42.40
486	(421)	Amberly Dawn Green.	\$122.44
487	(422)	Becky G. Green.	\$169.60
488	(423)	Carol L. Green.	\$186.36
489	(424)	Lisa L. Green.	\$137.56
490	(425)	Ray A. Green.	\$178.92
491	(426)	Vicki Gregorash.	\$84.80
492	(427)	Hildred L. Grey.	\$358.23

Ch. 36]		CLAIMS AGAINST THE STATE	161
493	(428)	Barbara Griffin.....	\$161.65
494	(429)	James R. Griffith.	\$237.96
495	(430)	Groff Tractor & Equipment.	\$2,605.43
496	(431)	David Gross.	\$151.00
497	(432)	Samuel C. Gross and	
498		Virginia M. Gross.....	\$250.00
499	(433)	Sarah Groves and James Groves.	\$275.70
500	(434)	Susan W. Groves.	\$500.00
501	(435)	Anthony J. Guarascio.....	\$500.00
502	(436)	Corey Gue and Sarah Gue.	\$1,000.00
503	(437)	Clark T. Gump.	\$500.00
504	(438)	Richard Gump and Audrey Gump.	\$231.08
505	(439)	Erdogan Gunel and Janis Gunel.....	\$500.00
506	(440)	Michael L. Hager and	
507		Jeanne B. Hager.	\$290.35
508	(441)	Nancy L. Hager and	
509		David Patrick Hager.....	\$1,000.00
510	(442)	Bryan M. Hagley.	\$400.00
511	(443)	Patrick D. Haines.	\$243.13
512	(444)	Sandra J. Haines.....	\$554.07
513	(445)	Franklin Hairston.	\$500.00
514	(446)	Danny Hall.	\$90.00

162		CLAIMS AGAINST THE STATE	[Ch. 36
515	(447)	Randall B. Hall.....	\$250.00
516	(448)	Ricky D. Hall.....	\$500.00
517	(449)	Matthew D. Haller.....	\$401.74
518	(450)	Sylvia Hamden.....	\$497.92
519	(451)	Betty L. Hammett.....	\$75.26
520	(452)	Mallory E. Hammond.....	\$110.12
521	(453)	Angela Crone and Michael Hamrick.	\$212.09
522	(454)	Walks With Wolves Handley.....	\$150.00
523	(455)	Luther C. Hansbarger.....	\$238.90
524	(456)	Nancy L. Harding.....	\$411.70
525	(457)	Scott Robert Hardy, David Hardy and	
526		Nadia Hardy.....	\$531.20
527	(458)	John W. Harless.....	\$428.18
528	(459)	Michael Harless and Pamela Harless.....	\$500.00
529	(460)	Ray B. Harless.....	\$93.28
530	(461)	Dorrel Harman and Jeanne Harman.....	\$100.00
531	(462)	Karen Harmon.....	\$162.95
532	(463)	Marty Harmon and Deborah Harmon.	\$737.13
533	(464)	Bradley C. Harris.....	\$111.70
534	(465)	Garry Harris and Lillie Harris.....	\$250.00
535	(466)	Michelle Harris.....	\$235.00

Ch. 36]		CLAIMS AGAINST THE STATE	163
536	(467)	Ronald Harris.	\$253.34
537	(468)	Tabatha N. Harrison.	\$500.00
538	(469)	Angelique Hart.	\$169.02
539	(470)	William E. Hart.	\$3,942.00
540	(471)	Isaac Hartman.	\$500.00
541	(472)	Gregory A. Harvey and	
542		Elizabeth A. Harvey.	\$131.21
543	(473)	Tammy M. Harvey.	\$861.65
544	(474)	Dana Jividen and Wesley Hatfield.	\$153.48
545	(475)	Dwayne E. Hatfield.	\$134.61
546	(476)	Wallie E. Hatfield.	\$201.08
547	(477)	Jeffrey L. Haught.	\$153.98
548	(478)	Eugene Hawk.	\$64.50
549	(479)	Candice Hawley.	\$178.69
550	(480)	Lindsay C. Hay, Robert Hay and	
551		Janice Hay.	\$150.00
552	(481)	Kim Haynes.	\$250.00
553	(482)	John D. Haynie.	\$250.00
554	(483)	Bethany Heater.	\$241.68
555	(484)	Amanda Renee Heaton.	\$165.83
556	(485)	James W. Hedges.	\$500.00
557	(486)	Matthew P. Heiskell.	\$238.75

164		CLAIMS AGAINST THE STATE	[Ch. 36
558	(487)	Gregory Helbus.	\$417.19
559	(488)	Lindal C. Helmick and	
560		A. Ray Helmick.	\$247.01
561	(489)	Jerry P. Helms.	\$95.00
562	(490)	Gail Henderson.	\$500.00
563	(491)	Aaron Henry.	\$657.35
564	(492)	William Hensley by and on behalf of	
565		Luther Hensley.	\$3,031.00
566	(493)	Christopher L. Herdman.	\$500.00
567	(494)	Dianna L. Hewitt and	
568		Vance J. Hewitt.	\$500.00
569	(495)	Brian Hickson.	\$31.80
570	(496)	Sarah Highlander.	\$451.51
571	(497)	Mary Taylor Hile.	\$347.05
572	(498)	Debbie A. Hileman.	\$146.32
573	(499)	Kenneth Hileman.	\$1,000.00
574	(500)	Lois Hill.	\$211.76
575	(501)	George Hilvers.	\$1,743.30
576	(502)	Barbara A. Hinkle.	\$177.24
577	(503)	William L. Hinkle.	\$354.90
578	(504)	Oleta P. Hinzman.	\$275.47
579	(505)	Ronald Hinzman.	\$100.00

Ch. 36]	CLAIMS AGAINST THE STATE	165
580	(506) Rex F. Hodge.	\$449.84
581	(507) Robert Hoel.	\$283.15
582	(508) Paul D. Hoff.	\$131.13
583	(509) Alan J. Hoffman.	\$346.59
584	(510) Karen Beth Hoffman.	\$500.00
585	(511) Diana Brown Hogan.	\$90.84
586	(512) Amy Hogsett.	\$455.80
587	(513) Rebekah Wilson Hoh.	\$341.98
588	(514) Vicki Lynn Holbein and	
589	Michael Holbein.	\$500.00
590	(515) Carletta Hollandsworth and	
591	Gary N. Hollandsworth.	\$296.76
592	(516) David Holley and	
593	Linda Louise Holley.	\$500.00
594	(517) Sandra Holley.	\$152.67
595	(518) David L. Honeycutt.	\$434.55
596	(519) Jason A. Honeycutt.	\$111.30
597	(520) Donna Hopkins-Harrison.	\$500.00
598	(521) Gary Horne.	\$1,370.27
599	(522) Tonya S. Hostetler and	
600	David Hostetler.	\$500.00
601	(523) Joshua S. Hostuttler.	\$446.14
602	(524) Chaz S. Howard.	\$1,049.15

166		CLAIMS AGAINST THE STATE	[Ch. 36
603	(525)	Beth M. Huddleston and	
604		Kenneth Huddleston.....	\$225.78
605	(526)	Timothy M. Hudson.....	\$217.79
606	(527)	Betsy S. Huffman.....	\$100.00
607	(528)	Denny Hughes and Helen Hughes.....	\$413.30
608	(529)	Joel R. Hughes.....	\$500.00
609	(530)	Harry Humphreys Jr.....	\$151.66
610	(531)	Matthew Humphries.....	\$177.02
611	(532)	Christy J. Hunter.....	\$250.00
612	(533)	Frances E. Hunter.....	\$220.06
613	(534)	Mindy Hunter.....	\$500.00
614	(535)	Donald Hussell and Alice Hussell.....	\$100.00
615	(536)	Gary A. Hutchinson.....	\$98.05
616	(537)	Carole Hutton.....	\$106.00
617	(538)	James B. Isaacs and Iris R. Isaacs.....	\$127.20
618	(539)	Constance P. Jackson and	
619		Joseph L. Jackson.....	\$52.95
620	(540)	Kathleen J. Jackson.....	\$125.50
621	(541)	Leonard Jackson.....	\$146.28
622	(542)	Mark Jackson.....	\$250.00
623	(543)	Mistie Jackson.....	\$120.90
624	(544)	Norman E. Jackson.....	\$500.00

Ch. 36]		CLAIMS AGAINST THE STATE	167
625	(545)	Trina A. Jackson.....	\$1,000.00
626	(546)	Vicki L. Jackson.....	\$199.38
627	(547)	Larry Jackson Jr.	\$626.99
628	(548)	Brandon James.....	\$180.18
629	(549)	Karen L. James.....	\$473.62
630	(550)	Seth D. James.....	\$126.27
631	(551)	Tracy A. Jarvis.....	\$365.95
632	(552)	Charles P. Jeffrey and	
633		Barbara Jeffrey.....	\$155.99
634	(553)	Joyce Jenkins.....	\$181.01
635	(554)	Larry Jenkins.....	\$400.11
636	(555)	Daryl Jerabek.....	\$270.30
637	(556)	Rachel Johns and Timothy Johns.....	\$212.00
638	(557)	Teresa Johns and Timothy Johns.....	\$202.56
639	(558)	Barbara J. Johnson.....	\$502.35
640	(559)	Brandon C. Johnson.....	\$222.67
641	(560)	Courtney F. Johnson.....	\$250.00
642	(561)	Richard L. Johnson.....	\$140.98
643	(562)	Shawn K. Johnson.....	\$113.68
644	(563)	Teresa A. Johnson.....	\$115.55
645	(564)	Theresa Johnson and	
646		William Johnson.....	\$184.50

168		CLAIMS AGAINST THE STATE	[Ch. 36
647	(565)	Winona Johnson.....	\$400.61
648	(566)	Carl J. Jones.	\$235.32
649	(567)	Holly R. Jones.	\$78.44
650	(568)	Jennifer Jones.....	\$353.23
651	(569)	Michael D. Jones.	\$152.64
652	(570)	Elizabeth D. Jordan.	\$464.66
653	(571)	William Jordan.....	\$274.39
654	(572)	William J. Jordan.	\$500.00
655	(573)	Amy L. Justice.	\$500.00
656	(574)	Anthony T. Justice and	
657		Tammy M. Justice.	\$309.49
658	(575)	Norman R. Keaton.	\$250.00
659	(576)	Matthew Keen and Amanda Keen.	\$123.00
660	(577)	Lisa Keener and Danny Keener.	\$250.00
661	(578)	Franklin D. Keeney and	
662		Dorothy Keeney.	\$104.22
663	(579)	Brice Kehrer.....	\$426.64
664	(580)	John Kellaway.	\$173.82
665	(581)	Robert L. Keller II and	
666		Judy L. Keller.....	\$100.00
667	(582)	Andrea N. Kelley.	\$137.80
668	(583)	Flora Ruth Kemp.	\$250.00

Ch. 36]		CLAIMS AGAINST THE STATE	169
669	(584)	Leigh Ann Kennedy.....	\$144.30
670	(585)	Russell C. Keplinger.	\$308.84
671	(586)	Gary Kessell.....	\$1,000.00
672	(587)	Brenda Keyser.	\$657.20
673	(588)	Sandra K. Kiger.	\$146.28
674	(589)	Marcus E. Kilburn and	
675		Judith A. Kilburn.	\$200.76
676	(590)	Dan Kinder.....	\$345.74
677	(591)	Charles E. King Jr. and Phyllis King.	\$840.88
678	(592)	E. David King.....	\$500.00
679	(593)	King Coal Chevrolet.....	\$1,500.00
680	(594)	Heather A. Kirk.	\$210.94
681	(595)	Deborah Kirkendall and	
682		William Kirkendall.....	\$500.00
683	(596)	Kathryn H. Kiser.	\$500.00
684	(597)	Tony Kitzmiller.	\$185.97
685	(598)	Stacie Klishis.	\$926.33
686	(599)	Kelly Knapp and	
687		Debbie Knapp-Grimm.	\$250.00
688	(600)	Beth Kohler.	\$238.37
689	(601)	William A. Kolibash.	\$718.88
690	(602)	Michael L. Kortz and Victoria Kortz.....	\$500.00

170		CLAIMS AGAINST THE STATE	[Ch. 36
691	(603)	David Kotovsky.	\$265.76
692	(604)	R. Scott Krabill.	\$1,738.40
693	(605)	Matthew Timothy Krack.	\$140.93
694	(606)	Sarah Krofek and Christine Krofek.	\$137.48
695	(607)	Shannon M. Kuchinski.	\$500.00
696	(608)	Gary J. Kulchock.	\$199.60
697	(609)	Ted Stilgenbauer and	
698		Johnna Kunish-Stilgenbauer.	\$417.16
699	(610)	Daniel Kuntz.	\$114.64
700	(611)	John Kurpil.	\$284.15
701	(612)	Julius Kusimo.	\$250.00
702	(613)	Brian C. Lacy.	\$514.83
703	(614)	Meghan E. Lake.	\$226.44
704	(615)	Kenneth Lambert.	\$185.44
705	(616)	William M. Lambert III.	\$1,000.00
706	(617)	Joel Lancaster.	\$84.75
707	(618)	Betty Lannan.	\$570.85
708	(619)	Thelma Lansang and	
709		Ramon Lansang Jr.	\$500.00
710	(620)	John B. Lasure.	\$386.74
711	(621)	Michael E. Lasure.	\$33,920.00

Ch. 36]	CLAIMS AGAINST THE STATE	171
712	(622) Julia A. Lawson and	
713	Nicholas J. Lawson.	\$94.16
714	(623) John Layton and Jennifer Layton.	\$5,016.00
715	(624) Merna L. Layton and Roy Layton.	\$141.28
716	(625) Tae Wan Lee.	\$275.60
717	(626) Douglas M. Leech.	\$280.90
718	(627) Donna Leftwich.	\$210.40
719	(628) Hughart O. Legg.	\$363.98
720	(629) Jessica R. Legg.	\$254.34
721	(630) James R. Legg II.	\$287.89
722	(631) Russell B. Legg Jr.	\$1,000.00
723	(632) Mandy Legg, as Executrix of the	
724	Estate of Jason Legg.	\$300,000.00
725	(633) Daniel Jones, Linda Lehman and	
726	Leonard Lehman.	\$503.50
727	(634) Jeff LeMaster.	\$91.16
728	(635) Kathy J. Lemley.	\$285.00
729	(636) Fern Leonard.	\$250.00
730	(637) Amanda Lester.	\$411.81
731	(638) Christopher T. Lester.	\$500.00
732	(639) Mary E. Leuliette.	\$500.00
733	(640) Antonio Lewis.	\$714.00

172		CLAIMS AGAINST THE STATE	[Ch. 36
734	(641)	Tina S. Lewis.	\$97.55
735	(642)	Allen Lichvar.	\$500.00
736	(643)	Franklin E. Lilly.	\$432.48
737	(644)	Lonnie Lilly.	\$1,000.00
738	(645)	Nola J. Lilly.	\$500.00
739	(646)	Richard E. Lilly and	
740		Wendy Kay Lilly.	\$312.00
741	(647)	Gregory D. Liming.	\$62.01
742	(648)	Eric Jacob Lindstrom.	\$500.00
743	(649)	Laurie Linville.	\$500.00
744	(650)	Richard F. Linville.	\$970.19
745	(651)	Danielle M. Lipscomb.	\$78.35
746	(652)	Harold F. Lipscomb.	\$2,262.08
747	(653)	Judy Lipscomb and Alvin Lipscomb.	\$99.15
748	(654)	Keith Lipscomb and	
749		Marcie Lipscomb.	\$500.00
750	(655)	Charles F. Little.	\$500.00
751	(656)	Maggie Little.	\$231.62
752	(657)	Robbie E. Little's.	\$1,049.07
753	(658)	Amanda Keshner and	
754		Allison Logrippo.	\$304.40
755	(659)	Jack L. Long.	\$119.04

Ch. 36]		CLAIMS AGAINST THE STATE	173
756	(660)	James H. Long.	\$345.22
757	(661)	Matthew E. Long.	\$500.00
758	(662)	Michael F. Loop.	\$325.61
759	(663)	Michael Lopez.	\$500.00
760	(664)	Daniel D. Losh II and Dawn D. Losh.	\$92.80
761	(665)	Philip J. Lott.	\$119.76
762	(666)	Timothy R. Lovejoy and	
763		Cheryl A. Lovejoy.	\$520.41
764	(667)	Joseph E. Loveless III.	\$161.00
765	(668)	JoAnne Lowery and Kevin Lowery.	\$102.82
766	(669)	Karen Lowry.	\$421.98
767	(670)	Jayne E. Lowther and	
768		Brian K. Lowther.	\$285.72
769	(671)	Charles G. Mace.	\$190.75
770	(672)	Jessica Macias.	\$344.33
771	(673)	Elizabeth G. Magnone.	\$1,000.00
772	(674)	Carole L. Mahanes.	\$211.42
773	(675)	Clayton T. Malcomb.	\$500.00
774	(676)	Robert M. Malenich.	\$265.63
775	(677)	Michael Malone.	\$536.25
776	(678)	Adam Mandelka.	\$500.00
777	(679)	Matthew Mangini.	\$79.50

174		CLAIMS AGAINST THE STATE	[Ch. 36
778	(680)	Carol A. Mangone.	\$500.00
779	(681)	Eric F. Mankowski.	\$500.00
780	(682)	Darlene FS Manley and	
781		Michael Manley.	\$500.00
782	(683)	William Clark Manning and	
783		Lauren L. Manning.	\$576.79
784	(684)	Ashley Marchman.	\$500.00
785	(685)	Terri Marcischak.	\$500.00
786	(686)	David J. Marino and	
787		Jacqueline Marino.	\$163.77
788	(687)	Jaren Marino.	\$500.00
789	(688)	Mark Marino.	\$241.18
790	(689)	Delta E. Marks.	\$250.00
791	(690)	Christopher W. Marsh.	\$95.40
792	(691)	Connie Marsh.	\$500.00
793	(692)	Arthur C. Martin and Carol Martin.	\$163.90
794	(693)	Brandi R. Martin.	\$100.00
795	(694)	Carol M. Martin and Virgil Martin.	\$400.00
796	(695)	Gary A. Martin and Lana L. Martin.	\$335.21
797	(696)	Karen Martin.	\$394.42
798	(697)	Marilyn Martin.	\$152.08
799	(698)	Michelle A. Martin.	\$435.59

Ch. 36]	CLAIMS AGAINST THE STATE	175
800	(699) Barry L. Martino.	\$500.00
801	(700) Carol Martucci.	\$500.00
802	(701) Stephanie Mascella.	\$218.89
803	(702) Angela R. Massey.	\$500.00
804	(703) Richard Matherly.	\$500.00
805	(704) Debra J. Mathis and Kevin B. Mathis.	\$176.54
806	(705) Bertha Matthews and	
807	Kristi Matthews.	\$499.99
808	(706) Kristina L. Matyskiela.	\$250.00
809	(707) Tony Maury.	\$193.96
810	(708) Cynthia M. Maxson and	
811	Joseph S. Maxson.	\$500.00
812	(709) David Maxson and Kim A. Maxson.	\$1,028.72
813	(710) Clyde W. May and Susan B. May.	\$500.00
814	(711) Jill Myers and Sarah Mayle.	\$500.00
815	(712) Melissa C. Mayle.	\$998.31
816	(713) Taylor M. Parrish and	
817	Chris and Latina Mayle.	\$100.00
818	(714) Belinda Maynard and	
819	Brian Maynard.	\$500.00
820	(715) Kaila B. Maynard.	\$512.70
821	(716) Harland Maynard Jr.	\$1,000.00
822	(717) Brittany Maynor.	\$196.59

176		CLAIMS AGAINST THE STATE	[Ch. 36
823	(718)	Paul Mays.....	\$400.00
824	(719)	L. Ben McAtee and Sarah K. McAtee. . . .	\$250.00
825	(720)	Matthew T. McCabe.....	\$243.04
826	(721)	Debra DeVall McCardle.....	\$209.88
827	(722)	Robert McCarty.	\$416.84
828	(723)	Brenda L. McClelland.	\$202.43
829	(724)	Moss E. McCloud.....	\$338.02
830	(725)	Lillian R. McClung.	\$609.58
831	(726)	Verlena McComas.	\$375.00
832	(727)	Christopher M. McConnell.	\$310.58
833	(728)	Donald McCoy.....	\$1,000.00
834	(729)	Robert McCoy.	\$500.00
835	(730)	Kayla E. McCune.....	\$91.50
836	(731)	David W. McDaniel.	\$435.00
837	(732)	Hollie McDaniel-Brown.....	\$500.00
838	(733)	Nora L. McDiffitt.....	\$170.56
839	(734)	Kevin K. McGee.....	\$206.32
840	(735)	Michelle McGee.....	\$500.00
841	(736)	Jared McGoskey.....	\$168.54
842	(737)	Ann C. McGraw.....	\$324.30
843	(738)	Larry L. McHenry.	\$173.84

Ch. 36]		CLAIMS AGAINST THE STATE	177
844	(739)	Catherine McKenzie.....	\$56.18
845	(740)	Darrell McKinney.	\$485.39
846	(741)	Kelly L. McKinney and	
847		Michael McKinney.....	\$184.97
848	(742)	William G. McLean Jr.....	\$646.75
849	(743)	Ashlee McMillen.	\$123.75
850	(744)	Vernon P. McMillen and	
851		Sharon G. McMillen.....	\$500.00
852	(745)	John P. McPhail III.....	\$18,000.00
853	(746)	Thomas R. McSorley.....	\$1,748.16
854	(747)	Arnold B. Meadows Jr..	\$500.00
855	(748)	Cynthia Means.	\$250.00
856	(749)	Glenn Means.	\$233.44
857	(750)	Curtis L. Meeks and	
858		Lora A. Meeks.	\$5,000.00
859	(751)	Stephen Mellett.	\$250.00
860	(752)	Joseph Mendenhall.....	\$74.05
861	(753)	Denise Mercer.	\$378.23
862	(754)	Jay Merrifield.....	\$173.82
863	(755)	Robert R. Mesich.	\$297.92
864	(756)	Gregory R. Metalf.	\$500.00
865	(757)	Richard Mickel.....	\$500.00

178		CLAIMS AGAINST THE STATE	[Ch. 36
866	(758)	Kristy Midkiff.	\$233.20
867	(759)	Shawn Midkiff.	\$161.65
868	(760)	Emily Hunter and Stephen Mildner.	\$287.37
869	(761)	Heath Miller and Keri Miller.	\$500.00
870	(762)	Jessica Miller and James Miller.	\$304.47
871	(763)	Joann Miller.	\$120.19
872	(764)	Mary E. Miller.	\$669.00
873	(765)	Primus E. Miller.	\$194.51
874	(766)	Ray Miller.	\$600.22
875	(767)	Regina L. Mims and David S. Mims.	\$448.75
876	(768)	Thomas Minck.	\$736.16
877	(769)	Dean Miner.	\$126.74
878	(770)	Shane M. Minnix.	\$383.14
879	(771)	Judy K. Minor.	\$250.00
880	(772)	Jeffery Mitchell.	\$172.38
881	(773)	Jesus Mitchell.	\$250.00
882	(774)	Kenneth B. Mitchell.	\$340.24
883	(775)	Delbert R. Moats.	\$227.90
884	(776)	Nancy Moody.	\$202.46
885	(777)	Sam Spencer and Sterling Moon.	\$250.00
886	(778)	Dorothy A. Mooney and	
887		Thomas A. Mooney.	\$138.37

Ch. 36]		CLAIMS AGAINST THE STATE	179
888	(779)	Cindy M. Moore and	
889		Thomas E. Moore.....	\$1,503.70
890	(780)	Donna K. Moore and	
891		Robert O. Moore.	\$264.95
892	(781)	Gretchen Moore.	\$179.33
893	(782)	Holly L. Moore.....	\$212.00
894	(783)	Mary E. Moore.....	\$420.31
895	(784)	Michael Moore and Clarissa Moore.....	\$392.98
896	(785)	Rhonda L. Moore.	\$488.64
897	(786)	Bennie Moran.....	\$192.92
898	(787)	Angela Mordan.....	\$190.09
899	(788)	Carrie Morgan.	\$149.46
900	(789)	Roger Morgan.	\$336.02
901	(790)	Ronald L. Morgan.	\$177.53
902	(791)	Melinda S. Morrell.....	\$214.39
903	(792)	Becky Morris.	\$522.56
904	(793)	Morgan Morris.....	\$185.07
905	(794)	Robert Morris.....	\$414.16
906	(795)	Yvonne Morris.....	\$200.00
907	(796)	Libby Morrison and James Morrison.....	\$174.75
908	(797)	Thomas E. Morrison.....	\$300.54
909	(798)	Brandi R. Mosley-Green.	\$1,517.40

180		CLAIMS AGAINST THE STATE	[Ch. 36
910	(799)	Peter Moya.	\$175.80
911	(800)	Ronald A. Mudry Sr. and	
912		Helen L. Mudry.	\$205.64
913	(801)	Amanda Mullins and Beau Mullins.	\$243.80
914	(802)	Billy J. Mullins.	\$89.53
915	(803)	Emmil Dale Mullins.	\$500.00
916	(804)	Herbert Mullins.	\$246.86
917	(805)	Charles Murphy.	\$421.70
918	(806)	Holly Myers.	\$555.49
919	(807)	Janice Quailey and Larry Myers.	\$897.31
920	(808)	Peter Nadel.	\$179.98
921	(809)	Conrad Neely and Mary Neely.	\$301.00
922	(810)	Thomas W. Neer.	\$213.87
923	(811)	Charles D. Nelson.	\$500.00
924	(812)	Susan M. Nelson.	\$318.00
925	(813)	Janice Nestor.	\$500.00
926	(814)	Helen T. Newlon.	\$500.00
927	(815)	Peter W. Ngan.	\$172.73
928	(816)	Chrissy A. Nichols.	\$153.65
929	(817)	Christopher Nichols.	\$250.00
930	(818)	Glenna S. Nichols.	\$827.00

Ch. 36]		CLAIMS AGAINST THE STATE	181
931	(819)	Pamela S. Nicholson.	\$500.00
932	(820)	Steven Nicholson.	\$165.85
933	(821)	Jane Ellen Nickell.	\$210.90
934	(822)	Leann M. Niday.	\$146.13
935	(823)	Dale S. Niederhauser and	
936		Diane Niederhauser.	\$207.97
937	(824)	Charles A. Nielson.	\$500.00
938	(825)	Benjamin E. Noland.	\$943.74
939	(826)	Zafar A. Nomani.	\$471.40
940	(827)	Phyllis Norris and Floyd Norris.	\$223.61
941	(828)	Thomas Norris.	\$746.52
942	(829)	Brenda K. Northup.	\$105.11
943	(830)	Stacy Nowicki-Eldridge and	
944		Leonard Nowicki.	\$484.40
945	(831)	John O'Connor.	\$228.29
946	(832)	James T. Ogden and Melissa Ogden.	\$135.17
947	(833)	Frances C. Oliver.	\$250.00
948	(834)	Christine Olson.	\$301.95
949	(835)	Mary Ord.	\$64.66
950	(836)	Wesley A. Ornick.	\$179.32
951	(837)	Codi Osborne.	\$132.48
952	(838)	Sam Osburn and Marci Osburn.	\$233.77

182		CLAIMS AGAINST THE STATE	[Ch. 36
953	(839)	Megan O’Toole.	\$237.36
954	(840)	Randall D. Pack Sr..	\$68.85
955	(841)	Robert Packtor.	\$250.00
956	(842)	Raymond Padgett.	\$391.06
957	(843)	Tess Paetzold and	
958		Gregory C. Paetzold.	\$185.94
959	(844)	Linda Pagan and Michael Pagan.	\$148.50
960	(845)	Danielle Painter.	\$250.00
961	(846)	John Jay Pallotta.	\$500.00
962	(847)	Mark S. Palmer and	
963		Jennifer L. Palmer.	\$244.02
964	(848)	Richard Brian Pancoast.	\$316.05
965	(849)	Carla Lee Pannell.	\$246.67
966	(850)	Mildred Parker.	\$250.00
967	(851)	Thomas Parker.	\$1,000.00
968	(852)	Robert J. Parlin.	\$142.57
969	(853)	Donald Parrish Jr.	\$661.08
970	(854)	Darin S. Parsons.	\$267.20
971	(855)	David K. Parsons.	\$100.00
972	(856)	James L. Parsons.	\$154.76
973	(857)	Larry E. Parsons.	\$100.00
974	(858)	Russell A. Parsons II.	\$1,000.00

Ch. 36]		CLAIMS AGAINST THE STATE	183
975	(859)	Govind M. Patel.	\$185.50
976	(860)	Rajubhai M. Patel.	\$1,000.00
977	(861)	Fred Pauley.	\$467.37
978	(862)	Linda Pauley and Robert Pauley.	\$222.32
979	(863)	Randy A. Pauley and	
980		Loretta G. Pauley.	\$131.44
981	(864)	Katherine Paybins and	
982		Gary A. Paybins.	\$250.00
983	(865)	Charles Payne.	\$500.00
984	(866)	Maletha A. Payne and	
985		Michael L. Payne.	\$1,082.69
986	(867)	Joshua Pearson.	\$595.65
987	(868)	Phyllis Penn and Richard Penn.	\$100.00
988	(869)	Margret Perdue and Cameron Perdue.	\$500.00
989	(870)	Corey Perry and Micah Perry.	\$500.00
990	(871)	Samuel B. Peters.	\$500.00
991	(872)	Matt Petersen and Tiffany Petersen.	\$502.28
992	(873)	Tarah N. Peterson.	\$1,000.00
993	(874)	Ariel Petrella.	\$100.00
994	(875)	Lori A. Petry and David Petry.	\$216.19
995	(876)	Jennifer Pettry and Pacer Pettry.	\$1,014.94
996	(877)	John Petts.	\$298.88

184		CLAIMS AGAINST THE STATE	[Ch. 36
997	(878)	Jeremy Pevahouse.	\$75.00
998	(879)	Thomas M. Peyton.	\$591.13
999	(880)	Gerald Robert Phelps and	
1000		Bonnie Gay Phelps.	\$500.00
1001	(881)	Audra Phibbs.	\$226.74
1002	(882)	George H. Phillips and	
1003		Biddie Phillips.	\$440.53
1004	(883)	James Phillips and Bobbi Jo Phillips.	\$63.60
1005	(884)	Lindsay Michele Phillips.	\$427.50
1006	(885)	Paul Phillips.	\$54.09
1007	(886)	Stephanie Nicole Phillips.	\$500.00
1008	(887)	Alex V. Pietrowski and	
1009		Cara R. Pietrowski.	\$399.76
1010	(888)	Jeffrey K. Pittsenberger.	\$500.00
1011	(889)	Janice E. Platthy.	\$250.00
1012	(890)	Jeanette Pleva.	\$100.00
1013	(891)	David E. Poling.	\$700.00
1014	(892)	Theresa R. Poling.	\$174.90
1015	(893)	Nicklaus Polito.	\$500.00
1016	(894)	Lori Polivka.	\$174.90
1017	(895)	Cynthia Pomrenke.	\$359.03
1018	(896)	William Ponceroff.	\$465.00

Ch. 36]		CLAIMS AGAINST THE STATE	185
1019	(897)	Edward Porrini.	\$262.20
1020	(898)	Brenda Powell.	\$250.00
1021	(899)	Denyse L. Powell.	\$322.06
1022	(900)	Gavin R. Powers.	\$162.99
1023	(901)	Terry Powers and Loretta Powers.	\$335.08
1024	(902)	Victor A. Preiser.	\$1,000.00
1025	(903)	Norma J. Price.	\$192.87
1026	(904)	Ashley Pridemore.	\$500.00
1027	(905)	Jamie Pro.	\$111.03
1028	(906)	Cynthia L. Proskin.	\$250.00
1029	(907)	Lindy Proutt and James Proutt.	\$443.39
1030	(908)	Frances E. Pugh and Larry Pugh.	\$153.70
1031	(909)	Larry Pugh.	\$157.94
1032	(910)	Karol A. Puskarich.	\$136.68
1033	(911)	Jeffrey Quedado and	
1034		Kimberly Quedado.	\$127.50
1035	(912)	Jonetta Queen.	\$405.86
1036	(913)	Lisa Raber and Bryan Raber.	\$209.73
1037	(914)	Patricia E. Radcliff.	\$250.00
1038	(915)	Erik Rader.	\$319.22
1039	(916)	Nicholas Raffa.	\$146.29

186		CLAIMS AGAINST THE STATE	[Ch. 36
1040	(917)	Kimbra Rager.....	\$500.00
1041	(918)	Naomi Rahn.....	\$240.23
1042	(919)	Naomi Rahn and Jason Rahn.....	\$288.40
1043	(920)	Kenneth Raines and	
1044		Margaret A. Raines.....	\$500.00
1045	(921)	Janet L. Ramsayer and	
1046		Jack Ramsayer.....	\$250.00
1047	(922)	Valerie Ann Ramsey.....	\$220.00
1048	(923)	Charles M. Ransom.....	\$500.00
1049	(924)	Kim D. Ransom.....	\$271.65
1050	(925)	James Jeremy Ranson.....	\$500.00
1051	(926)	Thomas E. Rapp.....	\$100.70
1052	(927)	Denise Ratzer.....	\$1,000.00
1053	(928)	Donald L. Rayburn and	
1054		Lana J. Rayburn.....	\$500.00
1055	(929)	Gregory A. Rearick.....	\$50.00
1056	(930)	Kay F. Reavis.....	\$148.40
1057	(931)	Nancy A. Redford.....	\$473.93
1058	(932)	Brooklyn Reed.....	\$250.00
1059	(933)	Larry Reed.....	\$87.20
1060	(934)	Marcie Reed and Daniel Reed.....	\$500.00
1061	(935)	Roi O. Reed and Dianna Reed.....	\$253.36

Ch. 36]	CLAIMS AGAINST THE STATE	187
1062	(936) Christopher W. Renneman.....	\$74.15
1063	(937) Cynthia I. Renobato.	\$500.00
1064	(938) Linda Renshaw.....	\$343.07
1065	(939) Larry A. Reseter.....	\$339.99
1066	(940) Jason K. Rexroad and Angel Rexroad. . . .	\$500.00
1067	(941) Betty A. Reynolds.	\$239.27
1068	(942) Lisa C. Richmond..	\$500.00
1069	(943) Lisa Richmond and Daniel Richmond. . . .	\$155.03
1070	(944) Casonya M. Rickard and	
1071	Douglas Rickard.....	\$360.53
1072	(945) Debra Riffon and Mark Riffon.....	\$64.66
1073	(946) Julie Riggs.	\$133.36
1074	(947) Norman G. Riggs.	\$171.19
1075	(948) Seymour Vencil Riley and	
1076	Gloria Riley.	\$178.08
1077	(949) Nina M. Rimmer.	\$96.18
1078	(950) Karla Rinehart.	\$309.05
1079	(951) Douglas F. Rink.	\$157.50
1080	(952) Michael Ritchie and Lauren Ritchie. . . .	\$605.10
1081	(953) River City Ford Inc.....	\$613.69
1082	(954) Angela D. Roach.	\$113.42
1083	(955) Jennifer Anne Robbins.....	\$127.58

188		CLAIMS AGAINST THE STATE	[Ch. 36
1084	(956)	Brenda L. Roberts.	\$500.00
1085	(957)	Douglas D. Roberts.	\$422.46
1086	(958)	Laura B. Roberts and Jason Roberts.	\$500.00
1087	(959)	Scott J. Roberts.	\$437.22
1088	(960)	Timothy Roberts.	\$500.00
1089	(961)	Cameron Robertson.	\$733.91
1090	(962)	Judy Robinson and Gary Robinson.	\$275.59
1091	(963)	Mark L. Rockhold.	\$75.00
1092	(964)	Sarah E. Rodeheaver.	\$243.80
1093	(965)	Paul Rogoszewski.	\$807.88
1094	(966)	Kayla Rohaley.	\$225.01
1095	(967)	Patrick Rollins and Christina Rollins.	\$332.93
1096	(968)	John Rose and Judy Rose.	\$162.03
1097	(969)	Blake Ross.	\$147.93
1098	(970)	Mary Lynn Rouse.	\$168.49
1099	(971)	Jeffrey Scott Roush.	\$137.28
1100	(972)	Stephanie E. Rowh.	\$500.00
1101	(973)	Jill Roy.	\$100.00
1102	(974)	Keith B. Ruckman.	\$130.00
1103	(975)	Trevor Rudy.	\$283.87
1104	(976)	Tina Rumer and Derrick Rumer.	\$262.54

Ch. 36]	CLAIMS AGAINST THE STATE	189
1105	(977) Brent Runyon.	\$698.84
1106	(978) Jade RusmisseL.	\$71.35
1107	(979) Juliane Russell.	\$120.10
1108	(980) Rhonda Russell and Tim Russell.	\$300.00
1109	(981) Ellwood W. Ryan and	
1110	Gladys M. Ryan.	\$717.91
1111	(982) Patrick J. Ryan.	\$100.65
1112	(983) Kimberly A. Rymer.	\$500.00
1113	(984) Kevin Salisbury.	\$286.58
1114	(985) Leland S. Salmon.	\$500.00
1115	(986) Karen Sanders.	\$500.00
1116	(987) Amina Sansotta-Mayzanova.	\$1,579.32
1117	(988) Ronnie L. Sapp.	\$34,000.00
1118	(989) Erik J. Sarson.	\$500.00
1119	(990) Charles E. Saxon IV.	\$500.00
1120	(991) Cletis W. Sayre II and	
1121	Deborah S. Sayre.	\$228.96
1122	(992) Libbyann Sayre.	\$500.00
1123	(993) Lenore F. Scarberry and	
1124	Rodger L. Scarberry.	\$156.54
1125	(994) Michael Schack.	\$160.92
1126	(995) Mathew J. Schlemmer and	
1127	Kylie Schlemmer.	\$201.91

190		CLAIMS AGAINST THE STATE	[Ch. 36
1128	(996)	Linda Ann Schlueter.....	\$100.00
1129	(997)	Michael D. Scott.....	\$900.00
1130	(998)	Carolyn Seafler.....	\$488.29
1131	(999)	Julie Seagraves.....	\$232.14
1132	(1000)	Richard D. Seaman.....	\$500.00
1133	(1001)	Larry J. Sears and Susan Sears.....	\$331.48
1134	(1002)	Daniel R. Sechkar.....	\$1,000.00
1135	(1003)	Sandra Lemley Secreto.....	\$417.00
1136	(1004)	Lori Sendling.....	\$40.00
1137	(1005)	Betty Jean Seth and Shiela Seth.....	\$542.94
1138	(1006)	Frank H. Sexton.....	\$934.80
1139	(1007)	Michael J. Sgalla.....	\$185.31
1140	(1008)	Malcolm Shafer.....	\$10,223.70
1141	(1009)	Justin M. Shaffer.....	\$70.00
1142	(1010)	Lana M. Shaffer.....	\$500.00
1143	(1011)	Cherity A. Shahan.....	\$179.95
1144	(1012)	Tyson Shahan.....	\$124.02
1145	(1013)	Lisa Shamblin.....	\$142.04
1146	(1014)	Alicia G. Shaver.....	\$606.08
1147	(1015)	Robert H. Shaver and	
1148		Clarice E. Shaver.....	\$2,500.00

1149	(1016) Linn J. Sheik.....	\$1,050.00
1150	(1017) Calvin Shelton and Leora Shelton.	\$100.00
1151	(1018) Jessica L. Shelton.....	\$286.23
1152	(1019) Patricia Shiflet and Carl Shiflet.	\$148.51
1153	(1020) Bonnie Shiflett.	\$367.61
1154	(1021) Bivek Shilpakar.	\$2,050.75
1155	(1022) Brenna Shook.....	\$186.54
1156	(1023) Christopher Short and Eden Short.	\$400.00
1157	(1024) Erica Short.	\$132.50
1158	(1025) Rebecca Shrader.....	\$110.20
1159	(1026) Karen Shrout and Danny Shrout.	\$250.00
1160	(1027) Beatrice R. Sias and Dallas T. Sias.	\$226.05
1161	(1028) Ashley Sickles and Zack Sickles.	\$500.00
1162	(1029) Ashley Sidow and Lois Sidow.....	\$106.94
1163	(1030) William B. Sigman.....	\$1,000.00
1164	(1031) Larry Simmons and	
1165	Sherry Simmons.....	\$131.42
1166	(1032) Sokratis Simos.	\$186.12
1167	(1033) Jesse Sine.	\$305.87
1168	(1034) Denver Singleton.	\$543.56
1169	(1035) Stephen P. Singleton Jr. and	
1170	Tenille Singleton.	\$395.53

192	CLAIMS AGAINST THE STATE	[Ch. 36
1171	(1036) Donetta Sisler.....	\$980.15
1172	(1037) Philip M. Sivak.....	\$185.37
1173	(1038) Robbie Skull.....	\$500.00
1174	(1039) Okey Manuel Slate.....	\$963.54
1175	(1040) Randal R. Sloter and Joshua Sloter.	\$250.00
1176	(1041) Cheri Angele Small.	\$84.99
1177	(1042) Eugene R. Smarrella.....	\$50.00
1178	(1043) David Smigel.	\$1,000.00
1179	(1044) Amy E. Smith and Lyle D. Smith.	\$500.00
1180	(1045) Beverly Smith.....	\$484.08
1181	(1046) Candace M. Smith.	\$1,434.10
1182	(1047) Cindy L. Smith.....	\$159.38
1183	(1048) David Smith.	\$163.71
1184	(1049) Douglas P. Smith.	\$500.00
1185	(1050) Erica R. Smith.	\$359.50
1186	(1051) Jaclyn Smith and Don Smith.	\$193.88
1187	(1052) Nikki Smith.	\$53.00
1188	(1053) Robert W. Smith.....	\$152.53
1189	(1054) Shelby Smith.	\$389.42
1190	(1055) Walter A. Smith.	\$269.21
1191	(1056) Teresa M. Smoot.	\$500.00

1192	(1057) Steven P. Snead-Smith and	
1193	Jennifer Snead Smith.	\$500.00
1194	(1058) Tina Snodgrass.	\$100.00
1195	(1059) Amanda L. Snyder.	\$288.71
1196	(1060) Deborah A. Snyder and Jeff Snyder.	\$82.68
1197	(1061) Donna M. Snyder.	\$218.89
1198	(1062) Andy Sorine.	\$97.76
1199	(1063) Brandy Spaulding.	\$72.08
1200	(1064) Brian Speakman and	
1201	Rebecca Speakman.	\$674.77
1202	(1065) William Spencer.	\$3,000.00
1203	(1066) Barbara Sperry.	\$1,000.00
1204	(1067) Diane Spiker and William Spiker.	\$79.95
1205	(1068) Terry Spiker and Julie Spiker.	\$71.60
1206	(1069) Charles Sponhaltz Jr.	\$225.56
1207	(1070) Steven Spradling.	\$199.39
1208	(1071) Christopher Stamm.	\$500.00
1209	(1072) Timothy J. Stanley.	\$1,000.00
1210	(1073) Bonny Starkey.	\$343.50
1211	(1074) Floyd L. Stead.	\$238.80
1212	(1075) Laura Steele.	\$500.00
1213	(1076) John Richard Steffich.	\$264.22

194	CLAIMS AGAINST THE STATE	[Ch. 36
1214	(1077) Ellen Yvonne Stendel.....	\$152.64
1215	(1078) Nela Stennett and Robert Stennett.....	\$500.00
1216	(1079) Chelsey Stephens.....	\$121.33
1217	(1080) William D. Stephens.....	\$265.16
1218	(1081) David Stevens.....	\$500.00
1219	(1082) Kara Stewart.....	\$79.50
1220	(1083) Shirley Stewart.....	\$358.27
1221	(1084) Sean T. Stiles.....	\$1,000.00
1222	(1085) April Stiltner.....	\$156.99
1223	(1086) Nancy Stinard.....	\$227.27
1224	(1087) John Stolar.....	\$192.09
1225	(1088) Beth A. Stoneking.....	\$108.94
1226	(1089) Tammy Stoneking and	
1227	Brian Stoneking.....	\$250.00
1228	(1090) Jeffrey Scott Stonesifer.....	\$93.28
1229	(1091) Jonathan T. Storage.....	\$12,095.63
1230	(1092) Denise Stough.....	\$164.30
1231	(1093) Charles L. Stout.....	\$500.00
1232	(1094) Stephanie Stout.....	\$500.00
1233	(1095) Brittani Stowers.....	\$179.38
1234	(1096) Debra Sue Stowers.....	\$177.39

1235	(1097)	Robert R. Sutphin and	
1236		Rebecca R. Sutphin.	\$336.00
1237	(1098)	Casondra Sutton and	
1238		Bradley Sutton.	\$500.00
1239	(1099)	Lynn A. Swan.	\$222.60
1240	(1100)	Regina Swaney.	\$2,785.35
1241	(1101)	Kammie M. Swanger.	\$426.30
1242	(1102)	Pamela A. Swiger.	\$108.50
1243	(1103)	Barry N. Szafran.	\$160.01
1244	(1104)	Johnna Szafran.	\$184.54
1245	(1105)	Francis R. Tait and	
1246		Yvonne W. Tait.	\$250.00
1247	(1106)	Thomas L. Kopinski and	
1248		Mary Lou Tait.	\$90.10
1249	(1107)	Tom Talerico and	
1250		Rebecca Talerico.	\$691.56
1251	(1108)	Jennifer L. Tampoya.	\$250.00
1252	(1109)	Michele L. Tardivo.	\$533.77
1253	(1110)	John Teeuwissen.	\$250.00
1254	(1111)	Franklin Terry.	\$361.93
1255	(1112)	Charles R. Thiele and	
1256		Debra L. Thiele.	\$25,000.00
1257	(1113)	Kayla Thomas.	\$76.32

196	CLAIMS AGAINST THE STATE	[Ch. 36
1258	(1114) Misty M. Thompson.....	\$682.53
1259	(1115) Pamela Thompson.	\$65.00
1260	(1116) Tyler M. Thompson.	\$1,205.13
1261	(1117) Jason Thorn.	\$82.58
1262	(1118) Randy Thornsburry and	
1263	Angela Thornsburry.....	\$500.00
1264	(1119) Douglas T. Tilley.	\$333.27
1265	(1120) Gay E. Timbrook.	\$208.38
1266	(1121) Brandon Tinney.	\$392.27
1267	(1122) Samuel A. Tipton II and	
1268	April Tipton.	\$233.18
1269	(1123) Angelica A. Titus and	
1270	Christopher Titus.	\$211.21
1271	(1124) Wanda Tomblin and	
1272	Danny Tomblin.	\$162.37
1273	(1125) Twila Jean Tomer.....	\$138.00
1274	(1126) Mark G. Tomlin.	\$500.00
1275	(1127) Stevenson Tose'-Rigell.	\$414.25
1276	(1128) Richard Totten and Sheena Totten.....	\$214.08
1277	(1129) Keith Townsend and	
1278	Lori Ann Townsend.	\$424.87
1279	(1130) Gerald Travis.	\$149.81
1280	(1131) James Treola.....	\$323.94

1281	(1132) Earl D. Trice.....	\$133.03
1282	(1133) Geraldine Trogdon.....	\$101.74
1283	(1134) Denise Truman.....	\$365.70
1284	(1135) John Truman.....	\$500.00
1285	(1136) Karen Hunter Tubert.	\$250.00
1286	(1137) Barbara Tucker.....	\$480.12
1287	(1138) Brenda L. Tucker.	\$94.50
1288	(1139) Craig Turnbull.	\$121.90
1289	(1140) David Turner.	\$1,052.90
1290	(1141) Nancy A. Twigg and	
1291	Emory S. Twigg.....	\$500.00
1292	(1142) Leonard Tyree.	\$1,000.00
1293	(1143) Chun Underwood and	
1294	Steve Underwood.....	\$500.00
1295	(1144) Larry J. Underwood.	\$246.75
1296	(1145) Michele Underwood.....	\$250.00
1297	(1146) Roger R. Unger.....	\$250.00
1298	(1147) Matthew Vance.	\$500.00
1299	(1148) Phyllis VanHorn.....	\$114.48
1300	(1149) Melissa VanMeter.	\$95.23
1301	(1150) Joy A. VanScyoc.	\$250.00
1302	(1151) Jeff Varner.	\$2,347.27

198	CLAIMS AGAINST THE STATE	[Ch. 36
1303	(1152) Jerry Vaughan.	\$1,000.00
1304	(1153) Shayna Vetter and Darren Vetter.	\$119.76
1305	(1154) Dustin Wane Vickers.	\$148.93
1306	(1155) Steven M. Viglianco and	
1307	Carolyn A. Viglianco.	\$500.00
1308	(1156) Carolyn R. Vincent.	\$146.28
1309	(1157) Michael Virant and Sonya Virant.	\$500.00
1310	(1158) Randy Vogler and Ann Vogler.	\$134.09
1311	(1159) William H. Wagner.	\$121.00
1312	(1160) Mitch Wagnor.	\$163.24
1313	(1161) Eve Walker and Stephen Walker.	\$295.38
1314	(1162) Susan K. Walker.	\$68.90
1315	(1163) Patricia G. Walkup.	\$100.00
1316	(1164) Dena Wall.	\$190.80
1317	(1165) Derrick Wallace.	\$251.59
1318	(1166) Sabrina K. Wallace.	\$193.27
1319	(1167) Kimberly K. Waller.	\$250.00
1320	(1168) Scott F. Walls.	\$109.50
1321	(1169) Terry W. Walls.	\$320.91
1322	(1170) Robert L. Walters.	\$112.63
1323	(1171) Lisa Wamsley.	\$174.53

1324	(1172) Shaowei Wan.	\$201.31
1325	(1173) Tammy Wandling.	\$299.95
1326	(1174) Angelina Warburton.	\$177.02
1327	(1175) Bobby J. Ward and	
1328	Juanita E. Ward.	\$500.00
1329	(1176) Glen Douglas Ward and	
1330	Gloretta Sue Ward.	\$223.66
1331	(1177) Hallie R. Ward and	
1332	Richard Ray Ward.	\$142.04
1333	(1178) Michele Ward.	\$248.31
1334	(1179) Bryan S. Warner and Jean Warner.	\$198.20
1335	(1180) Elizabeth Warnick and	
1336	William Warnick.	\$250.00
1337	(1181) Robert L. Warren.	\$381.60
1338	(1182) Lawrence Washington.	\$1,000.00
1339	(1183) Kim Wasserman.	\$235.62
1340	(1184) Zachary M. Water.	\$42.96
1341	(1185) Bridgette L. Heuer and	
1342	Daniel J. Watson.	\$83.74
1343	(1186) Chuck Waybright.	\$90.10
1344	(1187) Lanie Ash and Gladys Webb.	\$250.00
1345	(1188) Heather Weekly.	\$107.04
1346	(1189) Ronald Weese.	\$224.25

200	CLAIMS AGAINST THE STATE	[Ch. 36
1347	(1190) Brian Weimer.....	\$161.12
1348	(1191) William Weiss Jr.....	\$107.00
1349	(1192) Dorothy Welc.....	\$15,000.00
1350	(1193) Brian Richard Welch.	\$200.00
1351	(1194) Christy Welch and John Welch.	\$197.68
1352	(1195) Jerry Lee Welch Jr... ..	\$153.47
1353	(1196) David O. Wells and Linda Wells.....	\$71.70
1354	(1197) Lora Wells.	\$1,998.10
1355	(1198) Vernon E. Wells.....	\$500.00
1356	(1199) Carol A. Wendland.....	\$210.23
1357	(1200) Kristie K. West.....	\$500.00
1358	(1201) Sherlyn West and Douglas West.	\$250.00
1359	(1202) Brent M. Wharry.	\$530.21
1360	(1203) Janet S. Whipkey.	\$500.00
1361	(1204) Curtis R. White and Sarah White.....	\$500.00
1362	(1205) Shannon R. White.	\$258.64
1363	(1206) Tatia Whitehead.....	\$78.97
1364	(1207) Michael Whitten and	
1365	Phyllis Whitten.....	\$320.23
1366	(1208) Katherine Wigal.....	\$196.46
1367	(1209) James R. Wilburn and	
1368	Deborah L. Wilburn.....	\$374.38

1369	(1210)	Rebecca Wild and Alan Wild.....	\$164.30
1370	(1211)	James M. Willard and	
1371		Dianna Willard.....	\$216.13
1372	(1212)	Mark Pooler and Sherri William.	\$246.88
1373	(1213)	Bruce Williams.....	\$110.56
1374	(1214)	Gregory D. Williams.	\$109.18
1375	(1215)	Justin Williams.....	\$53.00
1376	(1216)	Paula Williams.....	\$279.70
1377	(1217)	Sherry Williams.....	\$117.63
1378	(1218)	William Williamson.....	\$100.00
1379	(1219)	Charles J. Willis.....	\$254.89
1380	(1220)	Betty J. Wilson.....	\$146.02
1381	(1221)	Carl Wilson and Sharon Wilson.....	\$100.00
1382	(1222)	Jason M. Wilson.....	\$317.77
1383	(1223)	Shane A. Wilson.....	\$250.00
1384	(1224)	David Michael Wilt and	
1385		Sharon S. Wilt.	\$183.38
1386	(1225)	David J. Winters.....	\$500.00
1387	(1226)	Angela M. Withrow.	\$500.00
1388	(1227)	Ronald Wolfe.....	\$500.00
1389	(1228)	Patricia Womack.	\$395.62
1390	(1229)	Paul Woods.	\$500.00

202	CLAIMS AGAINST THE STATE	[Ch. 36
1391	(1230) Shawn M. Woody.....	\$500.00
1392	(1231) Sarah Steele Workman.....	\$10,000.00
1393	(1232) Amy Jo Wright.....	\$1,010.00
1394	(1233) Anna M. Wright.....	\$313.19
1395	(1234) Jordan Wright.....	\$177.21
1396	(1235) Tiffany S. Wright.....	\$311.18
1397	(1236) Vickie L. Wright and	
1398	Christopher Wright.....	\$500.00
1399	(1237) Taylor Wyant.....	\$271.91
1400	(1238) Courtney Shannon Wyatt.....	\$192.94
1401	(1239) Frances M. Yates and Brian Yates.....	\$1,205.00
1402	(1240) Allen Yeager.....	\$230.53
1403	(1241) Patrick Yeager.....	\$238.06
1404	(1242) Joyce I. Yirberg.....	\$93.65
1405	(1243) John Yost and Penny Yost.....	\$161.35
1406	(1244) Annastasia Young.....	\$204.00
1407	(1245) Bobby Young.....	\$202.99
1408	(1246) Darlene Young.....	\$209.77
1409	(1247) Karmella Wynne and Ella Young.....	\$250.00
1410	(1248) Kevin Young.....	\$100.00
1411	(1249) Luther M. Young and Helen Young.....	\$180.63

1412	(1250) Reda Zimmerman and	
1413	Randolph S. Zimmerman.	\$148.90
1414	<i>(e) Claim against the Division of Juvenile Services:</i>	
1415	(TO BE PAID FROM GENERAL REVENUE FUND)	
1416	Mountain State Justice.	\$256,669.09
1417	<i>(f) Claim against the Division of Labor:</i>	
1418	(TO BE PAID FROM GENERAL REVENUE FUND)	
1419	Thompson Reuters – West.	\$1,732.50
1420	<i>(g) Claim against the Office of the Chief Medical Examiner:</i>	
1421	(TO BE PAID FROM GENERAL REVENUE FUND)	
1422	Traco Business Systems.	\$13,964.25
1423	<i>(h) Claims against the Regional Jail Authority:</i>	
1424	(TO BE PAID FROM SPECIAL REVENUE FUND)	
1425	(1) Gary R. Baker.	\$100.00
1426	(2) Anthony Cartagena.	\$140.00
1427	(3) Earl Edmondson.	\$140.00
1428	(4) Dale P. Field Jr.	\$68.68
1429	(5) Lawrence Galbearth.	\$25.00
1430	(6) Sandra Harron.	\$300.00
1431	(7) Travis Hudson.	\$800.00
1432	(8) Dana D. Lafond.	\$75.00

1433 (9) Stephen Randolph Miller Jr. \$275.00

1434 (10) Robert W. Moats. \$550.00

1435 (11) Vu Thien Nguyen. \$420.00

1436 (12) Brian W. Pearl. \$500.00

1437 (i) *Claim against the State Fire Commission:*

1438 (TO BE PAID FROM SPECIAL REVENUE FUND)

1439 WV Media Management LLC. \$50,016.00

1440 (j) *Claims against the State of West Virginia:*

1441 (TO BE PAID FROM GENERAL REVENUE FUND)

1442 (1) Roger Allen Green. \$11,000.00

1443 (2) Wesley Charles Hardy. \$1,000.00

1444 (3) Casey Jo McGee and Sarah Elizabeth Adkins;
1445 Justin Murdock and William Glavaris;
1446 and Nancy Elizabeth Michael and Jane
1447 Louise Fenton, as next friends of A.S.M.,
1448 minor child \$99,804.64

1449 The Legislature finds that the above moral obligations and
1450 the appropriations made in satisfaction thereof shall be the full
1451 compensation for all claimants and that prior to the payments to
1452 any claimant provided in this bill, the Court of Claims shall
1453 receive a release from said claimant releasing any and all claims
1454 for moral obligations arising from the matters considered by the
1455 Legislature in the finding of the moral obligations and the
1456 making of the appropriations for said claimant. The Court of
1457 Claims shall deliver all releases obtained from claimants to the
1458 department against which the claim was allowed.

CHAPTER 37

**(H. B. 4345 - By Delegates Howell, Arvon,
Blair, Phillips, Hill, Hartman, Ihle, Cadle, Stansbury,
R. Smith and Morgan)
[By Request of the Department of Administration]**

[Passed March 9, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2016.]

AN ACT to repeal §5A-6A-1, §5A-6A-2, §5A-6A-3, §5A-6A-4, §5A-6A-5, §5A-6A-6, §5A-6A-7, §5A-6A-8 and §5A-6A-9 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Permitting and Licensing Information Act.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the West Virginia Permitting and Licensing Information Act.

- 1 §5A-6A-1, §5A-6A-2, §5A-6A-3, §5A-6A-4, §5A-6A-5,
- 2 §5A-6A-6, §5A-6A-7, §5A-6A-8 and §5A-6A-9 of the Code of
- 3 West Virginia, 1931, as amended, are hereby repealed.

CHAPTER 38

(Com. Sub. for S. B. 270 - By Senator Gauch)

[Passed March 11, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2016.]

AN ACT to repeal §19-25-7 of the Code of West Virginia, 1931, as amended, relating to insurance policies and such policies impact

on liability of landowners or insurers of landowners who open their property for use by others for military, law-enforcement or homeland-defense training or recreational or wildlife propagation purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§1. Repeal of section relating to insurance policies.

1 §19-25-7 of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.



CHAPTER 39

**(H. B. 4005 - By Delegates Householder, Cowles,
Duke, Foster, Gearheart, Miller, Overington, Shott, Walters,
Waxman and Westfall)**

[Passed February 4, 2016; in effect ninety days from passage.
Vetoed by the Governor. Repassed notwithstanding the objections of the Governor,
February 12, 2016.]

AN ACT to repeal §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10, §21-5A-11 and §21-5A-12 of the Code of West Virginia, 1931, as amended, all relating to repealing prevailing hourly rate of wages requirements by or on behalf of public authorities engaged in construction of public improvements.

Be it enacted by the Legislature of West Virginia:

That §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10, §21-5A-11 and §21-5A-12 of the Code of West Virginia, 1931, as amended, be repealed.

ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS.

§1. Repeal of article relating to wages for construction of public improvements.

1 §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6,
2 §21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10, §21-5A-11 and
3 §21-5A-12 of the Code of West Virginia, 1931, as amended, are
4 hereby repealed.



CHAPTER 40

**(Com. Sub. for H. B. 2101 - By Delegates Morgan, Caputo,
Faircloth, Folk, Howell and R. Smith)**

[Passed February 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on February 11, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by repealing §29-12C-1 and §29-12C-2, relating to eliminating obsolete government entities; and repealing sections relating to the Patient Injury Compensation Plan Study Board.

Be it enacted by the Legislature of West Virginia:

That §29-12C-1 and §29-12C-2 of the Code of West Virginia, 1931, as amended, be repealed.

§2. Repeal of article relating to the Patient Injury Compensation Plan Study Board.

1 §29-12C-1 and §29-12C-2 of the Code of West Virginia,
2 1931, as amended, are hereby repealed.

CHAPTER 41

(Com. Sub. for S. B. 614 - By Senators Gaunch and Ashley)

[Passed March 10, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §46A-1-105 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-2-115 and §46A-2-121 of said code, all relating to the Consumer Credit and Protection Act; excluding obligation to make required payments to property owners' or homeowners' association from provisions of the Consumer Credit and Protection Act; clarifying conduct for unconscionable inducement; and providing limits on charges a secured lender may recover from a consumer borrower upon default.

Be it enacted by the Legislature of West Virginia:

That §46A-1-105 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §46A-2-115 and §46A-2-121 of said code be amended and reenacted; all to read as follows:

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

- 1 (a) This chapter does not apply to:
 - 2 (1) Extensions of credit to government or governmental
 - 3 agencies or instrumentalities;
 - 4 (2) The sale of insurance by an insurer, except as otherwise
 - 5 provided in this chapter;

6 (3) The obligation of a property owner, lot owner or
7 homeowner in a planned community containing no more than
8 twelve units which is not subject to any development rights or a
9 planned community that provides in its declaration that the
10 annual average common expense liability of all units restricted
11 to residential purposes, exclusive of optional user fees and any
12 insurance premiums paid by the association, may not exceed
13 \$300 as adjusted pursuant to section one hundred fourteen,
14 chapter one, article thirty-six-b of this code, or the efforts of
15 property owners' associations or homeowners' associations to
16 collect the same to pay dues, assessments, costs or fees of any
17 kind to a property owners' association or homeowners'
18 association;

19 (4) Transactions under public utility or common carrier
20 tariffs if a subdivision or agency of this state or of the United
21 States regulates the charges for the services involved, the
22 charges for delayed payment, and any discount allowed for early
23 payment; or

24 (5) Licensed pawnbrokers.

25 (b) Mortgage lender and broker licensees are excluded from
26 the provisions of this chapter to the extent those provisions
27 directly conflict with any section of article seventeen, chapter
28 thirty-one of this code.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-115. Limitation on default charges.

1 (a) Except for reasonable expenses, including costs and fees
2 authorized by statute incurred in realizing on a security interest,
3 the agreements that evidence a consumer credit sale or a
4 consumer loan may not provide for charges as a result of default
5 by the consumer other than those authorized by this chapter.

6 (b) With respect to this subsection:

7 (1) The phrase “consumer loan” shall mean a consumer
8 loan secured by real property: (A) Originated by a bank or
9 savings and loan association, or an affiliate, not solicited by an
10 unaffiliated broker; (B) held by a federal home loan bank, the
11 federal National Mortgage Association, the federal Home Loan
12 Mortgage Corporation, the Government National Mortgage
13 Association, the West Virginia Housing Development Fund; or
14 (C) insured or guaranteed by the Farmers Home Administration,
15 the Veteran’s Administration or the Department of Housing and
16 Urban Development.

17 (2) Except as provided in subdivision (3) of this subsection,
18 the agreements that evidence a consumer loan may permit the
19 recovery of the following charges: (A) Costs of publication; (B)
20 an appraisal fee; (C) all costs incidental to a title examination
21 including professional fees, expenses incident to travel, and
22 copies of real estate and tax records; (D) expenses incidental to
23 notice made to lienholders and other parties and entities having
24 an interest in the real property to be sold; (E) certified mailing
25 costs; and (F) all fees and expenses incurred by a trustee incident
26 to a pending trustee’s sale of the real property securing the
27 consumer loan.

28 (3) For purposes of the charges expressly authorized by this
29 subsection, no charge may be assessed and collected from a
30 consumer unless: (A) Each charge is reasonable in its amount;
31 (B) each charge is actually incurred by or on behalf of the holder
32 of the consumer loan; (C) each charge is actually incurred after
33 the last day allowed for cure of the consumer’s default pursuant
34 to section one hundred six, of this article and before the
35 consumer reinstates the consumer loan or otherwise cures the
36 default; (D) the holder of the consumer loan and the consumer
37 have agreed to cancel any pending trustee’s sale or other
38 foreclosure on the real property securing the consumer loan; and

39 (E) in the case of an appraisal fee, no appraisal fee has been
40 charged to the consumer within the preceding six months.

41 (c) All amounts paid to a creditor arising out of any
42 consumer credit sale or consumer loan shall be credited upon
43 receipt against payments due: *Provided*, That amounts received
44 and applied during a cure period will not result in a duty to
45 provide a new notice of right to cure: *Provided, however*, That
46 partial amounts received during the period set forth in
47 subdivision (3) subsection (b) of this section do not create an
48 automatic duty to reinstate and may be returned by the creditor.
49 Default charges shall be accounted for separately. Those
50 recoverable charges set forth in said subsection arising during
51 the period described therein may be added to principal.

52 (d) At least once every twelve months, the holder or servicer
53 of each consumer loan secured by real property against which
54 the creditor assesses any default charge, and: (1) Not serviced by
55 the originating lender or its affiliate or their successors by
56 merger; (2) not held by a federal home loan bank, the federal
57 National Mortgage Association, the federal Home Loan
58 Mortgage Corporation, the Government National Mortgage
59 Association, the West Virginia Housing Development Fund; or
60 (3) not insured or guaranteed by the Farmers Home
61 Administration, the Veteran's Administration, Department of
62 Housing and Urban Development, shall transmit to the consumer
63 an accounting of every default charge assessed within the
64 previous twelve months, including the date, amount and nature
65 of the cost.

66 This subsection does not apply to delinquency charges
67 permitted under sections one hundred twelve and one hundred
68 thirteen, article three of this chapter; credit line over-the-limit
69 fees; deferral charges permitted under section one hundred
70 fourteen, article three of this chapter; collateral protection
71 insurance permitted under section one hundred nine-a, article
72 three of this chapter; and advances to pay taxes.

73 (e) A provision in violation of this section is unenforceable.
74 The amendments to this section by acts of the Legislature in the
75 regular session of 2003 are a clarification of existing law and
76 shall be retroactively applied to all agreements in effect on the
77 date of passage of the amendments, except where controversies
78 arising under those agreements are pending prior to the date of
79 passage of the amendments.

80 (f) Nothing in this section limits the expenses incidental to
81 a trustee's sale of real property that are recoverable pursuant to
82 section seven, article one, chapter thirty-eight of this code.

**§46A-2-121. Unconscionability; inducement by unconscionable
conduct.**

1 (a) With respect to a transaction which is or gives rise to a
2 consumer credit sale, consumer lease or consumer loan, if the
3 court as a matter of law finds:

4 (1) The agreement or transaction to have been
5 unconscionable at the time it was made, or to have been induced
6 by unconscionable conduct such as affirmative
7 misrepresentations, active deceit or concealment of a material
8 fact, the court may refuse to enforce the agreement; or

9 (2) Any term or part of the agreement or transaction to have
10 been unconscionable at the time it was made, the court may
11 refuse to enforce the agreement, or may enforce the remainder
12 of the agreement without the unconscionable term or part, or
13 may so limit the application of any unconscionable term or part
14 as to avoid any unconscionable result.

15 (b) If it is claimed or appears to the court that the agreement
16 or transaction or any term or part thereof may be
17 unconscionable, the parties shall be afforded a reasonable
18 opportunity to present evidence as to its setting, purpose and
19 effect to aid the court in making the determination.

- 20 (c) For the purpose of this section, a charge or practice
21 expressly permitted by this chapter is not unconscionable.

CHAPTER 42

**(H. B. 4417 - By Delegates Shott, Hanshaw,
Rowe, Marcum, Shaffer, Manchin, Summers,
Kessinger, Ireland and Skinner)**

[Passed March 9, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §46A-2-130 of the Code of West Virginia, 1931, as amended, relating to limitations on garnishment generally; potentially increasing wages protected from garnishment.

Be it enacted by the Legislature of West Virginia:

That §46A-2-130 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-130. Limitation on garnishment.

- 1 (1) For the purposes of the provisions in this chapter relating
2 to garnishment:
- 3 (a) “Disposable earnings” means that part of the earnings of
4 an individual remaining after the deduction from those earnings
5 of amounts required by law to be withheld; and
- 6 (b) “Garnishment” means any legal or equitable procedure
7 through which the earnings of an individual are required to be
8 withheld for payment of a debt.

9 (2) The maximum part of the aggregate disposable earnings
10 of an individual for any workweek which is subjected to
11 garnishment to enforce payment of a judgment arising from a
12 consumer credit sale or consumer loan may not exceed the lesser
13 of:

14 (a) Twenty percent of his or her disposable earnings for that
15 week, or

16 (b) The amount by which his or her disposable earnings for
17 that week exceed fifty times the federal minimum hourly wage
18 prescribed by section 6(a) (1) of the "Fair Labor Standards Act
19 of 1938," U.S.C. Title 19, Sec. 206(a)(1), in effect at the time the
20 earnings are payable.

21 (c) In the case of earnings for a pay period other than a
22 week, the commissioner shall prescribe by rule a multiple of the
23 federal minimum hourly wage equivalent in effect to that set
24 forth in subdivision (b), subsection (2) of this section.

25 (3) No court may make, execute or enforce an order or
26 process in violation of this section. Any time after a consumer's
27 earnings have been executed upon pursuant to article five-a or
28 article five-b, chapter thirty-eight of this code by a creditor
29 resulting from a consumer credit sale, consumer lease or
30 consumer loan, such consumer may petition any court having
31 jurisdiction of such matter or the circuit court of the county
32 wherein he or she resides to reduce or temporarily or
33 permanently remove such execution upon his or her earnings on
34 the grounds that such execution causes or will cause undue
35 hardship to him or her or his or her family. When such fact is
36 proved to the satisfaction of such court, it may reduce or
37 temporarily or permanently remove such execution.

38 (4) No garnishment governed by the provisions of this
39 section will be given priority over a voluntary assignment of

40 wages to fulfill a support obligation, a garnishment to collect
41 arrearages in support payments, or a notice of withholding from
42 wages of amounts payable as support, notwithstanding the fact
43 that the garnishment in question or the judgment upon which it
44 is based may have preceded the support-related assignment,
45 garnishment, or notice of withholding in point of time or filing.

CHAPTER 43

**(Com. Sub. for S. B. 468 - By Senators Gaunch
and Ashley)**

[Passed March 11, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §46A-6K-3 of the Code of West Virginia, 1931, as amended, relating to allowing accrual of interest during rescission period on a loan during the rescission period required under the federal Truth-in-Lending Act; providing exception if the loan is rescinded; and providing exception if the loan is for the purpose of paying in full a prior loan made by the same lender.

Be it enacted by the Legislature of West Virginia:

That §46A-6K-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6K. GOOD FUNDS SETTLEMENT ACT.

§46A-6K-3. Duty of lender; accrual of interest.

1 The lender shall, at or before loan closing, cause
2 disbursement of loan funds to the settlement agent; however, in

3 the case of a refinancing, or any other loan where a right of
4 rescission applies, the lender shall, within one business day after
5 the expiration of the rescission period required under the federal
6 Truth-in-Lending Act (15 U. S. C. §1601 et seq.), cause
7 disbursement of loan funds to the settlement agent, unless the loan
8 is rescinded by the customer. All funds disbursed by the lender to
9 the settlement agent must be collected funds. The lender may
10 charge and receive interest on the loan during the rescission
11 period required under the federal Truth-in-Lending Act (15 U. S.
12 C. §1601 et seq.): *Provided*, That the lender may not receive any
13 interest if the loan is rescinded by the customer: *Provided*,
14 *however*, That the lender may not charge or receive interest on
15 the loan during the rescission period, if the loan is for the
16 purpose of paying a prior loan made by the same lender in full.

CHAPTER 44

(H. B. 4728 - By Delegates Ellington, Summers and Householder)

[Passed on March 11, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §60A-2-208 of the Code of West Virginia, 1931, as amended, relating to schedule three controlled substances; designating human chorionic gonadotropin as a schedule three controlled substance; and allowing human chorionic gonadotropin solely for injection or implantation in cattle and other nonhuman species.

Be it enacted by the Legislature of West Virginia:

That §60A-2-208 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.**§60A-2-208. Schedule III.**

1 (a) Schedule III consists of the drugs and other substances,
2 by whatever official name, common or usual name, chemical
3 name or brand name designated, listed in this section.

4 (b) *Stimulants*. — Unless specifically excepted or unless
5 listed in another schedule, any material, compound, mixture or
6 preparation which contains any quantity of the following
7 substances having a stimulant effect on the central nervous
8 system, including its salts, isomers (whether optical, position or
9 geometric) and salts of such isomers whenever the existence of
10 the salts, isomers and salts of isomers is possible within the
11 specific chemical designation:

12 (1) Those compounds, mixtures or preparations in dosage
13 unit form containing any stimulant substances listed in Schedule
14 II which compounds, mixtures or preparations were listed on
15 August 25, 1971, as excepted compounds under 21 C.F.R.
16 §1308.32, and any other drug of the quantitative composition
17 shown in that list for those drugs or which is the same except
18 that it contains a lesser quantity of controlled substances;

19 (2) Benzphetamine;

20 (3) Chlorphentermine;

21 (4) Clortermine;

22 (5) Phendimetrazine.

23 (c) *Depressants*. — Unless specifically excepted or unless
24 listed in another schedule, any material, compound, mixture or
25 preparation which contains any quantity of the following
26 substances having a depressant effect on the central nervous
27 system:

- 28 (1) Any compound, mixture or preparation containing:
- 29 (A) Amobarbital;
- 30 (B) Secobarbital;
- 31 (C) Pentobarbital; or any salt of pentobarbital and one or
32 more other active medicinal ingredients which are not listed in
33 any schedule;
- 34 (2) Any suppository dosage form containing:
- 35 (A) Amobarbital;
- 36 (B) Secobarbital;
- 37 (C) Pentobarbital; or any salt of any of these drugs and
38 approved by the food and drug administration for marketing only
39 as a suppository;
- 40 (3) Any substance which contains any quantity of a
41 derivative of barbituric acid or any salt of barbituric acid;
- 42 (4) Aprobarbital;
- 43 (5) Butobarbital (secbutobarbital);
- 44 (6) Butalbital (including, but not limited to, Fioricet);
- 45 (7) Butobarbital (butethal);
- 46 (8) Chlorhexadol;
- 47 (9) Embutramide;
- 48 (10) Gamma Hydroxybutyric Acid preparations;
- 49 (11) Ketamine, its salts, isomers and salts of isomers [Some
50 other names for ketamine: (+-)-2-(2-chlorophenyl)-2-
51 (methylamino)-cyclohexanone];

52 (12) Lysergic acid;

53 (13) Lysergic acid amide;

54 (14) Methyprylon;

55 (15) Sulfondiethylmethane;

56 (16) Sulfonethylmethane;

57 (17) Sulfonmethane;

58 (18) Thiamylal;

59 (19) Thiopental;

60 (20) Tiletamine and zolazepam or any salt of tiletamine and
61 zolazepam; some trade or other names for a
62 tiletamine-zolazepam combination product: Telazol; some trade
63 or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-
64 cyclohexanone; some trade or other names for zolazepam:
65 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e]
66 [1,4]-diazepin-7(1H)-one, flupyrzapon; and

67 (21) Vinbarbital.

68 (d) Nalorphine.

69 (e) *Narcotic drugs*. — Unless specifically excepted or unless
70 listed in another schedule:

71 (1) Any material, compound, mixture or preparation
72 containing any of the following narcotic drugs, or their salts
73 calculated as the free anhydrous base or alkaloid, in limited
74 quantities as set forth below:

75 (A) Not more than 1.8 grams of codeine per 100 milliliters
76 and not more than 90 milligrams per dosage unit, with an equal
77 or greater quantity of an isoquinoline alkaloid of opium;

78 (B) Not more than 1.8 grams of codeine per 100 milliliters
79 or not more than 90 milligrams per dosage unit, with one or
80 more active, nonnarcotic ingredients in recognized therapeutic
81 amounts;

82 (C) Not more than 1.8 grams of dihydrocodeine per 100
83 milliliters and not more than 90 milligrams per dosage unit, with
84 one or more active, nonnarcotic ingredients in recognized
85 therapeutic amounts;

86 (D) Not more than 300 milligrams of ethylmorphine per 100
87 milliliters or not more than 15 milligrams per dosage unit, with
88 one or more active, nonnarcotic ingredients in recognized
89 therapeutic amounts;

90 (E) Not more than 500 milligrams of opium per 100
91 milliliters or per 100 grams or not more than 25 milligrams per
92 dosage unit, with one or more active, nonnarcotic ingredients in
93 recognized therapeutic amounts;

94 (F) Not more than 50 milligrams of morphine per 100
95 milliliters or per 100 grams, with one or more active,
96 nonnarcotic ingredients in recognized therapeutic amounts.

97 (2) Any material, compound, mixture or preparation
98 containing buprenorphine or its salts (including, but not limited
99 to, Suboxone).

100 (f) *Anabolic steroids*. — Unless specifically excepted or
101 unless listed in another schedule, any material, compound,
102 mixture, or preparation containing any quantity of anabolic
103 steroids, including its salts, isomers and salts of isomers
104 whenever the existence of the salts of isomers is possible within
105 the specific chemical designation.

106 (g) Human growth hormones.

107 (h) Dronabinol (synthetic) in sesame oil and encapsulated in
108 a soft gelatin capsule in a United States food and drug
109 administration approved drug product. (Some other names for
110 dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6,
111 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1- ol or
112 (-)-delta-9-(trans)-tetrahydrocannabinol).

113 (i) Human chorionic gonadotropin, except when used for
114 injection or implantation in cattle or any other nonhuman species
115 and when that use is approved by the Food and Drug
116 Administration.



CHAPTER 45

(Com. Sub. for S. B. 283 - By Senator Ferns)

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §60A-4-411 of the Code of West Virginia, 1931, as amended, relating to creating a crime of causing the burning of a dwelling, outbuilding, building or other structure while operating or attempting to operate a clandestine drug laboratory; establishing criminal penalties; clarifying the offense as a separate and distinct offense from operation or attempted operation of a clandestine drug laboratory; making clear that the operation or attempted operation of a clandestine drug lab is not a lesser included offense; providing that the offenses are qualifying felony offenses of manufacturing and delivery of a controlled substance for purposes of first degree murder; and providing for payment of all reasonable costs, if any, associated with remediation of the site of the clandestine drug laboratory upon conviction.

Be it enacted by the Legislature of West Virginia:

That §60A-4-411 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-411. Operating or attempting to operate clandestine drug laboratories; offenses; penalties.

1 (a) Any person who operates or attempts to operate a
2 clandestine drug laboratory is guilty of a felony and, upon
3 conviction, shall be confined in a state correctional facility for
4 not less than two years nor more than ten years or fined not less
5 than \$5,000 nor more than \$25,000, or both.

6 (b) Any person who operates or attempts to operate a
7 clandestine drug laboratory and who as a result of, or in the
8 course of doing so, causes to be burned any dwelling,
9 outbuilding, building or structure of any class or character is
10 guilty of a felony and, upon conviction thereof, shall be fined not
11 less than \$1,000 nor more than \$5,000, or imprisoned in a state
12 correctional facility for not less than one nor more than five
13 years, or both fined and imprisoned.

14 (c) For purposes of this section, a “clandestine drug
15 laboratory” means any property, real or personal, on or in which
16 a person assembles any chemicals or equipment or combination
17 thereof for the purpose of manufacturing methamphetamine,
18 methylenedioxymethamphetamine or lysergic acid diethylamide
19 in violation of the provisions of section four hundred one of this
20 article.

21 (d) The offenses in subsections (a) and (b) of this section are
22 separate and distinct offenses and subsection (a) of this section
23 shall not be construed to be a lesser included offense of
24 subsection (b) of this section.

25 (e) For purposes of section one, article two of this chapter,
26 both subsection (a) and (b) of this section shall be deemed
27 qualifying felony offenses of manufacturing and delivery of a
28 controlled substance.

29 (f) Any person convicted of a violation of subsection (a) or
30 (b) of this section shall be responsible for all reasonable costs, if
31 any, associated with remediation of the site of the clandestine
32 drug laboratory.

CHAPTER 46

(Com. Sub. for S. B. 262 - By Senator Blair)

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, all relating to law enforcement not needing to obtain court orders prior to receiving recordings of inmate phone calls and inmate mail for investigative purposes; eliminating requirement for promulgation of legislative rules relating to monitoring of inmate telephone conversations and mail; requiring commissioner to promulgate policy directive establishing record-keeping procedure to memorialize telephone conversations and mail provided to law enforcement for investigation; requiring records to be retained in accordance with Division of Correction's record retention policy; allowing an inmate's attorney access to telephone conversations and inmate mail supplied to law enforcement and exceptions thereto; clarifying that inmate mail and telephone provisions apply only to inmates in physical custody of commissioner; and clarifying that information supplied to law enforcement is not subject to disclosure under the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

That §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND
CORRECTIONS MANAGEMENT.**

**§25-1-17. Monitoring of inmate telephone calls; procedures and
restrictions; calls to or from attorneys excepted.**

1 (a) The Commissioner of Corrections or his or her designee
2 is authorized to monitor, intercept, record and disclose telephone
3 calls to or from adult inmates of state correctional institutions in
4 accordance with the following provisions:

5 (1) All adult inmates of state correctional institutions shall
6 be notified in writing that their telephone conversations may be
7 monitored, intercepted, recorded and disclosed;

8 (2) Only the commissioner, warden, administrator or their
9 designee shall have access to recordings of inmates' telephone
10 calls unless disclosed pursuant to subdivision (4) of this
11 subsection;

12 (3) Notice shall be prominently placed on or immediately
13 near every telephone that may be monitored;

14 (4) The contents of inmates' telephone calls may be
15 disclosed to an appropriate law-enforcement agency when
16 disclosure is necessary for the investigation, prevention or
17 prosecution of a crime or to safeguard the orderly operation of
18 the correctional institution. Disclosure may be made in civil or
19 administrative proceedings pursuant to an order of a court or an
20 administrative tribunal when the disclosure is:

21 (A) Necessary to safeguard and protect the orderly operation
22 of the correctional institution; or

23 (B) Necessary to protect persons from physical harm or the
24 threat of physical harm;

25 (5) All recordings of telephone calls shall be retained for at
26 least three years and maintained and destroyed in accordance
27 with the record retention policy of the Division of Corrections
28 adopted pursuant to section one, article eight, chapter five-a of
29 this code, et seq.; or

30 (6) To safeguard the sanctity of the attorney-client privilege,
31 a telephone line that is not monitored shall be made available for
32 telephone calls to or from an attorney. These calls shall not be
33 monitored, intercepted, recorded or disclosed in any matter.

34 (b) The commissioner shall promulgate a policy directive
35 establishing a record-keeping procedure which requires retention
36 of: (1) A copy of the contents of any inmate telephone
37 conversation provided to law enforcement; and (2) the name of
38 the law-enforcement officer and the law-enforcement agency to
39 which the contents of the telephone conversation were provided.
40 The records required to be retained pursuant to this subsection
41 shall be retained in accordance with the record retention policy
42 specified in subdivision (5), subsection (a) of this section. The
43 inmate's telephone conversation and the information regarding
44 law enforcement are law-enforcement records under subdivision
45 (4), subsection (a), section four, article one, chapter
46 twenty-nine-b of this code.

47 (c) Should an inmate be charged with a crime based in whole
48 or in part on the inmate's telephone conversation supplied to law
49 enforcement, the inmate's attorney in said criminal matter shall
50 be entitled to access to and copies of the inmate's telephone
51 conversations in the custody of the commissioner which are not
52 evidence in or the subject of another criminal investigation.

53 (d) The provisions of this section shall apply only to those
54 persons serving a sentence of incarceration in the physical
55 custody of the Commissioner of Corrections.

§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

1 (a) The Commissioner of Corrections or his or her designee
2 is authorized to monitor, open, review, copy and disclose mail
3 sent to adult inmates of state correctional institutions in
4 accordance with the following provisions:

5 (1) All adult inmates of state correctional institutions shall
6 be notified in writing that their mail may be monitored, opened,
7 reviewed, copied and disclosed;

8 (2) Only the commissioner and his or her designee shall have
9 access to copies of inmates' mail unless disclosed pursuant to
10 subdivision (4) of this subsection;

11 (3) Notice that the mail may be monitored shall be
12 prominently placed on or immediately near every mail receptacle
13 or other designated area for the collection or delivery of mail;

14 (4) The contents of inmates' mail may be disclosed to an
15 appropriate law-enforcement agency when disclosure is
16 necessary for the investigation, prevention or prosecution of a
17 crime or to safeguard the orderly operation of the correctional
18 institution. Disclosure may be made in civil or administrative
19 proceedings pursuant to an order of a court or administrative
20 tribunal when the disclosure is:

21 (A) Necessary to safeguard and protect the orderly operation
22 of the correctional institution; or

23 (B) Necessary to protect persons from physical harm or the
24 threat of physical harm;

25 (5) All copies of mail shall be retained for at least three years
26 and maintained and destroyed in accordance with the records

27 retention policy of the Division of Corrections adopted pursuant
28 to section one, article eight, chapter five-a of this code, *et seq.*;
29 or

30 (6) The inmate whose mail has been copied and disclosed
31 under this section shall be given a copy of all such mail when it
32 is determined by the commissioner, warden or administrator not
33 to jeopardize the safe and secure operation of the facility or to be
34 detrimental to an ongoing investigation or administrative action.

35 (b) To safeguard the sanctity of the attorney-client privilege,
36 mail to or from an inmate's attorney shall not be monitored,
37 reviewed, copied or disclosed in any manner unless required by
38 an order of a court of competent jurisdiction. However, such
39 mail may be checked for weapons, drugs and other contraband
40 provided it is done in the presence of the inmate and there is a
41 reasonable basis to believe that any weapon, drug or other
42 contraband exists in the mail.

43 (c) All inmates' outgoing mail must be clearly identified as
44 being sent from an inmate at a state correctional institution and
45 must include on the face of the envelope the name and full
46 address of the institution.

47 (d) The Commissioner of Corrections or his or her designee
48 is authorized to open, monitor, review, copy and disclose an
49 inmate's outgoing mail in accordance with the provisions of
50 subsection (a) of this section.

51 (e) The commissioner shall promulgate a policy directive
52 establishing a record-keeping procedure which requires retention
53 of: (1) All inmate mail provided to law enforcement; and (2) the
54 name of the law-enforcement officer and the law-enforcement
55 agency to which the inmate mail was provided. The records
56 required to be retained pursuant to this subsection shall be
57 retained in accordance with the record retention policy specified

58 in subdivision (5), subsection (a) of this section. The inmate mail
59 and the information regarding law enforcement are
60 law-enforcement records under subdivision (4), subsection (a),
61 section four, article one, chapter twenty-nine-b of this code.

62 (f) Should an inmate be charged with a criminal offense
63 based in whole or in part on the inmate's mail supplied to law
64 enforcement, the inmate's attorney in said criminal matter shall
65 be entitled to access to and copies of the inmate's mail in the
66 custody of the commissioner which are not evidence in or the
67 subject of another criminal investigation.

68 (g) The provisions of this section shall apply only to those
69 persons serving a sentence of incarceration in the physical
70 custody of the Commissioner of Corrections.



CHAPTER 47

**(Com. Sub. for H. B. 2904 - By Delegates McGeehan
and Zatezalo)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-2-4, to amend said code by adding thereto a new section, designated §7-1-3rr; and to amend and reenact §7-1-7 of said code, all relating to accessible county records; requiring county clerks to report certain county official information to the Secretary of State annually; requiring the Secretary of State to annually update a website of county information; requiring county commissions to maintain a website; and requiring the clerk of a county commission to maintain a county ordinance book.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-2-4; and that said code be amended by adding thereto a new section, designated §7-1-3rr; and that §7-1-7 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 2. SECRETARY OF STATE.

§5-2-4. Accessible county records; required information.

1 (a) The Secretary of State shall maintain a website with
2 certain county information. The website shall be updated
3 annually.

4 (b) On or before January 31, 2018, the county officer
5 information website shall be updated by the Secretary of State.

6 (c) The website shall contain the following minimum
7 information regarding county officials:

8 (1) The official title and name of each county office holder;

9 (2) The contact information for each county office holder,
10 including telephone number, facsimile number, office location
11 and mailing address;

12 (3) The electronic mail address of each elected county office
13 holder where available; and

14 (4) The website of each county commission, where
15 available.

**CHAPTER 7. COUNTY COMMISSIONS
AND OFFICERS.**

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3rr. Accessible county records; required information.

1 (a) Beginning July 1, 2017, each county commission may
2 maintain a website that provides the following information
3 without charge:

4 (1) The title and name of each elected county office holder;

5 (2) The contact information of each elected county office
6 holder, including office telephone number, facsimile number,
7 office location and mailing address;

8 (3) The government electronic mail address of each elected
9 county office holder;

10 (4) A copy of each county ordinance as adopted;

11 (5) A copy of the approved meeting minutes; and

12 (6) A schedule of regular meeting days for each calendar
13 year.

14 (b) Beginning on or before December 31, 2017, and each
15 year thereafter, the Secretary of State shall obtain the following
16 information:

17 (1) A list of each elected county official by title, with the
18 name of the elected official;

19 (2) The office contact information for each county office
20 holder; and

21 (3) The website address of the county commission website,
22 where available.

§7-1-7. Record books.

1 (a) Beginning on July 1, 2017, the county commission shall,
2 within sixty days of adoption, through the clerk of the
3 commission, enter into a separate book the complete record of all
4 ordinances adopted by the county commission. The clerk shall
5 list, along with each ordinance in the book, the provision of the
6 West Virginia Code authorizing each ordinance. The clerk shall
7 maintain the book in his or her office and shall make available
8 a copy to the county sheriff. Compiling all such ordinances
9 adopted by the county commission and publishing the same on
10 a publically available internet website as delineated in section
11 three-rr of this article shall constitute full compliance with the
12 provisions of this section.

13 (b) The county commission of every county shall provide
14 two record books for the use of the county commission, in one
15 of which shall be entered all the proceedings of such county
16 commission in relation to contested elections, all matters of
17 probate, the appointment of appraisers of the estates of decedents
18 and the appointment and qualification of personal
19 representatives, guardians, committees and curators, and the
20 settlement of their accounts, and all matters relating to
21 apprentices; and in the other of said books shall be entered all
22 the other proceedings of such county commission: *Provided*,
23 That said county commission shall provide and keep such
24 additional or different record books as may be specially required
25 by law.

CHAPTER 48**(Com. Sub. for S. B. 298 - By Senator Walters)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3ss; to amend and reenact §11-16-18 of said code; to amend and reenact §60-4-3a and §60-4-3b of said code; to amend and reenact §60-7-12 of said code; and to amend and reenact §60-8-34 of said code, all relating to regulation of alcoholic liquor, wine and non-intoxicating beer generally; allowing county commissions to conduct a county option election on the question of whether to allow restaurants, private clubs, Class A retailers, wineries and wine serving entities to sell alcoholic liquors, wine and non-intoxicating beer as their licenses allow, and distilleries and mini-distilleries to offer complimentary samples of alcohol beginning at 10:00 a.m. on Sundays for on-premises consumption only; and establishing publication requirements for providing notice of election.

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 §7-1-3ss; that §11-16-18 of said code be amended and reenacted; that §60-4-3a and §60-4-3b of said code be amended and reenacted; that §60-7-12 of said code be amended and reenacted; and that §60-8-34 of said code be amended and reenacted, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS
AND OFFICERS.****ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

§7-1-3ss. County option election on allowing nonintoxicating beer, wine or alcoholic liquors to be sold, given or dispensed after ten o'clock a.m. on Sundays.

1 The county commission of any county may conduct a county
2 option election on the question of whether the sale or dispensing
3 of nonintoxicating beer, wine or alcoholic liquors in or on
4 premises shall be allowed in the county beginning ten o'clock
5 a.m. on any Sunday, as provided in section eighteen, article
6 sixteen, chapter eleven, sections three-a and three-b, article four,
7 chapter sixty of this code, section twelve, article seven, of said
8 chapter, and section thirty-four, article eight, of said chapter,
9 upon approval as provided in this section. The option election on
10 this question may be placed on the ballot in each county at any
11 primary or general election. The county commission of the
12 county shall give notice to the public of the election by
13 publication of the notice as a Class II-0 legal advertisement in
14 compliance with the provisions of article three, chapter fifty-nine
15 of this code, and the publication area for publication shall be the
16 county in which the election is to be held. The date of the last
17 publication of the notice shall fall on a date within the period of
18 the fourteen consecutive days next preceding the election. On the
19 local option election ballot shall be printed the following: "Shall
20 the beginning hour at which non-intoxicating beer, wine and
21 alcoholic liquor be sold or dispensed for on premises
22 consumption only in _____ County on Sundays be changed
23 from one o'clock p.m. to ten o'clock a.m.

24 If approved by the voters this would allow private clubs and
25 restaurants licensed to sell and dispense non-intoxicating beer,
26 wine and alcoholic liquor; licensed private wine restaurants,
27 private wine spas, private wine bed and breakfasts to sell and
28 dispense wine; and licensed Class A retail dealers to sell and
29 dispense nonintoxicating beer for on premises consumption only
30 beginning at ten o'clock a.m. Additionally, if approved, it would
31 also allow any mini-distilleries, wineries or farm wineries in this

32 county to offer complimentary samples for on premises
33 consumption only beginning at ten o'clock a.m."

34 [] Yes [] No

35 (Place a cross mark in the square opposite your choice.)

36 The ballots shall be counted, returns made and canvassed as
37 in general elections and the results certified by the
38 commissioners of election to the county commission. The county
39 commission shall, without delay, certify the result of the
40 election. Upon receipt of the results of the election, in the event
41 a majority of the votes are marked "Yes" all applicable licensees
42 shall be permitted prohibited to sell and dispense beer, wine or
43 alcoholic liquors beginning at ten o'clock a.m. on Sundays. In
44 the event a majority of the votes are marked "No" all applicable
45 licensees will continue to be required to comply with existing
46 law.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-18. Unlawful acts of licensees; criminal penalties.

1 (a) It shall be unlawful:

2 (1) For any licensee, his, her, its or their servants, agents or
3 employees to sell, give or dispense, or any individual to drink or
4 consume, in or on any licensed premises or in any rooms directly
5 connected, nonintoxicating beer or cooler on weekdays between
6 the hours of two o'clock a.m. and seven o'clock a.m., or between
7 the hours of two o'clock a.m. and one o'clock p.m., or a Class A
8 retail dealer who sells nonintoxicating beer for on premises
9 consumption only between the hours of two o'clock a.m. and ten
10 o'clock a.m. in any county upon approval as provided for in
11 section three-pp, article one, chapter seven of this code, on any
12 Sunday, except in private clubs licensed under the provisions of

13 article seven, chapter sixty of this code, where the hours shall
14 conform with the hours of sale of alcoholic liquors;

15 (2) For any licensee, his, her, its or their servants, agents or
16 employees to sell, furnish or give any nonintoxicating beer, as
17 defined in this article, to any person visibly or noticeably
18 intoxicated or to any person known to be insane or known to be
19 a habitual drunkard;

20 (3) For any licensee, his, her, its or their servants, agents or
21 employees to sell, furnish or give any nonintoxicating beer as
22 defined in this article to any person who is less than twenty-one
23 years of age;

24 (4) For any distributor to sell or offer to sell, or any retailer
25 to purchase or receive, any nonintoxicating beer as defined in
26 this article, except for cash and no right of action shall exist to
27 collect any claims for credit extended contrary to the provisions
28 of this subdivision. Nothing herein contained in this section
29 prohibits a licensee from crediting to a purchaser the actual price
30 charged for packages or containers returned by the original
31 purchaser as a credit on any sale, or from refunding to any
32 purchaser the amount paid or deposited for the containers when
33 title is retained by the vendor: *Provided*, That a distributor may
34 accept an electronic transfer of funds if the transfer of funds is
35 initiated by an irrevocable payment order on the invoiced
36 amount for the nonintoxicating beer. The cost of the electronic
37 fund transfer shall be borne by the retailer and the distributor
38 shall initiate the transfer no later than noon of one business day
39 after the delivery;

40 (5) For any brewer or distributor or brew-pub or his, her, its
41 or their agents to transport or deliver nonintoxicating beer as
42 defined in this article to any retail licensee on Sunday;

43 (6) For any brewer or distributor to give, furnish, rent or sell
44 any equipment, fixtures, signs or supplies directly or indirectly
45 or through a subsidiary or affiliate to any licensee engaged in

46 selling products of the brewing industry at retail or to offer any
47 prize, premium, gift or other similar inducement, except
48 advertising matter of nominal value, to either trade or consumer
49 buyers: *Provided*, That a distributor may offer, for sale or rent,
50 tanks of carbonic gas. Nothing herein contained in this section
51 prohibits a brewer from sponsoring any professional or amateur
52 athletic event or from providing prizes or awards for participants
53 and winners in any events: *Provided, however*, That no event
54 shall be sponsored which permits actual participation by athletes
55 or other persons who are minors, unless specifically authorized
56 by the commissioner;

57 (7) For any licensee to permit in his or her premises any
58 lewd, immoral or improper entertainment, conduct or practice;

59 (8) For any licensee except the holder of a license to operate
60 a private club issued under the provisions of article seven,
61 chapter sixty of this code or a holder of a license or a private
62 wine restaurant issued under the provisions of article eight of
63 said chapter to possess a federal license, tax receipt or other
64 permit entitling, authorizing or allowing the licensee to sell
65 liquor or alcoholic drinks other than nonintoxicating beer;

66 (9) For any licensee to obstruct the view of the interior of his
67 or her premises by enclosure, lattice, drapes or any means which
68 would prevent plain view of the patrons occupying the premises.
69 The interior of all licensed premises shall be adequately lighted
70 at all times: *Provided*, That provisions of this subdivision do not
71 apply to the premises of a Class B retailer, the premises of a
72 private club licensed under the provisions of article seven,
73 chapter sixty of this code or the premises of a private wine
74 restaurant licensed under the provisions of article eight of said
75 chapter;

76 (10) For any licensee to manufacture, import, sell, trade,
77 barter, possess or acquiesce in the sale, possession or

78 consumption of any alcoholic liquors on the premises covered by
79 a license or on premises directly or indirectly used in connection
80 with it: *Provided*, That the prohibition contained in this
81 subdivision with respect to the selling or possessing or to the
82 acquiescence in the sale, possession or consumption of alcoholic
83 liquors is not applicable with respect to the holder of a license to
84 operate a private club issued under the provisions of article
85 seven, chapter sixty of this code nor shall the prohibition be
86 applicable to a private wine restaurant licensed under the
87 provisions of article eight of said chapter insofar as the private
88 wine restaurant is authorized to serve wine;

89 (11) For any retail licensee to sell or dispense
90 nonintoxicating beer, as defined in this article, purchased or
91 acquired from any source other than a distributor, brewer or
92 manufacturer licensed under the laws of this state;

93 (12) For any licensee to permit loud, boisterous or disorderly
94 conduct of any kind upon his or her premises or to permit the use
95 of loud musical instruments if either or any of the same may
96 disturb the peace and quietude of the community where the
97 business is located: *Provided*, That no licensee may have in
98 connection with his or her place of business any loudspeaker
99 located on the outside of the licensed premises that broadcasts or
100 carries music of any kind;

101 (13) For any person whose license has been revoked, as
102 provided in this article, to obtain employment with any retailer
103 within the period of one year from the date of the revocation, or
104 for any retailer to knowingly employ that person within the
105 specified time;

106 (14) For any distributor to sell, possess for sale, transport or
107 distribute nonintoxicating beer except in the original container;

108 (15) For any licensee to knowingly permit any act to be done
109 upon the licensed premises, the commission of which constitutes
110 a crime under the laws of this state;

111 (16) For any Class B retailer to permit the consumption of
112 nonintoxicating beer upon his or her licensed premises;

113 (17) For any Class A licensee, his, her, its or their servants,
114 agents or employees, or for any licensee by or through any
115 servants, agents or employees, to allow, suffer or permit any
116 person less than eighteen years of age to loiter in or upon any
117 licensed premises; except, however, that the provisions of this
118 subdivision do not apply where a person under the age of
119 eighteen years is in or upon the premises in the immediate
120 company of his or her parent or parents, or where and while a
121 person under the age of eighteen years is in or upon the premises
122 for the purpose of and actually making a lawful purchase of any
123 items or commodities therein sold, or for the purchase of and
124 actually receiving any lawful service therein rendered, including
125 the consumption of any item of food, drink or soft drink therein
126 lawfully prepared and served or sold for consumption on the
127 premises;

128 (18) For any distributor to sell, offer for sale, distribute or
129 deliver any nonintoxicating beer outside the territory assigned to
130 any distributor by the brewer or manufacturer of nonintoxicating
131 beer or to sell, offer for sale, distribute or deliver nonintoxicating
132 beer to any retailer whose principal place of business or licensed
133 premises is within the assigned territory of another distributor of
134 such nonintoxicating beer: *Provided*, That nothing in this
135 section is considered to prohibit sales of convenience between
136 distributors licensed in this state where one distributor sells,
137 transfers or delivers to another distributor a particular brand or
138 brands for sale at wholesale; and

139 (19) For any licensee or any agent, servant or employee of
140 any licensee to knowingly violate any rule lawfully promulgated

141 by the commissioner in accordance with the provisions of
142 chapter twenty-nine-a of this code.

143 (b) Any person who violates any provision of this article
144 including, but not limited to, any provision of this section, or any
145 rule, or order lawfully promulgated by the commissioner, or who
146 makes any false statement concerning any material fact in
147 submitting application for license or for a renewal of a license or
148 in any hearing concerning the revocation thereof, or who
149 commits any of the acts herein declared to be unlawful is guilty
150 of a misdemeanor and, upon conviction thereof, shall be
151 punished for each offense by a fine of not less than \$25, nor
152 more than \$500, or confined in the county or regional jail for not
153 less than thirty days nor more than six months, or by both fine
154 and confinement. Magistrates have concurrent jurisdiction with
155 the circuit court and any other courts having criminal jurisdiction
156 in their county for the trial of all misdemeanors arising under
157 this article.

158 (c) (1) A Class B licensee that:

159 (A) Has installed a transaction scan device on its licensed
160 premises; and

161 (B) Can demonstrate that it requires each employee, servant
162 or agent to verify the age of any individual to whom
163 nonintoxicating beer is sold, furnished or given away by the use
164 of the transaction device may not be subject to: (i) Any criminal
165 penalties whatsoever, including those set forth in subsection (b)
166 of this section; (ii) any administrative penalties from the
167 commissioner; or (iii) any civil liability whatsoever for the
168 improper sale, furnishing or giving away of nonintoxicating beer
169 to an individual who is less than twenty-one years of age by one
170 of his or her employees, servants or agents. Any agent, servant
171 or employee who has improperly sold, furnished or given away
172 nonintoxicating beer to an individual less than twenty-one years

173 of age is subject to the criminal penalties of subsection (b) of this
174 section. Any agent, servant or employee who has improperly
175 sold, furnished or given away nonintoxicating beer to an
176 individual less than twenty-one years of age is subject to
177 termination from employment, and the employer shall have no
178 civil liability for the termination.

179 (2) For purposes of this section, a Class B licensee can
180 demonstrate that it requires each employee, servant or agent to
181 verify the age of any individual to whom nonintoxicating beer is
182 sold by providing evidence: (A) That it has developed a written
183 policy which requires each employee, servant or agent to verify
184 the age of each individual to whom nonintoxicating beer will be
185 sold, furnished or given away; (B) that it has communicated this
186 policy to each employee, servant or agent; and (C) that it
187 monitors the actions of its employees, servants or agents
188 regarding the sale, furnishing or giving away of nonintoxicating
189 beer and that it has taken corrective action for any discovered
190 noncompliance with this policy.

191 (3) “Transaction scan” means the process by which a person
192 checks, by means of a transaction scan device, the age and
193 identity of the cardholder, and “transaction scan device” means
194 any commercial device or combination of devices used at a point
195 of sale that is capable of deciphering in an electronically
196 readable format the information enclosed on the magnetic strip
197 or bar code of a driver’s license or other governmental identity
198 card.

199 (d) Nothing in this article nor any rule or regulation of the
200 commissioner shall prevent or be considered to prohibit any
201 licensee from employing any person who is at least eighteen
202 years of age to serve in the licensee’s lawful employ, including
203 the sale or delivery of nonintoxicating beer as defined in this
204 article. With the prior approval of the commissioner, a licensee
205 whose principal business is the sale of food or consumer goods

206 or the providing of recreational activities, including, but not
207 limited to, nationally franchised fast food outlets,
208 family-oriented restaurants, bowling alleys, drug stores, discount
209 stores, grocery stores and convenience stores, may employ
210 persons who are less than eighteen years of age but at least
211 sixteen years of age: *Provided*, That the person's duties may not
212 include the sale or delivery of nonintoxicating beer or alcoholic
213 liquors: *Provided, however*, That the authorization to employ
214 persons under the age of eighteen years shall be clearly indicated
215 on the licensee's license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 4. LICENSES.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

1 (a) *Sales of liquor.* — An operator of a distillery or a
2 mini-distillery may offer liquor for retail sale to customers from
3 the distillery or the mini-distillery for consumption off premises
4 only. Except for free complimentary samples offered pursuant to
5 section one, article six of this chapter, customers are prohibited
6 from consuming any liquor on the premises of the distillery or
7 the mini-distillery: *Provided*, That a licensed distillery or
8 mini-distillery may offer complimentary samples per this
9 subsection of alcoholic liquors manufactured by that licensed
10 distillery or mini-distillery for consumption on the premises only
11 on Sundays beginning at ten o'clock a.m. in any county in which
12 the same has been approved as provided for in section three-ss,
13 article one, chapter seven of this code.

14 (b) *Retail sales.* — Every licensed distillery or
15 mini-distillery shall comply with the provisions of sections nine,
16 eleven, thirteen, sixteen, seventeen, eighteen, nineteen,

17 twenty-two, twenty-three, twenty-four, twenty-five and
18 twenty-six, article three-a of this chapter and the provisions of
19 articles three and four of this chapter applicable to liquor
20 retailers and distillers.

21 (c) *Payment of taxes and fees.* — The distillery or
22 mini-distillery shall pay all taxes and fees required of licensed
23 retailers and meet applicable licensing provisions as required by
24 this chapter and by rule of the commissioner, except for
25 payments of the wholesale markup percentage and the handling
26 fee provided by rule of the commissioner: *Provided*, That all
27 liquor for sale to customers from the distillery or the
28 mini-distillery for off-premises consumption shall be subject of
29 a five percent wholesale markup fee and an 80 cents per case
30 bailment fee to be paid to the commissioner: *Provided, however*,
31 That no liquor sold by the distillery or mini-distillery shall be
32 priced less than the price set by the commissioner pursuant to
33 section seventeen, article three-a of this chapter.

34 (d) *Payments to market zone retailers.* — Each distillery or
35 mini-distillery shall submit to the commissioner two percent of
36 the gross sales price of each retail liquor sale for the value of all
37 sales at the distillery or the mini-distillery each month. This
38 collection shall be distributed by the commissioner, at least
39 quarterly, to each market zone retailer located in the distillery or
40 mini-distillery's market zone, proportionate to each market zone
41 retailer's annual gross prior years pretax value sales. The
42 maximum amount of market zone payments that a distillery or
43 mini-distillery shall be required to submit to the commissioner
44 is \$15,000 per annum.

45 (e) *Limitations on licensees.* — No distillery or
46 mini-distillery may sell more than three thousand gallons of
47 product at the distillery or mini-distillery location the initial two
48 years of licensure. The distillery or mini-distillery may increase
49 sales at the distillery or mini-distillery location by two thousand

50 gallons following the initial twenty-four-month period of
51 licensure and may increase sales at the distillery or
52 mini-distillery location each subsequent twenty-four-month
53 period by two thousand gallons, not to exceed ten thousand
54 gallons a year of total sales at the distillery or mini-distillery
55 location. No licensed mini-distillery may produce more than
56 fifty thousand gallons per calendar year at the mini-distillery
57 location. No more than one distillery or mini-distillery license
58 may be issued to a single person or entity and no person may
59 hold both a distillery and a mini-distillery license.

§60-4-3b. Winery and farm winery license to manufacture and sell.

1 (a) *Sales of wine.* — An operator of a winery or farm winery
2 may offer wine produced by the winery or farm winery for retail
3 sale to customers from the winery or farm winery for
4 consumption off the premises only. Except for free
5 complimentary samples offered pursuant to section one, article
6 six of this chapter, customers are prohibited from consuming any
7 wine on the premises of the winery or farm winery, unless such
8 winery or farm winery has obtained a multicapacity winery or
9 farm winery license: *Provided*, That a licensed winery or farm
10 winery may offer complimentary samples per this subsection of
11 wine manufactured by that licensed winery or farm winery for
12 consumption on the premises only on Sundays beginning at ten
13 o'clock a.m. in any county in which the same has been approved
14 as provided in section three-pp, article one, chapter seven of this
15 code.

16 (b) *Retail sales.* — Every licensed winery or farm winery
17 shall comply with the provisions of articles three, four and eight
18 of this chapter as applicable to wine retailers, wineries and
19 suppliers when properly licensed in such capacities.

20 (c) *Payment of taxes and fees.* — The winery or farm winery
21 shall pay all taxes and fees required of licensed wine retailers

22 and meet applicable licensing provisions as required by this
23 chapter and by rule of the commissioner. Each winery or farm
24 winery acting as its own supplier shall submit to the Tax
25 Commissioner the liter tax for all sales at the winery or farm
26 winery each month, as provided in article eight of this chapter.

27 (d) *Advertising.* — A winery or farm winery may advertise
28 a particular brand or brands of wine produced by it, and the price
29 of the wine subject to federal requirements or restrictions.

30 (e) *Limitations on licensees.* — A winery or farm winery
31 must maintain separate winery or farm winery supplier, retailer
32 and direct shipper licenses when acting in one or more of those
33 capacities, and must pay all associated license fees, unless such
34 winery or farm winery holds a license issued pursuant to the
35 provisions of subdivision (12), subsection (b), section three,
36 article eight of this chapter. A winery or farm winery, if holding
37 the appropriate licenses or a multicapacity winery or farm
38 winery license, may act as its own supplier; retailer for
39 off-premises consumption of its wine as specified in section two,
40 article six of this chapter; private wine restaurant; and direct
41 shipper for wine produced by the winery or farm winery. All
42 wineries must use a distributor to distribute and sell their wine
43 in the state, except for farm wineries. No more than one winery
44 or farm winery license may be issued to a single person or entity
45 and no person may hold both a winery and a farm winery
46 license.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

1 (a) It is unlawful for any licensee, or agent, employee or
2 member thereof, on such licensee's premises to:

3 (1) Sell or offer for sale any alcoholic liquors other than
4 from the original package or container;

5 (2) Authorize or permit any disturbance of the peace;
6 obscene, lewd, immoral or improper entertainment, conduct or
7 practice, gambling or any slot machine, multiple coin console
8 machine, multiple coin console slot machine or device in the
9 nature of a slot machine;

10 (3) Sell, give away or permit the sale of, gift to or the
11 procurement of any nonintoxicating beer, wine or alcoholic
12 liquors for or to, or permit the consumption of nonintoxicating
13 beer, wine or alcoholic liquors on the licensee's premises, by any
14 person less than twenty-one years of age;

15 (4) Sell, give away or permit the sale of, gift to or the
16 procurement of any nonintoxicating beer, wine or alcoholic
17 liquors, for or to any person known to be deemed legally
18 incompetent, or for or to any person who is physically
19 incapacitated due to consumption of nonintoxicating beer, wine
20 or alcoholic liquor or the use of drugs;

21 (5) Sell, give or dispense nonintoxicating beer, wine or
22 alcoholic liquors in or on any licensed premises or in any rooms
23 directly connected therewith, between the hours of three o'clock
24 a.m. and one o'clock p.m., or, between the hours of three o'clock
25 a.m. and ten o'clock a.m. in any county upon approval as
26 provided for in section three-pp, article one, chapter seven of this
27 code, on any Sunday;

28 (6) Permit the consumption by, or serve to, on the licensed
29 premises any nonintoxicating beer, wine or alcoholic liquors,
30 covered by this article, to any person who is less than twenty-one
31 years of age;

32 (7) With the intent to defraud, alter, change or misrepresent
33 the quality, quantity or brand name of any alcoholic liquor;

34 (8) Sell or offer for sale any alcoholic liquor to any person
35 who is not a duly elected or approved dues paying member in
36 good standing of said private club or a guest of such member;

37 (9) Sell, offer for sale, give away, facilitate the use of or
38 allow the use of carbon dioxide, cyclopropane, ethylene, helium
39 or nitrous oxide for purposes of human consumption except as
40 authorized by the commissioner;

41 (10) (A) Employ any person who is less than eighteen years
42 of age in a position where the primary responsibility for such
43 employment is to sell, furnish or give nonintoxicating beer, wine
44 or alcoholic liquors to any person;

45 (B) Employ any person who is between the ages of eighteen
46 and twenty-one who is not directly supervised by a person aged
47 twenty-one or over in a position where the primary responsibility
48 for such employment is to sell, furnish or give nonintoxicating
49 beer, wine or alcoholic liquors to any person; or

50 (11) Violate any reasonable rule of the commissioner.

51 (b) It is unlawful for any licensee to advertise in any news
52 media or other means, outside of the licensee's premises, the fact
53 that alcoholic liquors may be purchased thereat.

54 (c) Any person who violates any of the foregoing provisions
55 is guilty of a misdemeanor and, upon conviction thereof, shall be
56 fined not less than \$500 nor more than \$1,000, or imprisoned in
57 the county jail for a period not to exceed one year, or both fined
58 and imprisoned.

ARTICLE 8. SALE OF WINES.

§60-8-34. When retail sales prohibited.

1 It shall be unlawful for a retailer, farm winery, wine
2 specialty shop retailer, private wine bed and breakfast, private
3 wine restaurant or private wine spa licensee, his or her servants,
4 agents or employees to sell or deliver wine between the hours of
5 two o'clock a.m. and one o'clock p.m., or, it shall be unlawful

6 for a winery, farm winery, private wine bed and breakfast,
7 private wine restaurant or private wine spa, his or her servants,
8 agents or employees to sell wine between the hours of two
9 o'clock a.m. and ten o'clock a.m. in any county upon approval
10 as provided for in section three-pp, article one, chapter seven of
11 this code, on Sundays, or between the hours of two o'clock a.m.
12 and seven o'clock a.m. on weekdays and Saturdays.

CHAPTER 49

(S. B. 306 - By Senator Blair)

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to sale of county or district property; permitting property be sold either at an on-site public auction or by utilizing an Internet-based public auction service; and requiring notice of sale include notice of the time, terms, manner and place of sale or the Internet-based public auction service to be utilized.

Be it enacted by the Legislature of West Virginia:

That §7-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COUNTY PROPERTY.

§7-3-3. Sale of county or district property.

1 Except as may be prohibited by law or otherwise, the county
2 commission of a county is authorized by law to sell or dispose of

3 any property, either real or personal, belonging to the county or
4 held by it for the use of any district thereof. The property shall
5 be sold either at an on-site public auction or by utilizing an
6 Internet-based public auction service, and such sale shall be
7 conducted by the president of the county commission, but before
8 making any such sale, notice of the time, terms, manner and
9 either the location of the sale or the Internet-based public auction
10 service to be utilized, together with a brief description of the
11 property to be sold, shall be published as a Class II legal
12 advertisement in compliance with the provisions of article three,
13 chapter fifty-nine of this code, and the publication area for such
14 publication shall be the county: *Provided*, That this section shall
15 not apply to the sale of any one item of property of less value
16 than \$1,000: *Provided, however*, That the provisions of this
17 section concerning sale at public auction shall not apply to a
18 county commission selling or disposing of its property for a
19 public use to the United States of America, its instrumentalities,
20 agencies or political subdivisions or to the State of West
21 Virginia, or its political subdivisions, including county boards of
22 education, volunteer fire departments and volunteer ambulance
23 services, for an adequate consideration without considering
24 alone the present commercial or market value of the property:
25 *Provided further*, That all real property conveyed or sold by a
26 county commission to a volunteer fire department or volunteer
27 ambulance service under this provision shall revert back to the
28 county commission if the volunteer fire department or volunteer
29 ambulance service ceases to use it for the purpose for which the
30 real property was conveyed or sold.

CHAPTER 50

**(Com. Sub. for S. B. 27 - By Senators Kirkendoll,
Miller and Gaunch)**

[Passed March 5, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2016.]

AN ACT to amend and reenact §7-5-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11A-2-2 of said code, all relating to permitting county commissions to hire outside attorneys to prosecute actions or defend the county's interest in any proceeding before any United States Bankruptcy Court; providing for outside attorney to be reimbursed for actual expenses directly incurred in the representation; providing that engagements of outside counsel be in writing; requiring that hourly engagements with outside attorneys contain a cumulative cap of any hourly fees charged on a per-case basis; requiring that contingency fee agreements with outside attorneys contain a percentage cap on money or things of value recovered; and requiring attorney fees or costs be paid prior to distribution to taxing units.

Be it enacted by the Legislature of West Virginia:

That §7-5-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11A-2-2 of said code be amended and reenacted, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS
AND OFFICERS.**

ARTICLE 5. FISCAL AFFAIRS.

§7-5-24. Sheriff may commence civil action without paying fees and costs; fees and costs recoverable from defendants after completion of litigation.

1 The sheriff is not required to pay any filing fee, cost, bond
2 or security, as may otherwise be required of other civil litigants
3 by provisions of this code, in any action in which the sheriff
4 commences the action in his or her official capacity or on behalf
5 of the county government: *Provided*, That where the sheriff or
6 county government prevails in the action and any filing fees,
7 costs, bond or security are recovered from the opposing party,
8 the sheriff shall pay therefrom the fees, costs, bond or security
9 to the officer who otherwise would have been entitled thereto but
10 for the provisions of this section: *Provided, however*, That any
11 legal fees and costs not so recovered from the opposing party
12 shall be paid out of the taxes so collected prior to the distribution
13 of the taxes to the various taxing units.

**CHAPTER 11A. COLLECTION AND
ENFORCEMENT OF PROPERTY TAXES.**

**ARTICLE 2. DELINQUENCY AND METHODS OF
ENFORCING PAYMENT.**

**§11A-2-2. Collection by civil action; fees and costs not required of
sheriff.**

1 (a) Taxes are hereby declared to be debts owing by the
2 taxpayer, for which he or she shall be personally liable. After
3 delinquency, the sheriff may enforce this liability by appropriate
4 action in any court of competent jurisdiction. No such action
5 may be brought after five years from the time the action accrued.

6 (b) In any such action, the sheriff may prosecute the same
7 without paying fees or costs, and without providing bond or
8 security, as may otherwise be required of civil litigants by the
9 provisions of this code, and shall have all services and process,

10 including the services of witnesses, without paying therefor:
11 *Provided*, That the sheriff shall maintain for each action for the
12 recovery of delinquent taxes records sufficient to demonstrate
13 the total fees and costs paid and that would have been paid but
14 for the authority provided herein to seek recovery without such
15 payment: *Provided, however*, That where the sheriff recovers
16 delinquent taxes in or as the result of such action, whether by
17 way of settlement or judgment, such fees and costs as above
18 required to be recorded shall be recoverable from the opposite
19 party and, upon receipt of any recovery, the sheriff shall pay
20 from the amount recovered such fees or costs to the officer who
21 otherwise would have been entitled thereto but for the provisions
22 of this section: *Provided further*, That the fees and costs shall be
23 paid prior to payment to the various taxing units of the balance
24 of the recovered taxes: *And provided further*, That the payment
25 to the various taxing units shall be prorated on the basis of the
26 total amount of taxes due them.

27 (c) The county commission may hire an attorney to
28 prosecute any such action for the collection of such delinquent
29 taxes or to defend the county's interest in any proceeding before
30 any United States Bankruptcy Court: *Provided*, That any
31 attorney so hired shall be reimbursed for actual expenses directly
32 incurred in the course of the representation: *Provided, however*,
33 That in any engagement of any attorney so hired under this
34 section, the county commission shall enter into a written
35 representation agreement with the attorney so engaged, which
36 written representation agreement shall include, in the case of an
37 hourly fee agreement, a cumulative cap of any hourly fees
38 charged on a per-case basis or, in the case of a contingency fee
39 agreement, a percentage cap of any money or things of value
40 recovered in the representation. Any attorney fees or other costs
41 associated with the collection of taxes, not heretofore provided
42 for in subsection (b) of this section, shall be paid from the taxes
43 so collected prior to the distribution to the various taxing units.

CHAPTER 51

**(Com. Sub. for H. B. 4009 - By Delegates Statler, Ambler,
Cooper, Ellington, D. Evans, Moffatt, Romine, Storch,
Weld and Zatezalo)**

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

[Approved by the Governor on April 30, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §7-27-1, §7-27-2, §7-27-3, §7-27-4, §7-27-5, §7-27-6, §7-27-7, §7-27-8, §7-27-9, §7-27-10, §7-27-11, §7-27-12, §7-27-13, §7-27-14, §7-27-15, §7-27-16, §7-27-17, §7-27-18, §7-27-19, §7-27-20, §7-27-21, §7-27-22, §7-27-23, §7-27-24, §7-27-25, §7-27-26, §7-27-27, §7-27-28, §7-27-29, §7-27-30, §7-27-31, §7-27-32, §7-27-33, §7-27-34, §7-27-35, §7-27-36, §7-27-37, §7-27-38, §7-27-39, §7-27-40, §7-27-41, §7-27-42, §7-27-43, §7-27-44 and §7-27-45, and to amend said code by adding thereto a new section, designated §31-15-16c, all relating to road construction projects; creating a short title; setting forth legislative findings and purpose; defining terms; authorizing county commissions to propose creation of road construction project plans; requiring public hearing; setting requirements for notice of public hearing; permitting submission of written comments; authorizing finalization of road construction project plan after public hearing by resolution of county commission; requiring prioritization of projects within road construction project plan; requiring consent of municipalities when road construction project plan located within its boundaries; authorizing submission of road construction project plan to Commissioner of Highways; identifying contents of application; requiring Commissioner of Highways review all proposed road construction project plans; setting forth criteria for review of plans;

requiring decision of Commissioner of Highways within sixty days of receipt; providing certification of approved project by Commissioner of Highways; requiring assignment of name to project plan and individual projects within plan by Commissioner of Highways; granting legislative rulemaking authority; requiring referendum for approval of certain road construction project plans; setting requirements for referendum election; prohibiting proceeding with road construction project plan to be financed by county transportation sales and use tax or by issuance of special revenue bonds unless approved by the voters; providing for amendments to road construction plans; providing for termination of road construction project plan; providing for termination of county transportation sales and use taxes; prohibiting termination or rate reduction as long as revenue bonds remain outstanding, unless payment of special revenue bonds has been secured in full; directing county commission to enter order describing road construction project plan after approval of plan by Commissioner of Highways and voters of county; setting forth contents of order, including establishment of county transportation sales and use taxes; limiting county transportation sales and use taxes to one percent; requiring transportation sales and use taxes to be identical; allowing joint road construction project plans; clarifying that obligations of parties under intergovernmental agreements may not be considered debt within the meaning of section six or eight, article X of the Constitution of West Virginia; authorizing county commissions and Commissioner of Highways enter into intergovernmental agreements; creating County Road Improvement Account and subaccounts; authorizing deposit of funds from certain sources into account; authorizing certain expenditures from county subaccount; allowing road construction projects be financed on cash basis or by special revenue bonds issued by West Virginia Economic Development Authority; giving Commissioner of Highways final approval of all road construction projects; providing that all road construction projects accepted into state road system are under exclusive jurisdiction and control of

Commissioner of Highways; specifying that road construction projects are public improvements; requiring annual reporting by Commissioner of Highways on county road construction projects; providing procedures and requirements for issuance of special revenue bonds by West Virginia Economic Development Authority; permitting special revenue bonds to be secured by trust agreement between Authority and corporate trustee; providing procedures and requirements for refunding bonds for county road construction projects; providing that bonds are not debts of state, county or any political subdivisions; providing that bonds are negotiable instruments; providing that bonds are exempt from taxation; specifying that neither West Virginia Economic Development Authority nor its officers or employees nor any persons executing bonds have personal liability on issued bonds; providing that powers relating to road construction project plans, construction of projects and issuance of special revenue bonds are additional powers; requiring county to enter into one or more intergovernmental agreements with Commissioner of Highways prior to imposing county transportation sales and use taxes; allowing county commissions with approved road construction projects to impose county transportation sales and use taxes; limiting rate of taxes; establishing tax base for county transportation sales and use taxes; providing exceptions to tax base; setting forth provisions for when purchases are made in county without county transportation sales and use taxes and purchase are used in county that does impose county transportation sales and use taxes; requiring county to notify Tax Commissioner at least one hundred eighty days before effective date of imposition of county transportation sales and use taxes; requiring copy of notice be sent to State Auditor and State Treasurer; requiring Tax Commissioner to administer, collect and enforce county transportation sales and use tax; authorizing Tax Commissioner to assess a fee for collection of county transportation sales and use taxes; providing for calculation of cost of service; providing for deposit of fees retained by Tax Commissioner into Local Sales Tax

and Excise Tax Administration Fund; requiring certain vendors to collect county transportation sales tax; providing for payment of county transportation use tax to Tax Commissioner; clarifying that county transportation sales and use taxes are to be collected and paid in addition to certain other taxes; granting purchaser credit against county transportation use tax for sales tax paid in another county; making county transportation sales and use taxes subject to sourcing rules; making applicable provisions of law related to state consumer sales and service tax provisions and state consumer use tax provisions; making county transportation sales and use taxes subject to West Virginia Tax Procedure and Administration Act; making West Virginia Tax Crimes and Penalties Act applicable to county transportation sales and use taxes; providing for date of first application for county transportation sales and use taxes; providing for deposit of county transportation sales and use taxes into subaccount of county in County Road Improvement Account; providing for crediting of county transportation sales and use taxes; authorizing issuance of requisition to Auditor to request issuance of state warrant for funds in county subaccount; requiring actions by State Auditor and State Treasurer upon receipt of requisition; providing for correction and adjustment to payments; setting effective date of county transportation sales and use tax; requiring county commissions to develop and maintain county rate and boundary databases; requiring county commission to notify Tax Commissioner if tax has been imposed or tax rate has changed; authorizing early retirement of special revenue bonds under certain conditions; authorizing termination of county transportation sales and use taxes once special revenue bonds are no longer outstanding or have been defeased; providing for excess funds be forwarded to county commission for deposit in county's general fund; providing that all powers are supplemental; exempting public officers from personal liability; providing for severability; authorizing West Virginia Economic Development Authority to issue bonds for county capital improvements; setting requirements on issuance of bonds; setting certain terms for

revenue bonds; providing for handling of moneys deposited in account; providing for establishment of debt service fund for each bond issue; requiring West Virginia Economic Development Authority certify annually to county commission certain information regarding bond issue; providing for disposition of balance remaining in debt service fund after bond issued and requirements have been satisfied; and directing generally how the West Virginia Economic Development Authority implements and manages bonds issued for county road construction projects.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §7-27-1, §7-27-2, §7-27-3, §7-27-4, §7-27-5, §7-27-6, §7-27-7, §7-27-8, §7-27-9, §7-27-10, §7-27-11, §7-27-12, §7-27-13, §7-27-14, §7-27-15, §7-27-16, §7-27-17, §7-27-18, §7-27-19, §7-27-20, §7-27-21, §7-27-22, §7-27-23, §7-27-24, §7-27-25, §7-27-26, §7-27-27, §7-27-28, §7-27-29, §7-27-30, §7-27-31, §7-27-32, §7-27-33, §7-27-34, §7-27-35, §7-27-36, §7-27-37, §7-27-38, §7-27-39, §7-27-40, §7-27-41, §7-27-42, §7-27-43, §7-27-44, and §7-27-45, and that said code be amended by adding thereto a new section, designated §31-15-16c; all to read as follows:

ARTICLE 27. LETTING OUR COUNTIES ACT LOCALLY ACT.

PART I. GENERAL.

§7-27-1. Short title.

- 1 This article shall be known as the “Letting Our Counties Act
- 2 Locally Act.”

§7-27-2. Purpose and findings.

- 1 (a) The Legislature hereby makes the following findings:

2 (1) Roads maintained by the Department of Transportation
3 include:

4 (A) Thirty-eight thousand six hundred eighty-four miles of
5 public roads;

6 (B) Thirty-five thousand eight hundred ninety-three miles of
7 state owned highways;

8 (C) Four hundred sixty-eight miles of state owned Interstate
9 highway;

10 (D) Eighty-eight miles of West Virginia Turnpike;

11 (E) One thousand nine hundred seventy-two miles included
12 in the National Highway System, twenty-three miles of which
13 are connectors to other modes of transportation such as airports,
14 trains and buses;

15 (F) Six thousand nine hundred fourteen bridges, thirty-three
16 percent of which are more than one hundred feet in length;

17 (G) One all-American road;

18 (H) Five national byways;

19 (I) Fourteen state byways; and

20 (J) Eight backways.

21 (2) A 2012 road needs assessment prepared for Governor
22 Tomblin's Blue Ribbon Commission by Wilbur Smith
23 Associates reveals that:

24 (A) During the next seventeen years:

25 (i) Fifty-one thousand one hundred eight lane miles of road
26 will need to be improved;

27 (ii) Ten thousand four hundred one lane miles will need
28 modernization improvements including lane widening, road
29 reconstruction, and shoulder improvements; and

30 (iii) Three thousand four hundred two lane miles will need
31 to be constructed;

32 (B) Within the next twenty-five years:

33 (i) Eight hundred fourteen bridges will need to be replaced;

34 (ii) Five hundred seventy-seven bridges will need to be
35 widened;

36 (iii) Eight bridges will need to be straightened; and

37 (iv) One bridge will need to be raised;

38 (C) The funding gap for road construction and maintenance
39 over the next twenty-five years is estimated to be \$36.7 billion,
40 excluding new road construction; and

41 (D) The funding gap for bridges construction and
42 maintenance was \$2.4 billion, excluding new bridge
43 construction.

44 (3) Modern, safe roads are critical to economic development.

45 (4) Modern, safe roads and bridges are essential to the
46 growth of our communities and to the public health, welfare and
47 safety.

48 (5) Counties need greater ability to influence when and
49 where new roads are constructed and existing roads and bridges
50 are modernized or upgraded, including the ability to recommend
51 to the Division of Highways road and bridge construction
52 projects and to assist in the financing of those projects.

53 (b) The purpose of this article is to provide county
54 commissions with a source of funding to finance the accelerated
55 construction of new roads and bridges in their respective
56 counties; and the accelerated upgrading or modernizing of
57 existing state roads and bridges in their counties, by allowing
58 them to impose transportation sales and use taxes as provided in
59 this article.

§7-27-3. Definitions.

1 For purposes of this article:

2 (1) “Business” means any activity engaged in by any person,
3 or caused to be engaged in by any person, with the object of
4 direct or indirect economic gain, benefit or advantage, and
5 includes any purposeful revenue generating activity in a county
6 of this state that imposes transportation sales and use taxes
7 pursuant to this article.

8 (2) “Calendar quarter” means the three-month time period
9 beginning on January 1, April 1, July 1 and October 1 of each
10 year.

11 (3) “Commissioner of Highways” means the chief executive
12 officer of the Division of Highways of the Department of
13 Transportation provided in section one, article two-a, chapter
14 seventeen of this code, or his or her designee. The term
15 “designee” in the phrase “or his or her designee”, when used in
16 reference to the Commissioner of Highways, means any officer
17 or employee of the Division of Highways duly authorized by the
18 commissioner directly, or indirectly by one or more
19 redelegations of authority, to perform the functions mentioned
20 or described in this article or rules promulgated for this article.

21 (4) “Consumer” means any person purchasing tangible
22 personal property, custom software or a taxable service from a

23 retailer, as that term is defined in subdivision (14) of this section
24 or from a seller, as that term is defined in section two, article
25 fifteen-b, chapter eleven of this code.

26 (5) “County transportation sales tax” means the sales tax
27 imposed by a county commission pursuant to this article.

28 (6) “County transportation sales and use taxes” means the
29 transportation sales tax and the transportation use tax imposed by
30 a county commission pursuant to this article.

31 (7) “County transportation use tax” means the use tax
32 imposed by a county commission pursuant to this article.

33 (8) “Custom software” means software prepared for a
34 particular customer to meet the specific needs or circumstances
35 of the customer.

36 (9) “Executive Director of the West Virginia Economic
37 Development Authority” means the chief executive officer of the
38 West Virginia Economic Development Authority created in
39 section five, article fifteen, chapter thirty-one, of this code.

40 (10) “Expansion projects” are road and bridge construction
41 projects that add to the existing road system and include, but are
42 not limited to, new roads, new bridges, new lanes and new
43 interchanges.

44 (11) “Highway authority” or “highway association” means
45 any entity created by the Legislature for the advancement and
46 improvement of the state road and highway system, including,
47 but not limited to, the New River Parkway Authority, Midland
48 Trail Scenic Highway Association, Shawnee Parkway Authority,
49 Corridor G Regional Development Authority, Coalfields
50 Expressway Authority, Robert C. Byrd Corridor H Highway
51 Authority, West Virginia 2 and I-68 Authority, Little Kanawha
52 River Parkway Authority, King Coal Highway Authority, Coal

53 Heritage Highway Authority, Blue and Gray Intermodal
54 Highway Authority and the West Virginia Eastern Panhandle
55 Transportation Authority or, if an authority is abolished, any
56 entity succeeding to the principal functions of the highway
57 authority or to whom the powers given to the highway authority
58 are given by law.

59 (12) “Modernization projects” are road and bridge
60 construction projects that improve safety by improving the
61 existing roadway including, but not limited to, shoulder
62 improvements, reducing the grade of hills, straightening curves,
63 and improving interchanges.

64 (13) “Person” includes any individual, firm, partnership,
65 joint venture, joint stock company, association, public or private
66 corporation, limited liability company, limited liability
67 partnership, cooperative, estate, trust, business trust, receiver,
68 executor, administrator, any other fiduciary, any representative
69 appointed by order of any court or otherwise acting on behalf of
70 others, or any other group or combination acting as a unit and the
71 plural as well as the singular number.

72 (14) “Preservation projects” are road and bridge construction
73 projects that take care of infrastructure already in place and
74 include, but are not limited to, pavement rehabilitation and
75 reconstruction, and bridge repairs and replacements.

76 (15) “Project costs” means capital costs, costs of financing,
77 planning, designing, constructing, expanding, improving, or
78 maintaining a road; the cost of land, equipment, machinery,
79 installation of utilities and other similar expenditures; and all
80 other charges or expenses necessary, appurtenant or incidental
81 to the foregoing.

82 (16) “Purchase” means any transfer, exchange or barter,
83 conditional or otherwise, in any manner or by any means, for a
84 consideration.

85 (17) “Purchaser” means a person to whom a sale of personal
86 property is made or to whom a service is furnished.

87 (18) “Retailer” means and includes every person engaging
88 in the business of selling, leasing or renting tangible personal
89 property or custom software or furnishing a taxable service for
90 use within the meaning of this article, or in the business of
91 selling, at auction, tangible personal property or custom software
92 owned by the person or others for use in the county imposing
93 taxes pursuant to this article. However, when, in the opinion of
94 the Tax Commissioner, it is necessary for the efficient
95 administration of county use taxes imposed pursuant to this
96 article to regard any salespersons, representatives, truckers,
97 peddlers or canvassers as the agents of the dealers, distributors,
98 supervisors, employees or persons under whom they operate or
99 from whom they obtain the tangible personal property sold by
100 them, irrespective of whether they are making sales on their own
101 behalf or on behalf of the dealers, distributors, supervisors,
102 employers or persons, the Tax Commissioner may so regard
103 them and may regard the dealers, distributors, supervisors,
104 employers, or persons as retailers for purposes of county use
105 taxes.

106 (19) “Retailer engaging in business in the county” or any
107 like term, unless otherwise limited by federal statute, means and
108 includes, but is not limited to:

109 (A) Any retailer having or maintaining, occupying or using,
110 within the county, directly or by a subsidiary, an office,
111 distribution house, sales house, warehouse, or other place of
112 business, or any agent, however called, operating within the
113 county under the authority of the retailer or its subsidiary,
114 irrespective of whether the place of business or agent is located
115 in the county permanently or temporarily, or whether the retailer
116 or subsidiary is admitted to do business within this state pursuant
117 to article fifteen, chapter thirty-one-d of this code or article
118 fourteen, chapter thirty-one-e of this code; or

119 (B) Any retailer that is related to, or part of a unitary
120 business with, a person, entity or business that, without regard to
121 whether the retailer is admitted to do business in this state
122 pursuant to article fifteen, chapter thirty-one-d of this code or
123 article fourteen, chapter thirty-one-e of this code, is a subsidiary
124 of the retailer, or is related to, or unitary with, the retailer as a
125 related entity, a related member or part of a unitary business, all
126 as defined in section three-a, article twenty four, chapter eleven
127 of this code, that:

128 (i) Pursuant to an agreement with or in cooperation with the
129 related retailer, maintains an office, distribution house, sales
130 house, warehouse or other place of business in the county;

131 (ii) Performs services in the county in connection with
132 tangible personal property or services sold by the retailer, or any
133 related entity, related member or part of the unitary business;

134 (iii) By any agent, or representative (by whatever name
135 called), or employee, performs services in the county in
136 connection with tangible personal property or services sold by
137 the retailer, or any related entity, related member or part of the
138 unitary business; or

139 (iv) Directly or indirectly, through or by an agent,
140 representative or employee located in, or present in, the county,
141 solicits business in the county for or on behalf of the retailer, or
142 any related entity, related member or part of the unitary business.

143 (C) For purposes of paragraph (B) of this subdivision, the
144 term “service” means and includes, but is not limited to,
145 customer support services, help desk services, call center
146 services, repair services, engineering services, installation
147 service, assembly service, delivery service by means other than
148 common carrier or the United States Postal Service, technical
149 assistance services, the service of investigating, handling or

150 otherwise assisting in resolving customer issues or complaints
151 while in the county, the service of operating a mail order
152 business or telephone, Internet or other remote order business
153 from facilities located within the county, the service of operating
154 a website or internet-based business from a location within the
155 county imposing the use tax or any other service.

156 (20) “Road” means a public highway, road, bridge, tunnel,
157 or overpass to be used for the transportation of persons or goods
158 including bicycle and pedestrian facilities.

159 (21) “Road project” means any project to acquire, design,
160 construct, expand, renovate, extend, enlarge, increase, equip,
161 improve, maintain or operate a road in this state, including, but
162 not limited to, providing bicycle and pedestrian facilities in
163 conjunction with a road in this state, that is under the jurisdiction
164 of the Division of Highways.

165 (22) “Road construction project” means and includes any
166 road construction project included in a road construction project
167 plan that is adopted by a county commission pursuant to this
168 article and approved by the Commissioner of Highways as
169 provided in this article.

170 (23) “Sale” means any transaction resulting in the purchase
171 or lease of tangible personal property, custom software or a
172 taxable service from a retailer.

173 (24) “Tax Commissioner” means the State Tax
174 Commissioner provided in article one, chapter eleven of this
175 code or his or her delegate. The term “delegate” in the phrase
176 “or his or her delegate”, when used in reference to the Tax
177 Commissioner, means any officer or employee of the state Tax
178 Division duly authorized by the Tax Commissioner directly, or
179 indirectly by one or more redelegations of authority, to perform
180 the functions mentioned or described in this article or rules
181 promulgated for this article.

182 (25) "Taxpayer" means a taxpayer, as that term is defined in
183 section two, article fifteen-b, chapter eleven of this code, who is
184 subject to a county transportation sales tax or county
185 transportation use tax imposed by a county commission pursuant
186 to this article, whether acting for himself or herself or as a
187 fiduciary, and who is liable for payment of any additions to tax,
188 penalties or interest imposed by article ten, chapter eleven of this
189 code for failure to timely pay or remit the county transportation
190 sales taxes or county transportation use taxes imposed by a
191 county commission pursuant to this article.

192 (26) "Vendor" means any person furnishing services subject
193 to a county's sales and use taxes imposed pursuant to this article,
194 or making sales of tangible personal property or custom software
195 subject to a county's sales and use taxes imposed pursuant to this
196 article. The terms "vendor," "retailer" and "seller" are used
197 interchangeably in this article.

198 (27) "West Virginia Economic Development Authority" or
199 "Authority" means the governmental entity created in section
200 five, article fifteen, chapter thirty-one of this code.

201 As used in this article, the terms "computer software,"
202 "lease," "purchase price," "retail sale," "sale at retail," "sales
203 price," "seller," "service," "selected service," and "tangible
204 personal property" have the same meanings as those terms are
205 given in section two, article fifteen-b, chapter eleven of this
206 code.

PART II. COUNTY ROAD AND BRIDGE CONSTRUCTION PROJECTS.

§7-27-4. Creation of county road construction project plan.

1 A county commission may, upon its own initiative or upon
2 application of: (1) a highway authority; (2) a local, county or
3 regional economic development authority; or (3) any resident of

4 the county, propose creation of a road construction project plan
5 for the county, or propose an amendment to an existing road
6 construction project plan of the county.

§7-27-5. Public hearing and notice requirements.

1 (a) *General.* — The county commission shall hold one or
2 more public hearings at which interested persons may express
3 their views on the county’s proposed road construction project
4 plan.

5 (b) *Notice of public hearing.* — Notice of the public hearing
6 or hearings shall be published as a Class II legal advertisement
7 in accordance with the requirements of article three, chapter
8 fifty-nine of this code. The published notice shall include, at a
9 minimum:

10 (1) The date, time, place and purpose of the public hearing
11 or hearings;

12 (2) A description of each road construction project included
13 in the proposed road construction project plan in sufficient detail
14 to give the public notice of the contents of the proposed road
15 construction project plan to cause residents of the county and
16 other interested persons to examine the proposed road
17 construction project plan and attend the public hearing or submit
18 written comments thereon;

19 (3) The places in the county where the proposed road
20 construction project plan may be viewed: *Provided*, That the
21 county commission shall include the proposed road construction
22 project plan on its webpage; and

23 (4) Information regarding how the county commission
24 anticipates funding the road construction projects contained in
25 the road construction project plan, including, but not limited to,
26 whether one or more projects in the proposed road construction

27 project plan, will be financed, in whole or in part, by the
28 imposition of a county transportation sales and use tax and the
29 proposed rate of the taxes the county finds necessary to finance,
30 in whole or in part, the proposed road construction project plan,
31 and any proposed road construction special revenue bonds to be
32 issued to finance the road construction project plan.

33 (c) *Notice by mail.* — On or before the first day of
34 publication of the public notice required in subsection (b) of this
35 section, the county commission shall send a copy of the notice
36 by first-class mail to the Commissioner of Highways, the
37 Executive Director of the West Virginia Economic Development
38 Authority and the mayor of each municipality located within the
39 county. When the county commission reasonably anticipates that
40 a proposed road construction project may affect one or more
41 bordering counties, it shall send a copy of the notice by
42 first-class mail to the president of the county commission of the
43 bordering county or counties.

44 (d) *Public Hearing.* — All persons who appear at any public
45 hearing held pursuant to this section shall be afforded a
46 reasonable opportunity to express their views on all or any part
47 of the proposed road construction project plan. Each public
48 hearing shall be recorded by a court reporter, or be digitally
49 recorded.

50 (e) *Written comments.* — Written comments may be
51 submitted to the county commission before, during, or within
52 five business days after the last public hearing. Timely mailing
53 of the written comments to the county commission, at the
54 mailing address of the courthouse, postage prepaid, shall be
55 deemed timely submission of the written comments.

§7-27-6. Finalization of road construction project plan.

1 (a) Resolution of county commission. — After the public
2 hearing or hearings are concluded and the public comment

3 period is closed, and after receipt of any required resolution of
4 the governing body of a municipality, as required in subsection
5 (b) of this section, the county commission may, by resolution,
6 finalize its road construction project plan: *Provided*, That if there
7 is more than one road construction project in the road
8 construction project plan, the road construction project plan shall
9 include a prioritization of each road construction project.

10 (b) Consent of municipality in which project located. — No
11 county commission may adopt a resolution approving a road
12 construction project plan, any portion of which is located within
13 the boundaries of a Class I, II, III or IV municipality, without the
14 adoption of a resolution by the governing body of that
15 municipality consenting to the road construction project.

**§7-27-7. Submission of road construction project plan to
Commissioner of Highways; contents of application.**

1 (a) After the county commission has finalized its road
2 construction project plan, the commission may submit the plan
3 to the Commissioner of Highways.

4 (b) Each application submitted pursuant to this article shall
5 include:

6 (1) A true copy of the county's proposed road construction
7 project plan, or proposed amendment to a project plan previously
8 approved by the Commissioner of Highways, that is adopted,
9 after the public hearing, by resolution of the county commission;

10 (2) A true copy of the resolution adopted by the county
11 commission approving submission of the adopted road
12 construction project plan, or the proposed amendment to a
13 project plan previously approved by the Commissioner of
14 Highways, to the Commissioner of Highways for approval;

15 (3) A true copy of the notice of public hearing or hearings on
16 the county's proposed road construction plan, or proposed

17 amendment to a previously adopted project plan, and a true copy
18 of the proposed plan, or the proposed amendment to an existing
19 project plan that was the subject of the public hearing;

20 (4) An affidavit signed by the president of the county
21 commission confirming publication of the notice of public
22 hearing;

23 (5) A true copy of the transcript of the public hearing or
24 hearings, or a true copy of the digital recording of the public
25 hearing or hearings;

26 (6) True copies of any written comments received by the
27 commission on the proposed road construction project plan, or
28 the proposed amendment to an existing project plan;

29 (7) A statement generally describing each project included
30 in the county's road construction project plan, or the proposed
31 amendment to an existing project plan, and identifying:

32 (A) Type of project, as a road project, bridge project, or both
33 road and bridge project;

34 (B) Location of the project;

35 (C) Length of the project (in miles or feet);

36 (D) Scope of the work;

37 (E) Classification of the project as a preservation project,
38 modernization project, or expansion project;

39 (F) Estimated cost of the project;

40 (G) Method of financing the project; and

41 (H) Timeline for completion of the project.

42 (8) A map of the county showing the geographic location of
43 each road construction project included in the county's road
44 construction project plan;

45 (9) When the road construction project is located, in whole
46 or in part, within the corporate limits of any municipality, a true
47 copy of the resolution adopted by the governing body of the
48 municipality consenting to the road construction project;

49 (10) Identification of any businesses or residents that the
50 county commission anticipates will be displaced because of the
51 road construction project;

52 (11) A good faith estimate of the annual net county
53 transportation sales and use tax collections to be deposited in the
54 county's sub-account in the County Road Improvement Account
55 created pursuant to section fourteen of this article that will be
56 available to finance the project, in whole or in part; and

57 (12) Any additional information the Commissioner of
58 Highways may reasonably require to analyze a proposed road
59 construction project.

**§7-27-8. Application to Commissioner of Highways for approval
of road construction project plans.**

1 (a) *Review of applications.* — The Commissioner of
2 Highways shall review all proposed road construction project
3 plans for conformity to statutory and regulatory requirements,
4 the reasonableness of the project's budget, and the timetable for
5 completion using the following criteria:

6 (1) The quality of the proposed road construction project and
7 how it addresses transportation problems in the area in which the
8 road construction project will be located;

9 (2) Whether there is credible evidence that, unless county
10 transportation sales and use tax revenues are used to finance the

11 road construction project, in whole or in part, the project would
12 not otherwise be feasible in the time line proposed by the county
13 commission;

14 (3) Whether the county transportation sales and use tax
15 revenues will leverage or be the catalyst for the effective use of
16 state or federal funding that is available;

17 (4) Whether there is substantial and credible evidence that
18 the proposed road construction project is likely to be started and
19 completed in a timely fashion;

20 (5) Whether the proposed project will, directly or indirectly,
21 improve transportation in the area where the road construction
22 project will occur, thereby benefitting county residents and
23 facilitating commercial business development and expansion in
24 the county;

25 (6) Whether the proposed road construction project will,
26 directly or indirectly, assist in the creation of additional
27 long-term employment opportunities in the area and the quality
28 of jobs created to include, but not be limited to, wages and
29 benefits;

30 (7) Whether the proposed road construction project will
31 fulfill a pressing transportation need for the county, or part of the
32 county, in which the road construction project would be located;

33 (8) Whether the county commission has a strategy for road
34 construction in the county and whether the proposed road
35 construction project is consistent with that strategy;

36 (9) Whether the road construction project is consistent with
37 the goals of this article;

38 (10) Whether the road construction project is economically
39 and fiscally sound using recognized business standards of
40 finance and accounting; and

41 (11) Any other additional criteria established by the
42 Commissioner of Highways by legislative rule.

43 (b) *Decision of Commissioner of Highways.* — Within sixty
44 days after receipt of the county commission's proposed road
45 construction project plan or an amendment to a previously
46 approved project plan, the Commissioner of Highways shall
47 either (1) approve the plan as submitted, in whole or in part; (2)
48 reject the plan as submitted, in whole or in part; or (3) return the
49 plan to the county commission for further development or review
50 in accordance with instructions from the Commissioner of
51 Highways. The decision of the commissioner is final and is not
52 subject to judicial review.

53 (c) *Certification of road construction project.* — If the
54 Commissioner of Highways approves a county's road
55 construction project application, in whole or in part, the
56 commissioner shall issue to the county commission a written
57 certificate evidencing approval of each approved project.

58 (d) Assignment of project plan and individual projects. —
59 Upon approval of a road construction project plan or an
60 amendment to an existing project, the Commissioner of
61 Highways shall:

62 (1) Assign a name to the road construction project for
63 identification purposes, which name may include a geographic
64 or other designation; and

65 (2) Assign each project within the road construction project
66 plan a project number that begins with the federal information
67 processing (FIPS) code number for the county, followed by a
68 hyphen and a consecutive number beginning with the number
69 "01," with each additional road construction project in the plan
70 being assigned the next consecutive number.

71 (e) *Rules.* — The Commissioner of Highways may propose
72 rules for legislative approval in accordance with article three,

73 chapter twenty-nine-a of this code to implement the county road
74 construction project application approval process and to further
75 identify and describe the criteria and procedures he or she has
76 established in connection therewith.

§7-27-9. Requirement for referendum on final road construction project plan.

1 (a) After obtaining project certification from the
2 Commissioner of Highways under section eight of this article the
3 county commission shall submit the question of the adoption of
4 a road construction project plan to the voters in a county-wide
5 referendum to be held in conjunction with a primary or general
6 election. The question to be voted on in the referendum shall
7 identify the project plan by its name and location, its projected
8 cost estimate and how the cost of the road construction project
9 plan is to be financed. The question shall state if the road
10 construction plan is to be financed in whole or in part by the
11 imposition of a county transportation sales and use tax, including
12 the rate of the tax to be imposed, and if it is to be financed in
13 whole or in part by the issuance of special revenue bonds as
14 authorized by this article.

15 (b) No county commission may proceed with a road
16 construction plan which will be financed, in whole or in part, by
17 the imposition of a transportation sales and use tax or by the
18 issuance of special revenue bonds as authorized by this article
19 unless a majority of voters casting votes in the referendum vote
20 to approve the road construction project plan.

§7-27-10. Amendment of road construction project plan.

1 (a) *General.* — A road construction project plan adopted by
2 order of the county commission may be amended by the county
3 commission at any time to add one or more projects, delete one
4 or more projects, or redesignate the order in which projects are
5 to be completed as funds become available.

6 (b) *Procedure to amend project plan.* — The procedures that
7 apply to creation of a road construction project plan shall also
8 apply to each proposed amendment to the adopted road
9 construction project plan.

§7-27-11. Termination of road construction project plan.

1 (a) *General.* — No road construction project plan may be in
2 existence for a period longer than thirty years, except as
3 otherwise provided in this section, and no revenue bond secured
4 by collections of the taxes imposed by a county commission may
5 have a final maturity date more than thirty years after date of
6 issuance of the revenue bonds.

7 (b) *Extension of plan.* — Each amendment of a county's
8 roads construction project plan approved by the Commissioner
9 of Highways that results in execution of an intergovernmental
10 agreement by the county commission and the Commissioner of
11 Highways shall extend the term of the project plan for thirty
12 years from the date on which the intergovernmental agreement
13 is fully executed.

14 (c) *Termination of county transportation sales and use taxes.*
15 — The county transportation sales and use tax imposed by a
16 county commission pursuant to this article shall expire on the
17 first day of the calendar quarter that begins one hundred twenty
18 days after the following:

19 (1) If no special revenue bonds are issued as authorized by
20 this article, the day the county commission notifies the Tax
21 Commissioner in writing that its road construction projects
22 financed, in whole or in part, with transportation sales and use
23 tax revenue have been completed; or

24 (2) If special revenue bonds have been issued as authorized
25 by this article, the West Virginia Economic Development

26 Authority certifies to the county commission and to the Tax
27 Commissioner that all principal and interest due, or to become
28 due, on the bonds issued under this article has been paid or is
29 otherwise provided for.

30 (d) *Shorter period.* — The county commission may set an
31 earlier termination date for the county transportation sales and
32 use tax imposed pursuant to this article: *Provided*, That no
33 revenue bonds may have a final maturity date later than the
34 termination date of the county transportation sales and use tax.

35 (e) *Termination order.* — Prior to expiration of the county
36 transportation sales and use tax, the county commission shall
37 adopt an order terminating the county transportation sales and
38 use tax on the date specified therein: *Provided*, That the order
39 may not extinguish any person's liability for payment of county
40 transportation sales and use taxes that were assessed prior to
41 termination of the taxes. With respect to any such taxes, the
42 rights and duties of the taxpayer and of the State of West
43 Virginia shall be fully and completely preserved.

44 (f) *Prohibition on termination or rate reduction.* — The
45 county commission may not repeal the order imposing a county
46 transportation sales and use tax pursuant to this article, or reduce
47 the rate at which the county transportation sales and use taxes are
48 imposed so long as any revenue bonds secured by the taxes
49 remain outstanding, unless payment of the bonds has been
50 secured in full.

PART III. IMPLEMENTATION OF ROAD
CONSTRUCTION PROJECT PLAN.

§7-27-12. Order adopting road construction project plan or plan amendment.

1 Upon approval of a road construction project plan or an
2 amendment to an existing project plan by the Commissioner of

3 Highways, and approval of the voters in the referendum provided
4 in section nine of this article, the county commission shall enter
5 an order that:

6 (1) Describes each approved road construction project
7 sufficiently to identify with ordinary and reasonable certainty the
8 geographic location in the county of each road construction
9 project included in the county's plan;

10 (2) Identifies the road construction project plan by the name
11 assigned by the Commissioner of Highways, and identifies each
12 project within the road construction project plan by the project
13 number assigned by the Commissioner of Highways; and

14 (3) Establishes a county transportation sales tax and a county
15 transportation use tax as provided in this article at rates not to
16 exceed one percent: *Provided*, That the rate of the sales tax and
17 the rate of the use tax shall at all times be identical.

§7-27-13. Joint road construction projects.

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state would benefit from coordinated road
3 construction efforts by county commissions funded by county
4 transportation sales and use taxes imposed pursuant to this
5 article.

6 (b) Notwithstanding any other section of this code to the
7 contrary, any two or more county commissions may contract to
8 share expenses and dedicate county funds or county
9 transportation sales and use tax revenues, on a pro rata basis, to
10 facilitate construction of one or more road construction projects:
11 *Provided*, That each of the road construction projects must be a
12 part of a road construction project plan created and approved
13 pursuant to this article by each county commission contracting
14 to share expenses and funds.

15 (c) When a road construction project begins in one county
16 and ends in one or more other counties of this state, the county
17 commission of each county may, by resolution, adopt a written
18 intergovernmental agreement with each county and the
19 Commissioner of Highways regarding the proposed multicounty
20 road construction project.

21 (d) No county commission may withdraw from an
22 intergovernmental agreement so long as revenue bonds, the
23 proceeds of which were used by the Commissioner of Highways
24 to finance construction of the road, remain outstanding.

25 (e) No county commission that withdraws from an
26 intergovernmental agreement shall be entitled to the return of
27 any money or property advanced to the road construction project.

28 (f) Notwithstanding any provision of this code to the
29 contrary, any county commission imposing county transportation
30 sales and use taxes pursuant to this article may enter into an
31 intergovernmental agreement with one or more other counties
32 that also impose transportation sales and use taxes pursuant to
33 this article that have an interest in completion of a proposed road
34 construction project, with respect to the pooling of county
35 transportation sales and use tax revenues to finance construction
36 of the road construction project either on a cash basis or to pay
37 debt service on revenue bonds issued by the West Virginia
38 Economic Development Authority to fund the road construction
39 project.

40 (g) The obligations of the parties under any
41 intergovernmental agreement executed pursuant to this article
42 may not be considered debt within the meaning of sections six
43 or eight, article X of the Constitution of West Virginia.

44 (h) Any intergovernmental agreement shall be approved by
45 resolution adopted by a majority vote of the county commission

46 of each county participating in the agreement and by the
47 Commissioner of Highways. After the resolution is adopted, the
48 agreement shall be signed by at least one member of the county
49 commission and by the Commissioner of Highways.

50 (i) The Commissioner of Highways may enter into
51 intergovernmental agreements with county commissions or other
52 political subdivisions of the state, or with the federal government
53 or any agency thereof, respecting the financing, planning, and
54 construction of roads and bridges constructed pursuant to this
55 article.

§7-27-14. Creation of County Road Improvement Account.

1 (a) *Account created.* — There is hereby created in the State
2 Treasury a Special Revenue Revolving Fund account known as
3 the “County Road Improvement Account” which is an
4 interest-bearing account that shall be invested in the manner
5 described in section nine-c, article six, chapter twelve of this
6 code, with the interest income a proper credit to the account.

7 (b) *County subaccount.* — A separate and segregated
8 subaccount within the account shall be established for each
9 county that imposes a county transportation sales and use tax
10 pursuant to this article.

11 (c) *Additional funds.* — In addition to the county
12 transportation sales and use taxes levied and collected as
13 provided in this article, funds paid into the account for the credit
14 of any subaccount may also be derived from the following
15 sources:

16 (1) All interest or return on the investment accruing to the
17 subaccount;

18 (2) Any gifts, grants, bequests, transfers, appropriations or
19 donations which are received from any governmental entity or
20 unit or any person, firm, foundation or corporation; and

21 (3) Any appropriations by the Legislature which are made
22 for this purpose.

23 (d) *Expenditures from account.* — The Commissioner of
24 Highways may withdraw funds from a county's subaccount only
25 in accordance with one or more intergovernmental agreements
26 or contracts executed by the county commission of that county.

**§7-27-15. Cash basis projects; issuance of road construction
special revenue bonds by West Virginia Economic
Development Authority.**

1 (a) *Cash basis projects.* — Each county commission that has
2 a subaccount in the County Road Improvement Account
3 established pursuant to this article may, in its discretion and
4 pursuant to an intergovernmental written agreement with the
5 county commission, authorize the Commissioner of Highways
6 to use the moneys in its subaccount to finance the costs of road
7 construction projects in the county on a cash basis.

8 (b) *Special revenue bonds.* — The county commission may,
9 by intergovernmental written agreement, authorize the West
10 Virginia Economic Development Authority to issue, in the
11 manner prescribed by this article, special revenue bonds secured
12 by county transportation sales and use taxes imposed pursuant to
13 this article to finance or refinance all or part of a road
14 construction project in the county and pledge all or any part of
15 the county transportation sales and use taxes for the payment of
16 the principal of and interest on such bonds and the reserves
17 therefor.

**§7-27-16. Commissioner's authority over road construction
projects accepted into the state road system; use of
state road funds.**

1 (a) Notwithstanding anything in this article to the contrary,
2 the Commissioner of Highways has final approval of any road

3 construction project. However, no state road funds may be used,
4 singly or together with funds from any other source, for any
5 purpose or in any manner contrary to or prohibited by the
6 Constitution and laws of this state or the federal government or
7 where such use, in the sole discretion of the Commissioner of
8 Highways, would jeopardize receipt of federal funds.

9 (b) All road construction projects that shall be accepted as
10 part of the state road system, and all real property interests and
11 appurtenances, are under the exclusive jurisdiction and control
12 of the Commissioner of Highways, who may exercise the same
13 rights and authority as he or she has over other transportation
14 facilities in the state road system.

§7-27-17. Qualifying a transportation project as a public improvement.

1 All road construction projects authorized under this article
2 are public improvements subject to article one-c, chapter
3 twenty-one of this code, and either article twenty-two, chapter
4 five of this code or article two-d, chapter seventeen of this code.

§7-27-18. Reports by Commissioner of Highways.

1 Each year, the Commissioner of Highways shall prepare a
2 report giving the status of each road construction project being
3 constructed pursuant to this article and file it by October 1 with
4 the Governor, the Joint Committee on Government and Finance
5 of the Legislature and with each county commission with which
6 the Commissioner of Highways has an intergovernmental
7 agreement executed pursuant to this article. The report shall
8 include the following information:

9 (1) The identification, by county, of each road construction
10 project for which an intergovernmental agreement has been
11 executed pursuant to this article, and the status of the road
12 construction project as of June 30 preceding the due date of the
13 report;

14 (2) The estimated cost of each road construction project
15 included in the report;

16 (3) The source or sources of funding for each road
17 construction project included in the report;

18 (4) If revenue bonds have been issued by the West Virginia
19 Economic Development Authority, the amount of the bonds
20 issued that are outstanding as of June 30 preceding the due date
21 of the report for each project included in the report;

22 (5) The balance as of June 30 preceding the due date of the
23 report of each county's subaccount in the County Improvement
24 Account;

25 (6) The amount of county transportation sales and use taxes
26 deposited into each county's subaccount in the County Road
27 Improvement Account during the fiscal year ending June 30
28 preceding the due date of the report; and

29 (7) The amount the Commissioner of Highways withdrew
30 from each county's subaccount in the County Road Improvement
31 Account during the fiscal year ending June 30 preceding the due
32 date of the report to pay debt service on revenue bonds issued
33 pursuant to this article or to construct projects financed on a
34 pay-as-you-go basis.

PART IV COUNTY ROAD CONSTRUCTION
SPECIAL REVENUE BONDS.

**§7-27-19. Issuance of county road construction special revenue
bonds.**

1 Special revenue bonds may be issued by the West Virginia
2 Economic Development Authority pursuant to an
3 intergovernmental written agreement between the county
4 commission and the Commissioner of Highways to finance or

5 refinance, in whole or in part, road construction projects in an
6 aggregate principal amount not exceeding the amount which the
7 county commission(s) and the Authority mutually agree can be
8 paid as to both principal and interest and reasonable margins for
9 a reserve, if any, therefor from county transportation sales and
10 use tax collections. In the discretion of the Authority, special
11 revenue bonds issued pursuant to this article may be issued for
12 road construction projects in two or more counties.

13 (1) The Authority shall establish a fund to deposit county
14 transportation sales and use tax collections to pay debt service on
15 the bonds.

16 (2) The State Treasurer shall thereafter transfer from the
17 county's subaccount all county transportation sales and use tax
18 revenues pledged to the payment of principal and interest of the
19 road construction special revenue bonds into the fund established
20 under subdivision (1) of this section.

21 (3) The road construction special revenue bonds shall be
22 authorized to be issued by the Authority pursuant to this article,
23 and shall be secured, shall bear such date and shall mature at
24 such time, not exceeding thirty years from the date of issue, shall
25 bear interest at such rate or rates, including variable rates, be in
26 such denominations, be in such form, carry such registration
27 privileges, be payable in such medium of payment and at such
28 place or places and such time or times and be subject to such
29 terms of redemption as the Authority may authorize. Road
30 construction special revenue bonds may be sold by the West
31 Virginia Economic Development Authority, at public or private
32 sale, at or not less than the price the Authority determines. The
33 road construction special revenue bonds shall be executed by
34 manual or facsimile signature of an authorized officer of the
35 West Virginia Economic Development Authority. In case any
36 authorized officer whose signature, or a facsimile of whose
37 signature, appears on any bond ceases to be an authorized officer

38 before delivery of those bonds, the signature or facsimile is
39 nevertheless sufficient for all purposes the same as if he or she
40 had remained in office until the delivery.

**§7-27-20. Trustee for bondholders; contents of trust agreement;
pledge or assignment of revenues and funds.**

1 For bonds issued pursuant to this article, any bonds,
2 including refunding bonds issued by the Authority, may be
3 secured by a trust agreement between the Authority and a
4 corporate trustee, which trustee may be any bank or trust
5 company within or without the state. Any such trust agreement
6 may contain binding covenants with the holders of the bonds as
7 to any matter or provisions as are considered necessary or
8 advisable to the Authority to enhance the marketability and
9 security of the bonds and may also contain such other provisions
10 with respect thereto as the Authority may authorize and approve.
11 Any trust agreement may contain a pledge or assignment of
12 revenues to be received in connection with the financing.

§7-27-21. Refunding bonds.

1 Any bonds issued by the West Virginia Economic
2 Development Authority pursuant to the provisions of this article
3 or any other provision of this code and at any time outstanding
4 may at any time and from time to time be refunded by the
5 Authority by the issuance of its refunding bonds in such amount
6 as it may consider necessary to refund the principal of the bonds
7 so to be refunded, together with any unpaid interest thereon, to
8 provide additional funds to approved project costs and to pay any
9 premiums and commissions necessary to be paid in connection
10 therewith. Refunding may be effected by whether the bonds to
11 be refunded have then matured or thereafter mature, either by
12 sale of the refunding bonds and the application of the proceeds
13 thereof for the redemption of the bonds to be refunded thereby
14 or by exchange of the refunding bonds for the bonds to be

15 refunded thereby. Refunding bonds shall be issued in
16 conformance with the provisions of this article related to
17 issuance of bonds.

**§7-27-22. Obligations of the West Virginia Economic
Development Authority undertaken pursuant to
this article not debt of state, county, municipality
or any political subdivision.**

1 (a) Bonds, including refunding bonds, issued under this
2 article and any other obligations undertaken by the West
3 Virginia Economic Development Authority pursuant to this
4 article, do not constitute a debt or a pledge of the faith and credit
5 or taxing power of this state or of any county, municipality or
6 any other political subdivision of this state, and the holders and
7 owners thereof have no right to have taxes levied by the
8 Legislature or the taxing authority of any county, municipality
9 or any other political subdivision of this state for the payment of
10 the principal thereof or interest thereon. The bonds and other
11 obligations are payable solely from the revenues and funds
12 pledged for their payment as authorized by this article unless the
13 bonds are refunded by refunding bonds issued under the
14 authority of this article, which bonds or refunding bonds shall be
15 payable solely from revenues and funds pledged for their
16 payment as authorized by this article.

17 (b) All bonds, and all documents evidencing any other
18 obligation, shall contain on the face thereof a statement to the
19 effect that the bonds or other obligation as to both principal and
20 interest are not debts of the state or any county, municipality or
21 political subdivision thereof, but are payable solely from
22 revenues and funds pledged for their payment as authorized by
23 this article.

§7-27-23. Negotiability of bonds issued pursuant to this article.

1 Whether or not the bonds issued pursuant to this article are
2 of the form or character as to be negotiable instruments under the

3 Uniform Commercial Code, the bonds are negotiable
4 instruments within the meaning of and for all the purposes of the
5 Uniform Commercial Code, subject only to the provisions of the
6 bonds for registration.

§7-27-24. Exemption from taxation.

1 All bonds issued by the Authority pursuant to this article,
2 and all interest and income thereon, are exempt from all taxation
3 by this state and any county, municipality, political subdivision
4 or agency thereof, except inheritance taxes.

§7-27-25. Personal liability; persons executing bonds issued pursuant to this article.

1 Neither the West Virginia Economic Development
2 Authority, nor any officer or employee of the West Virginia
3 Economic Development Authority, or any person executing the
4 bonds issued pursuant to the provisions of this article, are liable
5 personally on the bonds or subject to any personal liability or
6 accountability by reason of the issuance thereof.

§7-27-26. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds issued pursuant to this article.

1 The provisions of this article relating to the issuance of
2 bonds shall be construed as granting cumulative authority for the
3 exercise of the various powers herein conferred, and neither the
4 powers nor any bonds issued hereunder are affected or limited by
5 any other statutory or charter provision now or hereafter in force,
6 other than as may be provided in this article, it being the purpose
7 and intention of this article to create full, separate and complete
8 additional powers. The various powers conferred herein may be
9 exercised independently and notwithstanding that no bonds are
10 issued hereunder.

PART V. COUNTY TRANSPORTATION SALES
AND USE TAXES.

§7-27-27. Criteria and requirements necessary to impose county transportation sales and use taxes.

1 As a prerequisite to imposing county transportation sales and
2 use taxes, the county commission shall have entered into one or
3 more intergovernmental agreements with the Commissioner of
4 Highways pursuant to which the county commission agrees to
5 finance one or more road construction projects in the county, in
6 whole or in part, using collections of the county transportation
7 sales and use taxes deposited in the county's subaccount in the
8 County Road Improvement Account.

§7-27-28. Counties authorized to impose county transportation sales and use taxes.

1 (a) In addition to all other powers and duties now conferred
2 by law upon county commissions, said county commissions,
3 may, after first satisfying the requirements of the preceding
4 section, adopt an order duly entered of record imposing county
5 transportation sales and use taxes as provided in this article.

6 (b) *Rate of county transportation sales and use taxes.* — The
7 rate of the county transportation sales tax and the rate of the
8 county transportation use tax shall be identical and may not
9 exceed one percent of the purchase price subject to tax under
10 article fifteen, chapter eleven of this code, or one percent of the
11 value upon which the county transportation use tax is imposed.

12 (c) *County transportation sales tax base.* — In general, the
13 tax base of the county transportation sales tax imposed pursuant
14 to this article shall be identical to the consumer sales and service
15 tax base of this state, except that: (1) The exemption in section
16 nine-f, article fifteen, chapter eleven of this code may not apply;

17 (2) the county sales tax may not apply when taxation is
18 prohibited by federal law; and (3) the county sales tax may not
19 apply as provided in subsection (e) of this section.

20 (d) *County transportation use tax base.* — The base of a
21 county transportation use tax imposed pursuant to this article
22 shall be identical to the base of the use tax imposed pursuant to
23 article fifteen-a, chapter eleven of this code, on the use of
24 tangible personal property, custom software and taxable services,
25 within the boundaries of the county, except that: (1) The
26 exemption in section nine-f, article fifteen, chapter eleven of this
27 code may not apply; (2) the county sales tax may not apply when
28 taxation is prohibited by federal law; and (3) the county sales tax
29 may not apply as provided in subsection (e) of this section.

30 (e) *Exceptions.* — County sales and use taxes may not apply
31 to:

32 (1) Sales and uses of motor vehicles upon which the tax
33 imposed by section three-c, article fifteen, chapter eleven of this
34 code was paid or is payable;

35 (2) Sales and uses of motor fuel upon which or with respect
36 to which the taxes imposed by articles fourteen-a and fourteen-c,
37 chapter eleven of this code was paid or is payable;

38 (3) Any sale of tangible personal property or custom
39 software or the furnishing of a service that is exempt from the
40 tax imposed by article fifteen, chapter eleven of this code;

41 (4) Any use of tangible personal property, custom software
42 or the results of a taxable service that is exempt from the tax
43 imposed by article fifteen-a, chapter eleven of this code, except
44 that this exception may not apply to any use within the county
45 when the state consumer sales and service tax imposed by article

46 fifteen, chapter eleven of this code, was paid to the seller at the
47 time of purchase but the county transportation sales tax was not
48 paid to the seller; and

49 (5) Any sale or use of tangible personal property, custom
50 software, taxable service that the county is prohibited from
51 taxing by federal law or the laws of this state.

52 (f) Whenever tangible personal property, custom software,
53 or a taxable service is purchased in a county of this state that
54 does not impose county transportation sales and use taxes
55 pursuant to this article and the tangible personal property,
56 custom software or results of a taxable service are used in a
57 county that does impose county transportation sales and use
58 taxes pursuant to this article:

59 (1) A vendor who delivers the tangible personal property,
60 custom software or results of a taxable service to a purchaser, or
61 the purchaser's donee, located in a county that imposes county
62 transportation sales and use taxes pursuant to this article, shall
63 collect, add the tax to the purchase price and collect the tax from
64 the purchaser; and

65 (2) A person using tangible personal property or custom
66 software in a county of this state that imposes sales and use taxes
67 pursuant to this article, shall remit the county's use tax to the
68 Tax Commissioner unless the amount of sales and use taxes
69 imposed by the county in which the tangible personal property,
70 custom software or taxable service was purchased were lawfully
71 paid.

**§7-27-29. Notification of Tax Commissioner, Auditor and
Treasurer.**

1 (a) Any county that imposes a county transportation sales
2 and use tax pursuant to this article, or changes the rate of the

3 taxes, shall notify the Tax Commissioner at least one hundred
4 eighty days before the effective date of the imposition of the
5 taxes or the change in the rate of taxation and provide the
6 commissioner with a certified copy of the order of the county
7 commission imposing the taxes or changing the rates of taxation.

8 (b) A copy of the notice shall at the same time be furnished
9 to the State Auditor and the State Treasurer.

**§7-27-30. State level administration of county transportation sales
and use taxes required; fee for services.**

1 (a) *State administration required.* — Any county
2 commission that imposes a county transportation sales and use
3 tax may not administer, collect or enforce those taxes. Authority
4 to administer, collect and enforce county transportation sales and
5 use taxes is vested solely in the Tax Commissioner as required
6 by article fifteen-b, chapter eleven of this code.

7 (b) *Fee for services.* — The Tax Commissioner may assess
8 a fee to be retained from collections authorized by this article.
9 Said fee shall not exceed the lesser of the cost of the service
10 provided or five percent of the net amount of the taxes imposed
11 pursuant to this article that are collected by the Tax
12 Commissioner during any fiscal year, notwithstanding any
13 provision of this code or rule to the contrary. For purposes of
14 calculating the cost of the service provided, the provisions of
15 section eleven-c, article ten, chapter eleven of this code and the
16 legislative rules promulgated pursuant thereto shall be utilized.

17 (c) *Deposit of fees in special revenue account.* — The fees
18 retained by the Tax Commissioner pursuant to subsection (b) of
19 this section shall be deposited in the Local Sales Tax and Excise
20 Tax Administration Fund, created pursuant to section eleven-c,
21 article ten, chapter eleven of this code.

§7-27-31. County transportation sales tax collected from purchaser.

1 A vendor selling tangible personal property or custom
2 software or furnishing a service in a county that imposes a
3 county transportation sales tax pursuant to this article shall for
4 the privilege of doing business in the county collect the county
5 transportation sales tax from the purchaser at the same time and
6 in the same manner that the tax imposed by article fifteen,
7 chapter eleven of this code, is collected from the customer. All
8 sales of tangible personal property and custom software made in
9 the county and all services furnished in the county are presumed
10 to be subject to the county transportation sales tax unless an
11 exemption or exception applies.

§7-27-32. Payment of county transportation use tax.

1 A county transportation use tax imposed pursuant to this
2 article shall be paid to the Tax Commissioner by the user of
3 tangible personal property or custom software or the results of a
4 taxable service in the county that imposes the county
5 transportation use tax, unless the county's use tax is collected by
6 a retailer located outside the county that is a retailer engaging in
7 business in the county as defined in this article, or the retailer is
8 an out-of-state retailer who is required to collect West Virginia
9 state and local use taxes.

§7-27-33. County transportation sales and use taxes in addition to other taxes.

1 County transportation sales and use taxes imposed pursuant
2 to this article shall be collected and paid in addition to:

3 (1) The state consumer sales and service tax imposed by
4 article fifteen, chapter eleven of this code;

5 (2) The state use tax imposed by article fifteen-a, chapter
6 eleven of this code;

7 (3) Any hotel occupancy tax imposed pursuant to section
8 one, article eighteen of this chapter;

9 (4) Any tax imposed pursuant to article twenty-two of this
10 chapter;

11 (5) Any municipal sales or use tax imposed pursuant to
12 section five-a, article one, chapter eight of this code;

13 (6) Any tax imposed pursuant to sections six and seven,
14 article thirteen, chapter eight of this code;

15 (7) Any tax imposed by article thirty-eight, chapter eight of
16 this code; and

17 (8) The tax imposed by section twenty-one, article three-a,
18 chapter sixty of this code.

§7-27-34. Credit for sales tax paid to another county.

1 (a) A person is entitled to a credit against the use tax
2 imposed by a county commission pursuant to this article on the
3 use of tangible personal property, custom software or the results
4 of a taxable service in the county equal to the amount, if any, of
5 sales tax lawfully paid to another county for the acquisition of
6 that tangible personal property, custom software or taxable
7 service. However, the amount of credit allowed may not exceed
8 the amount of use tax imposed on the use of the property or
9 service in the county of use and no credit may be allowed for
10 payment of county special district excise taxes imposed pursuant
11 to article twenty-two of this chapter.

12 (b) For purposes of this section:

13 (1) "County" means a county in this state or a comparable
14 unit of local government in another state;

15 (2) “Sales tax” includes a sales tax, or a compensating use
16 tax, lawfully imposed on the sale or use of tangible personal
17 property, custom software or a taxable service by the county, as
18 appropriate, in which the sale or first use occurred; and

19 (3) “State” includes the fifty states of the United States and
20 the District of Columbia but does not include any of the several
21 territories organized by Congress.

22 (c) No credit is allowed under this section for payment of
23 any sales or use taxes imposed by this state or by any other state.

§7-27-35. Sourcing rules for county transportation sales and use taxes.

1 Sales, purchases and uses of tangible personal property,
2 custom software and taxable services shall be sourced for
3 purposes of imposition and payment of county transportation
4 sales and use taxes imposed pursuant to this article in accordance
5 with the sourcing rules set forth in article fifteen-b, chapter
6 eleven of this code applicable to the taxes imposed by articles
7 fifteen and fifteen-a, chapter eleven of this code.

§7-27-36. Application of state consumers sales and service tax provisions.

1 (a) *Application of state sales tax.* — The provision of article
2 fifteen, chapter eleven of this code, and any subsequent
3 amendments to that article and the administrative rules of the
4 Tax Commissioner relating to article fifteen of chapter eleven
5 shall apply to a county transportation sales tax imposed pursuant
6 to this article to the extent that article and the rules are applicable
7 to the tax imposed by the county.

8 (b) *Application of state use tax law.* — The provisions of
9 article fifteen-a, chapter eleven of this code, and any subsequent
10 amendments to that article and the rules of the Tax

11 Commissioner relating to article fifteen-a of chapter eleven shall
12 apply to a county transportation use tax imposed pursuant to this
13 article to the extent the rules and laws are applicable.

14 (c) *Definitions incorporated.* — Any term used in this article
15 or in an order adopted by a county commission pursuant to this
16 article imposing county transportation sales and use taxes that is
17 defined in articles fifteen, fifteen-a and fifteen-b, chapter eleven
18 of this code and used in those articles in a similar context, shall
19 have the same meaning when used in this article or in an order
20 entered by the county commission pursuant to this article
21 imposing county transportation sales and use taxes, unless the
22 context in which the term is used clearly indicates that a
23 different result is intended by the Legislature.

§7-27-37. Application of West Virginia Tax Procedure and Administration Act.

1 Every provision of the West Virginia Tax Procedure and
2 Administration Act set forth in article ten, chapter eleven of this
3 code, and as amended from time to time by the Legislature,
4 applies to the taxes imposed pursuant to this article, except as
5 otherwise expressly provided in this article, with like effect as if
6 that act were applicable only to the taxes imposed by this article
7 and were set forth in extensor in this article or the order entered
8 by the county commission imposing the taxes pursuant to this
9 article.

§7-27-38. Application of West Virginia Tax Crimes and Penalties Act.

1 Every provision of the West Virginia Tax Crimes and
2 Penalties Act set forth in article nine, chapter eleven of this code,
3 and as amended from time to time by the Legislature, applies to
4 the taxes imposed pursuant to this article with like effect as if
5 that act were applicable only to the taxes imposed pursuant to

6 this article and were set forth in extensor in this article or the
7 order entered by the county commission imposing the taxes
8 pursuant to this article.

§7-27-39. Local rate and boundary changes.

1 (a) *General.* — New county transportation sales and use
2 taxes and any change in the rate of existing county transportation
3 sales and use taxes shall first apply and be collected and paid
4 only on the first day of a calendar quarter that begins at least
5 sixty days after the Tax Commissioner notifies sellers of the
6 imposition of the county taxes, or a change in the rate of those
7 taxes, except as provided in subsection (b) of this section.

8 (b) *Printed catalogs.* — County transportation sales and use
9 taxes and any change in the rate of taxation shall first apply to
10 purchases from printed catalogs where the purchaser computed
11 the tax based upon the local tax rate published in the catalog
12 only on and after the first day of a calendar quarter that begins
13 after the Tax Commissioner provides sellers at least one hundred
14 twenty days' notice of imposition of the tax or a change in the
15 rate of taxation.

16 (c) *County boundary changes.* — A county boundary change
17 shall first apply for purposes of computation of a county
18 transportation sales and use taxes on the first day of a calendar
19 quarter that begins at least sixty days after the Tax
20 Commissioner notifies sellers of the boundary change.

**§7-27-40. Deposit of county transportation sales and use taxes;
payment to Division of Highways.**

1 (a) All county sales and use taxes collected by the Tax
2 Commissioner under this article shall be collected and paid to
3 the credit of each county commission's subaccount in the
4 "County Road Improvement Account" established pursuant to
5 this article.

6 (b) The credit shall be made to the subaccount of the county
7 commission of the county in which the taxable sales were made
8 and services rendered or taxable uses occurred as shown by the
9 records of the Tax Commissioner and certified by the Tax
10 Commissioner to the State Treasurer, namely, the location of
11 each place of business of every vendor collecting and paying
12 sales and use taxes to the Tax Commissioner without regard to
13 the place of possible use by the purchaser and by every person
14 remitting county transportation use tax to the Tax Commissioner
15 or paying the county's use tax to the Tax Commissioner.

16 (c) As soon as practicable after the county transportation
17 sales and use taxes for a particular county have been paid into
18 the county's subaccount of the "County Road Improvement
19 Account" in any month for the preceding reporting period, the
20 Commissioner of Highways or the West Virginia Economic
21 Development Authority may issue a requisition to the Auditor
22 requesting issuance of a state warrant for the funds of the county
23 in its subaccount, as provided for by the intergovernmental
24 agreement or agreements executed by the Commissioner of
25 Highways and the county commission.

26 (1) Upon receipt of the requisition, the Auditor shall issue
27 his or her warrant on the State Treasurer for the funds requested
28 and the State Treasurer shall pay the warrant out of the
29 subaccount.

30 (2) If errors are made in any payment, or adjustments are
31 otherwise necessary, whether attributable to refunds to taxpayers
32 or to some other fact, the errors shall be corrected and
33 adjustments made in the payments for the next six months as
34 follows: One sixth of the total adjustment shall be included in
35 the payments for each month for the next six months, to be paid
36 in full during this six months period. In addition, the payment
37 shall include a refund of amounts erroneously not paid to the
38 subaccount of the county commission and not previously

39 remitted to the county's subaccount during the three years
40 preceding the discovery of the error.

41 (3) A correction and adjustment in payments described in
42 this subsection due to the misallocation of funds by the person
43 remitting the tax shall be made within three years of the date of
44 the payment error.

§7-27-41. Effective date of county transportation sales and use tax.

1 (a) Notwithstanding the effective date of an order of the
2 county commission imposing a county transportation sales and
3 use tax, or changing the rate of tax, the tax or a rate change may
4 not become operational and no vendor may be required to collect
5 the tax and no purchaser or user may be required to pay the tax
6 until the first day of a calendar quarter that begins at least sixty
7 days after the Tax Commissioner complies with the requirements
8 of section thirty-five, article fifteen-b, chapter eleven of this
9 code.

10 (b) The Tax Commissioner shall issue his or her notice to
11 vendors and other persons required to collect sales and use taxes
12 within thirty days after receiving notice from the county:

13 (1) A certified copy of the order of the county commission
14 imposing a county transportation sales and use tax, or changing
15 the rate of tax, notwithstanding any other provision of this code
16 or rule to the contrary;

17 (2) The rate and boundary database of the county identifying
18 all of the five digit zip codes and nine-digit zip codes located in
19 the county in conformity with the requirements for West
20 Virginia to maintain full membership in the Streamlined Sales
21 Tax Governing Board pursuant to article fifteen-b, chapter
22 eleven of this code; and

23 (3) Such other information as the Tax Commissioner may
24 reasonably require.

§7-27-42. Early retirement of special revenue bonds; termination of county transportation sales and use taxes; excess funds.

1 (a) *General.* — When special revenue bonds have been
2 issued as provided in this article and the amount of county
3 transportation sales and use taxes collected, less costs of
4 administration, collection and enforcement, exceeds the amount
5 needed to pay project costs and annual debt service, including
6 the funding of required debt service and maintenance reserves,
7 if any, the additional amount remaining in the county's
8 subaccount in the County Road Improvement Account shall be
9 used to retire outstanding revenue bonds before their maturity
10 date in accordance with the terms of such bonds.

11 (b) *Termination of county transportation sales and use taxes.*
12 — Once the special revenue bonds issued as provided in this
13 article are no longer outstanding or have been defeased, and no
14 additional road construction projects have been requested and
15 approved by the Commissioner of Highways, the county
16 transportation sales and use taxes shall be discontinued by order
17 adopted by the county commission as provided in this article.
18 Termination of the county transportation sales and use taxes as
19 provided in this section may not bar or otherwise prevent the Tax
20 Commissioner from collecting county transportation sales and
21 use taxes that accrued before the termination date and the rights
22 of the state and the taxpayers as to those taxes shall be preserved.

23 (c) *Excess funds.* — After all intergovernmental agreements
24 with the Commissioner of Highways have ended and all debt
25 service on special revenue bonds issued to finance, in whole or
26 in part, the road construction projects has been paid or provided
27 for, and county transportation sales and use taxes imposed by the
28 county have terminated, the Commissioner of Highways shall
29 forward the unencumbered balance of moneys remaining in the
30 county's subaccount in the County Road Improvement Account

31 to the county commission of that county for deposit in the
32 county's general fund.

PART VI. MISCELLANEOUS.

§7-27-43. Powers supplemental.

1 (a) *County commissions.* — The powers conferred by this
2 article are in addition and supplemental to the powers conferred
3 upon county commissions by the Legislature elsewhere in this
4 chapter.

5 (b) *Commissioner of Highways.* — The powers conferred by
6 this article are in addition and supplemental to the powers
7 conferred upon the Commissioner of Highways, the Division of
8 Highways, and the Department of Transportation by the
9 Legislature elsewhere in this code.

10 (c) *West Virginia Economic Development Authority.* — The
11 powers conferred by this article are in addition and supplemental
12 to the powers conferred upon the West Virginia Economic
13 Development Authority by the Legislature elsewhere in this
14 code.

§7-27-44. Public officials exempt from personal liability.

1 No member of a county commission or other county
2 officer may be personally liable on any contract or obligation
3 executed pursuant to the authority contained in this article, nor
4 may these contracts or obligations or the issuance of revenue
5 bonds by the Authority secured by county transportation sales
6 and use taxes imposed by county commissions under this article
7 be considered as misfeasance in office.

§7-27-45. Severability.

1 If any section, subsection, subdivision, paragraph, sentence,
2 clause or phrase of this article is for any reason held to be

- 3 invalid, unlawful or unconstitutional, that decision does not
4 affect the validity of the remaining portions of this article or any
5 part thereof.

CHAPTER 31. CORPORATIONS

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-16c. Bonds for county capital improvements; limitations; authority to issue revenue bonds; use of funds to pay for projects.

1 (a) The West Virginia Economic Development Authority
2 may, in accordance with the provisions of this article and article
3 twenty seven, chapter seven of this code, issue special revenue
4 bonds from time to time, to pay for a portion of the cost of
5 constructing, equipping, improving or maintaining road projects
6 under article twenty seven, chapter seven of this code or to
7 refund the bonds, at the request of the county. The principal
8 amount of the bonds issued under this section may not exceed,
9 in the aggregate, an amount that, in the opinion of the Authority,
10 is necessary to provide sufficient funds for achievement of the
11 purposes of this section and article twenty seven, chapter seven
12 of this code, and is within the limits of moneys pledged for the
13 repayment of the principal, interest and redemption premium, if
14 any, on any revenue bonds or refunding bonds authorized by this
15 section and article twenty seven, chapter seven of the code. Any
16 revenue bonds issued on or after the effective date of this section
17 which are secured by county transportation sales and use tax
18 shall mature at a time or times not exceeding thirty years from
19 their respective dates except as otherwise provided in article
20 twenty-seven, chapter seven of the code. The principal, interest
21 and redemption premium, if any, on the bonds shall be payable
22 solely from the county's subaccount in the County Road
23 Improvement Account in the State Treasury established in article
24 twenty-seven, chapter seven of this code.

25 (b) All amounts deposited in the fund shall be pledged to the
26 repayment of the principal, interest and redemption premium, if
27 any, on any revenue bonds or refunding revenue bonds
28 authorized by this section. The Authority may further provide in
29 the trust agreement for priorities on the revenues paid into the
30 county's subaccount in the County Road Improvement Account
31 as may be necessary for the protection of the prior rights of the
32 holders of bonds issued at different times under the provisions of
33 this section or article twenty seven, chapter seven of this code.
34 The bonds issued pursuant to this section shall be separate from
35 all other bonds which may be or have been issued from time to
36 time under the provisions of this article or article twenty seven,
37 chapter seven of this code. The debt service fund established for
38 each bond issue shall be pledged solely for the repayment of
39 bonds issued pursuant to this section and article twenty seven,
40 chapter seven of this code. On or prior to May 1 of each year,
41 commencing May 1, 2017, the Authority shall certify to each
42 county commission the principal and interest and coverage ratio
43 requirements for the following fiscal year on any revenue bonds
44 or refunding revenue bonds issued pursuant to this section, and
45 for which moneys deposited in the debt service fund have been
46 pledged, or will be pledged, for repayment pursuant to this
47 section.

48 (c) After the Authority has issued bonds authorized by this
49 section, and after the requirements of all funds have been
50 satisfied, including coverage and reserve funds established in
51 connection with the bonds issued pursuant to this section, any
52 balance remaining in the debt service fund may be used for the
53 redemption of any of the outstanding bonds issued under this
54 section which, by their terms, are then redeemable or for the
55 purchase of the outstanding bonds at the market price, but not to
56 exceed the price, if any, at which redeemable, and all bonds
57 redeemed or purchased shall be immediately canceled and shall
58 not again be issued. Any funds not used as provided in this
59 subsection shall be returned to the county commission of the
60 county for which the bonds were issued.

CHAPTER 52

**(Com. Sub. for H. B. 2801 - By Delegates Rowe,
Pushkin, Lynch, Guthrie and Byrd)**

[Passed March 8, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3pp; and to amend said code by adding thereto a new section, designated §8-12-16d, all relating to permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas; and setting forth their additional powers and responsibilities.

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 §7-1-3pp; and that said code be amended by adding thereto a new section, designated §8-12-16d, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3pp. Additional powers and duties of commission; areas of special or unique interest.

1 A county commission may designate areas of special or
 2 unique interest, with sites, buildings and structures within those
 3 areas, which are of local, regional, statewide or national
 4 significance. An area that has been so designated does not limit
 5 the use of nor require any alteration of any privately owned

6 property in the area for any purpose. The commission may also
7 publish a register setting forth information concerning those
8 areas; place markers on private property only with the consent of
9 the property owners; place markers on public property and along
10 highways or streets designating those areas; seek and accept
11 gifts, bequests, endowments and funds to accomplish the purpose
12 of this section; sell, lease or alter property it owns in or near the
13 designated areas; seek the advice and assistance of individuals,
14 groups and departments and governmental agencies; and seek
15 codesignation of areas with a municipality where an area is to be
16 designated in each jurisdiction.

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

§8-12-16d. Additional powers and duties of municipalities; areas of special or unique interest.

1 A municipality may designate areas of special or unique
2 interest, with sites, buildings and structures within those areas,
3 which are of local, regional, statewide or national significance.
4 An area that has been so designated does not limit the use of nor
5 require any alteration of any privately owned property in the area
6 for any purpose. The municipality may also publish a register
7 setting forth information concerning those areas; place markers
8 on private property only with the consent of the property owners;
9 place markers on public property and along highways or streets
10 designating those areas; seek and accept gifts, bequests,
11 endowments and funds to accomplish the purpose of this section;
12 sell, lease or alter property it owns in or near the designated

13 areas; seek the advice and assistance of individuals, groups and
14 departments and governmental agencies; and seek codesignation
15 of areas with a county commission where an area is to be
16 designated in each jurisdiction.

CHAPTER 53

**(Com. Sub. for H. B. 4612 - By Delegates E. Nelson,
Mr. Speaker (Mr. Armstead), Gearheart, Hamrick,
Householder, Anderson, Shott, Storch, Espinosa,
Howell and Boggs)**

[Passed March 11, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §7-11B-3, §7-11B-4, §7-11B-14, §7-11B-21 and §7-11B-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §7-11B-29 and §7-11B-30; to amend and reenact §7-22-5, §7-22-7, §7-22-8, §7-22-12 and §7-22-14 of said code; to amend said code by adding thereto two new sections, designated §7-22-23 and §7-22-24; to amend and reenact §8-38-5, §8-38-7, §8-38-8, §8-38-12 and §8-38-14 of said code; to amend said code by adding thereto two new sections, designated §8-38-23 and §8-38-24; and to amend and reenact §11-10-11a of said code, all relating generally to tax increment financing; authorizing tax increment financing for funding road projects in West Virginia; permitting certain agreements between the Division of Highways and counties or municipalities regarding development districts; permitting financing of certain projects by proceeds of tax increment financing obligations; permitting road construction projects be done jointly by counties and municipalities under certain circumstances; establishing procedures and requirements

for applications and the management of projects and districts; providing that projects are public improvements and subject to certain requirements; permitting the Division of Highways to propose certain projects; establishing procedures for the West Virginia Development Office and the Tax Commissioner regarding applications and their review; permitting audits in certain circumstances; establishing a procedure for adding or removing property from an economic opportunity development district; requiring procedures relating to taxpayers; providing for confidentiality; providing that roads to be part of the state road system; requiring legislative rulemaking; permitting a fee to be assessed; making findings; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §7-11B-3, §7-11B-4, §7-11B-14, §7-11B-21 and §7-11B-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §7-11B-29 and §7-11B-30; that §7-22-5, §7-22-7, §7-22-8, §7-22-12 and §7-22-14 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §7-22-23 and §7-22-24; that §8-38-5, §8-38-7, §8-38-8, §8-38-12 and §8-38-14 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §8-38-23 and §8-38-24; and that §11-10-11a of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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 “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 or the Division of Highways.

13 “Base assessed value” means the taxable assessed value of
14 all real and tangible personal property, excluding personal motor
15 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 “Blighted area” means an area within the boundaries of a
28 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 “Commissioner of Highways” means the Commissioner of
54 the Division of Highways.

55 “Conservation area” means any improved area within the
56 boundaries of a development or redevelopment district located
57 within the territorial limits of a municipality or county in which
58 fifty percent or more of the structures in the area have an age of
59 thirty-five years or more. A conservation area is not yet a
60 blighted area but is detrimental to the public health, safety,
61 morals or welfare and may become a blighted area because of
62 any one or more of the following factors: Dilapidation;
63 obsolescence; deterioration; illegal use of individual structures;
64 presence of structures below minimum code standards;
65 abandonment; excessive vacancies; overcrowding of structures
66 and community facilities; lack of ventilation, light or sanitary
67 facilities; inadequate utilities; excessive land coverage;
68 deleterious land use or layout; depreciation of physical

69 maintenance; and lack of community planning. A conservation
70 area shall meet at least three of the factors provided in this
71 subdivision.

72 “County commission” means the governing body of a
73 county of this state and, for purposes of this article only, includes
74 the governing body of a Class I or II municipality in this state.

75 “Current assessed value” means the annual taxable assessed
76 value of all real and tangible personal property, excluding
77 personal motor vehicles, having a tax situs within a development
78 or redevelopment district as shown upon the landbook and
79 personal property records of the assessor: *Provided*, That for any
80 development or redevelopment district approved after the
81 effective date of the amendments to this section enacted during
82 the regular session of the Legislature in 2014, personal trailers,
83 personal boats, personal campers, personal motor homes,
84 personal ATVs and personal motorcycles having a tax situs
85 within a development or redevelopment district are excluded
86 from the current assessed value.

87 “Development office” means the West Virginia
88 Development Office created in section one, article two, chapter
89 five-b of this code.

90 “Development project” or “redevelopment project” means
91 a project undertaken in a development or redevelopment district
92 for eliminating or preventing the development or spread of slums
93 or deteriorated, deteriorating or blighted areas, for discouraging
94 the loss of commerce, industry or employment, for increasing
95 employment or for any combination thereof in accordance with
96 a tax increment financing plan. A development or redevelopment
97 project may include one or more of the following:

98 (A) The acquisition of land and improvements, if any, within
99 the development or redevelopment district and clearance of the
100 land so acquired; or

101 (B) The development, redevelopment, revitalization or
102 conservation of the project area whenever necessary to provide
103 land for needed public facilities, public housing or industrial or
104 commercial development or revitalization, to eliminate
105 unhealthful, unsanitary or unsafe conditions, to lessen density,
106 mitigate or eliminate traffic congestion, reduce traffic hazards,
107 eliminate obsolete or other uses detrimental to public welfare or
108 otherwise remove or prevent the spread of blight or
109 deterioration;

110 (C) The financial or other assistance in the relocation of
111 persons and organizations displaced as a result of carrying out
112 the development or redevelopment project and other
113 improvements necessary for carrying out the project plan,
114 together with those site improvements that are necessary for the
115 preparation of any sites and making any land or improvements
116 acquired in the project area available, by sale or lease, for public
117 housing or for development, redevelopment or rehabilitation by
118 private enterprise for commercial or industrial uses in
119 accordance with the plan;

120 (D) The construction of capital improvements within a
121 development or redevelopment district designed to increase or
122 enhance the development of commerce, industry or housing
123 within the development project area; or

124 (E) Any other projects the county commission or the agency
125 deems appropriate to carry out the purposes of this article.

126 “Development or redevelopment district” means an area
127 proposed by one or more agencies as a development or
128 redevelopment district which may include one or more counties,
129 one or more municipalities or any combination thereof, that has
130 been approved by the county commission of each county in
131 which the project area is located if the project is located outside
132 the corporate limits of a municipality, or by the governing body

133 of a municipality if the project area is located within a
134 municipality, or by both the county commission and the
135 governing body of the municipality when the development or
136 redevelopment district is located both within and without a
137 municipality.

138 “Division of Highways” means the state Department of
139 Transportation, Division of Highways.

140 “Economic development area” means any area or portion of
141 an area within the boundaries of a development or
142 redevelopment district located within the territorial limits of a
143 municipality or county that is neither a blighted area nor a
144 conservation area and for which the county commission finds
145 that development or redevelopment will not be solely used for
146 development of commercial businesses that will unfairly
147 compete in the local economy and that development or
148 redevelopment is in the public interest because it will:

149 (A) Discourage commerce, industry or manufacturing from
150 moving their operations to another state;

151 (B) Result in increased employment in the municipality or
152 county, whichever is applicable; or

153 (C) Result in preservation or enhancement of the tax base of
154 the county or municipality.

155 “Governing body of a municipality” means the city council
156 of a Class I or Class II municipality in this state.

157 “Incremental value”, for any development or redevelopment
158 district, means the difference between the base assessed value
159 and the current assessed value. The incremental value will be
160 positive if the current value exceeds the base value and the
161 incremental value will be negative if the current value is less
162 than the base assessed value.

163 “Includes” and “including”, when used in a definition
164 contained in this article, shall not exclude other things otherwise
165 within the meaning of the term being defined.

166 “Intergovernmental agreement” means any written
167 agreement that may be entered into by and between two or more
168 county commissions, or between two or more municipalities, or
169 between a county commission and a municipality, in the singular
170 and the plural, or between two or more government entities and
171 the Commissioner of Highways: *Provided*, That any
172 intergovernmental agreement shall not be subject to provisions
173 governing intergovernmental agreements set forth in other
174 provisions of this code, including, but not limited to, article
175 twenty-three, chapter eight of this code, but shall be subject to
176 the provisions of this article.

177 “Local levying body” means the county board of education
178 and the county commission and includes the governing body of
179 a municipality when the development or redevelopment district
180 is located, in whole or in part, within the boundaries of the
181 municipality.

182 “Obligations” or “tax increment financing obligations”
183 means bonds, loans, debentures, notes, special certificates or
184 other evidences of indebtedness issued by a county commission
185 or municipality pursuant to this article to carry out a
186 development or redevelopment project or to refund outstanding
187 obligations under this article.

188 “Order” means an order of the county commission adopted
189 in conformity with the provisions of this article and as provided
190 in this chapter.

191 “Ordinance” means a law adopted by the governing body of
192 a municipality in conformity with the provisions of this article
193 and as provided in chapter eight of this code.

194 “Payment in lieu of taxes” means those estimated revenues
195 from real property and tangible personal property having a tax
196 situs in the area selected for a development or redevelopment
197 project which revenues, according to the development or
198 redevelopment project or plan, are to be used for a private use,
199 which levying bodies would have received had a county or
200 municipality not adopted one or more tax increment financing
201 plans and which would result from levies made after the date of
202 adoption of a tax increment financing plan during the time the
203 current assessed value of all taxable real and tangible personal
204 property in the area selected for the development or
205 redevelopment project exceeds the total base assessed value of
206 all taxable real and tangible personal property in the
207 development or redevelopment district until the designation is
208 terminated as provided in this article.

209 “Person” means any natural person, and any corporation,
210 association, partnership, limited partnership, limited liability
211 company or other entity, regardless of its form, structure or
212 nature, other than a government agency or instrumentality.

213 “Private project” means any project that is subject to ad
214 valorem property taxation in this state or to a payment in lieu of
215 tax agreement that is undertaken by a project developer in
216 accordance with a tax increment financing plan in a development
217 or redevelopment district.

218 “Project” means any capital improvement, facility or both,
219 as specifically set forth and defined in the project plan, requiring
220 an investment of capital including, but not limited to, extensions,
221 additions or improvements to existing facilities, including water
222 or wastewater facilities, and the remediation of contaminated
223 property as provided for in article twenty-two, chapter
224 twenty-two of this code, but does not include performance of any
225 governmental service by a county or municipal government.

226 “Project area” means an area within the boundaries of a
227 development or redevelopment district in which a development
228 or redevelopment project is undertaken as specifically set forth
229 and defined in the project plan.

230 “Project costs” means expenditures made in preparation of
231 the development or redevelopment project plan and made, or
232 estimated to be made, or monetary obligations incurred, or
233 estimated to be incurred, by the county commission which are
234 listed in the project plan as capital improvements within a
235 development or redevelopment district, plus any costs incidental
236 thereto. “Project costs” include, but are not limited to:

237 (A) Capital costs, including, but not limited to, the actual
238 costs of the construction of public works or improvements,
239 capital improvements and facilities, new buildings, structures
240 and fixtures, the demolition, alteration, remodeling, repair or
241 reconstruction of existing buildings, structures and fixtures,
242 environmental remediation, parking and landscaping, the
243 acquisition of equipment and site clearing, grading and
244 preparation;

245 (B) Financing costs, including, but not limited to, an interest
246 paid to holders of evidences of indebtedness issued to pay for
247 project costs, all costs of issuance and any redemption
248 premiums, credit enhancement or other related costs;

249 (C) Real property assembly costs, meaning any deficit
250 incurred resulting from the sale or lease as lessor by the county
251 commission of real or personal property having a tax situs within
252 a development or redevelopment district for consideration that
253 is less than its cost to the county commission;

254 (D) Professional service costs including, but not limited to,
255 those costs incurred for architectural planning, engineering and
256 legal advice and services;

257 (E) Imputed administrative costs including, but not limited
258 to, reasonable charges for time spent by county employees or
259 municipal employees in connection with the implementation of
260 a project plan;

261 (F) Relocation costs including, but not limited to, those
262 relocation payments made following condemnation and job
263 training and retraining;

264 (G) Organizational costs including, but not limited to, the
265 costs of conducting environmental impact and other studies and
266 the costs of informing the public with respect to the creation of
267 a development or redevelopment district and the implementation
268 of project plans;

269 (H) Payments made, in the discretion of the county
270 commission or the governing body of a municipality, which are
271 found to be necessary or convenient to creation of development
272 or redevelopment districts or the implementation of project
273 plans; and

274 (I) That portion of costs related to the construction of
275 environmental protection devices, storm or sanitary sewer lines,
276 water lines, amenities or streets or the rebuilding or expansion of
277 streets, or the construction, alteration, rebuilding or expansion of
278 which is necessitated by the project plan for a development or
279 redevelopment district, whether or not the construction,
280 alteration, rebuilding or expansion is within the area or on land
281 contiguous thereto.

282 “Project developer” means any person who engages in the
283 development of projects in the state.

284 “Project plan” means the plan for a development or
285 redevelopment project that is adopted by a county commission
286 or governing body of a municipality in conformity with the

287 requirements of this article and this chapter or chapter eight of
288 this code.

289 “Real property” means all lands, including improvements
290 and fixtures on them and property of any nature appurtenant to
291 them or used in connection with them and every estate, interest
292 and right, legal or equitable, in them, including terms of years
293 and liens by way of judgment, mortgage or otherwise, and
294 indebtedness secured by the liens.

295 “Redevelopment area” means an area designated by a
296 county commission or the governing body of a municipality in
297 respect to which the commission or governing body has made a
298 finding that there exist conditions which cause the area to be
299 classified as a blighted area, a conservation area, an economic
300 development area or a combination thereof, which area includes
301 only those parcels of real property directly and substantially
302 benefitted by the proposed redevelopment project located within
303 the development or redevelopment district or land contiguous
304 thereto.

305 “Redevelopment plan” means the comprehensive program
306 under this article of a county or municipality for redevelopment
307 intended by the payment of redevelopment costs to reduce or
308 eliminate those conditions, the existence of which qualified the
309 redevelopment area as a blighted area, conservation area,
310 economic development area or combination thereof, and to
311 thereby enhance the tax bases of the levying bodies which extend
312 into the redevelopment area. Each redevelopment plan shall
313 conform to the requirements of this article.

314 “Tax increment” means the amount of regular levy property
315 taxes attributable to the amount by which the current assessed
316 value of real and tangible personal property having a tax situs in
317 a development or redevelopment district exceeds the base
318 assessed value of the property.

319 “Tax increment financing fund” means a separate fund for
320 a development or redevelopment district established by the
321 county commission or governing body of the municipality into
322 which all tax increment revenues and other pledged revenues are
323 deposited and from which projected project costs, debt service
324 and other expenditures authorized by this article are paid.

325 “This code” means the Code of West Virginia, 1931, as
326 amended by the Legislature.

327 “Total ad valorem property tax regular levy rate” means the
328 aggregate levy rate of all levying bodies on all taxable property
329 having a tax situs within a development or redevelopment
330 district in a tax year but does not include excess levies, levies for
331 general obligation bonded indebtedness or any other levies that
332 are not regular levies.

§7-11B-4. Powers generally.

1 In addition to any other powers conferred by law, a county
2 commission or governing body of a Class I or II municipality
3 may exercise any powers necessary and convenient to carry out
4 the purpose of this article, including the power to:

5 (1) Create development and redevelopment areas or districts
6 and to define the boundaries of those areas or districts;

7 (2) Cause project plans to be prepared, to approve the project
8 plans, and to implement the provisions and effectuate the
9 purposes of the project plans;

10 (3) Establish tax increment financing funds for each
11 development or redevelopment district;

12 (4) Issue tax increment financing obligations and pledge tax
13 increments and other revenues for repayment of the obligations;

14 (5) Deposit moneys into the tax increment financing fund for
15 any development or redevelopment district;

16 (6) Enter into any contracts or agreements, including, but not
17 limited to, agreements with project developers, consultants,
18 professionals, financing institutions, trustees and bondholders
19 determined by the county commission to be necessary or
20 convenient to implement the provisions and effectuate the
21 purposes of project plans;

22 (7) Receive from the federal government or the state loans
23 and grants for, or in aid of, a development or redevelopment
24 project and to receive contributions from any other source to
25 defray project costs;

26 (8) Exercise the right of eminent domain to condemn
27 property for the purposes of implementing the project plan. The
28 rules and procedures set forth in chapter fifty-four of this code
29 shall govern all condemnation proceedings authorized in this
30 article;

31 (9) Make relocation payments to those persons, businesses,
32 or organizations that are displaced as a result of carrying out the
33 development or redevelopment project;

34 (10) Clear and improve property acquired by the county
35 commission pursuant to the project plan and construct public
36 facilities on it or contract for the construction, development,
37 redevelopment, rehabilitation, remodeling, alteration or repair of
38 the property;

39 (11) Cause parks, playgrounds or water, sewer or drainage
40 facilities or any other public improvements, including, but not
41 limited to, fire stations, community centers and other public
42 buildings, which the county commission is otherwise authorized
43 to undertake to be laid out, constructed or furnished in

44 connection with the development or redevelopment project.
45 When the public improvement of the county commission is to be
46 located, in whole or in part, within the corporate limits of a
47 municipality, the county commission shall consult with the
48 mayor and the governing body of the municipality regarding the
49 public improvement and shall pay for the cost of the public
50 improvement from the tax increment financing fund;

51 (12) Lay out and construct, alter, relocate, change the grade
52 of, make specific repairs upon or discontinue public ways and
53 construct sidewalks in, or adjacent to, the project area: *Provided,*
54 That when the public way or sidewalk is located within a
55 municipality, the governing body of the municipality shall
56 consent to the same and if the public way is a state road, the
57 consent of the commissioner of highways shall be necessary;

58 (13) Cause private ways, sidewalks, ways for vehicular
59 travel, playgrounds or water, sewer or drainage facilities and
60 similar improvements to be constructed within the project area
61 for the particular use of the development or redevelopment
62 district or those dwelling or working in it;

63 (14) Construct, or cause to be constructed, any capital
64 improvements of a public nature;

65 (15) Construct capital improvements to be leased or sold to
66 private entities in connection with the goals of the development
67 or redevelopment project;

68 (16) Cause capital improvements owned by one or more
69 private entities to be constructed within the development or
70 redevelopment district;

71 (17) Designate one or more official or employee of the
72 county commission to make decisions and handle the affairs of
73 development and redevelopment project areas or districts created
74 by the county commission pursuant to this article;

75 (18) Adopt orders, ordinances or bylaws or repeal or modify
76 such ordinances or bylaws or establish exceptions to existing
77 ordinances and bylaws regulating the design, construction and
78 use of buildings within the development or redevelopment
79 district created by a county commission or governing body of a
80 municipality under this article;

81 (19) Enter orders, adopt bylaws or repeal or modify such
82 orders or bylaws or establish exceptions to existing orders and
83 bylaws regulating the design, construction and use of buildings
84 within the development or redevelopment district created by a
85 county commission or governing body of a municipality under
86 this article;

87 (20) Sell, mortgage, lease, transfer or dispose of any
88 property or interest therein, by contract or auction, acquired by
89 it pursuant to the project plan for development, redevelopment
90 or rehabilitation in accordance with the project plan;

91 (21) Expend project revenues as provided in this article;

92 (22) Enter into one or more intergovernmental agreements
93 or memorandums of understanding with the Commissioner of
94 Highways or with other county commissions or municipalities
95 regarding development or redevelopment districts;

96 (23) Designate one or more officials or employees of the
97 county commission or municipality that created the development
98 or redevelopment district to sign documents, to make decisions
99 and handle the affairs of the development or redevelopment
100 district. When two or more county commissions, or
101 municipalities, or any combination thereof, established the
102 development or redevelopment district, the government entities
103 shall enter into one or more intergovernmental agreements
104 regarding administration of the development or redevelopment
105 district and the handling of its affairs; and

106 (24) Do all things necessary or convenient to carry out the
107 powers granted in this article.

§7-11B-14. Projects financed by tax increment financing considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

1 (a) Any project acquired, constructed, or financed, in whole
2 or in part, by a county commission or municipality under this
3 article shall be considered to be a “public improvement” within
4 the meaning of the provisions of articles one-c, chapter
5 twenty-one of this code.

6 (b) The county commission or municipality shall, except as
7 provided in subsection (c) of this section, solicit or require
8 solicitation of competitive bids and require compliance with
9 article one-c, chapter twenty-one of this code for every project
10 or infrastructure project funded pursuant to this article exceeding
11 \$25,000 in total cost: *Provided*, That the provisions of article
12 two-d, chapter seventeen of this code may apply where
13 applicable to projects subject to an intergovernmental agreement
14 with the Commissioner of Highways.

15 (c) Following the solicitation of the bids, the construction
16 contract shall be awarded to the lowest qualified responsible
17 bidder, who shall furnish a sufficient performance and payment
18 bond: *Provided*, That the county commission, municipality or
19 other person soliciting the bids may reject all bids and solicit
20 new bids on the project.

21 (d) No officer or employee of this state or of any public
22 agency, public authority, public corporation, or other public
23 entity, and no person acting or purporting to act on behalf of
24 such officer or employee or public entity shall require that any
25 performance bond, payment bond, or bid bond required or

26 permitted by this section be obtained from any particular surety
27 company, agent, broker or producer.

28 (e) This section does not:

29 (1) Apply to work performed on construction projects not
30 exceeding a total cost of \$50,000 by regular full-time employees
31 of the county commission or the municipality: *Provided*, That no
32 more than \$50,000 shall be expended on an individual project in
33 a single location in a twelve-month period;

34 (2) Prevent students enrolled in vocational educational
35 schools from being used in construction or repair projects when
36 such use is a part of the students' training program;

37 (3) Apply to emergency repairs to building components and
38 systems: *Provided*, That the term "emergency repairs" means
39 repairs that, if not made immediately, will seriously impair the
40 use of the building components and systems or cause danger to
41 those persons using the building components and systems; or

42 (4) Apply to any situation where the county commission or
43 municipality comes to an agreement with volunteers, or a
44 volunteer group, by which the governmental body will provide
45 construction or repair materials, architectural, engineering,
46 technical or any other professional services and the volunteers
47 will provide the necessary labor without charge to, or liability
48 upon, the governmental body: *Provided*, That the total cost of the
49 construction or repair projects does not exceed \$50,000.

50 (f) The provisions of subsections (a) and (b) of this section
51 apply to any specific project, whether privately or publicly
52 owned or constructed on private or public lands, that are
53 financed or to be financed, in whole or in part, with tax
54 increment or proceeds of tax increment financing obligations:
55 *Provided*, That, the provisions of subsections (a) and (b) of this

56 section do not apply to any project or part of a project that is
57 privately owned and financed without any tax increment or
58 proceeds of tax increment financing obligations.

§7-11B-21. Tax increment financing obligations — authorizing order or ordinance.

1 (a) Issuance of tax increment financing obligations shall be
2 authorized by order of the county commission, or ordinance of
3 the municipality, that created the development or redevelopment
4 district.

5 (b) The order, or ordinance, shall state the name of the
6 development or redevelopment district, the amount of tax
7 increment financing obligations authorized, the type of
8 obligation authorized and the interest rate or rates to be borne by
9 the bonds, notes or other tax increment financing obligations.

10 (c) The order or ordinance may prescribe the terms, form and
11 content of the tax increment financing obligations and other
12 particulars or information the county commission, or governing
13 body of the municipality, issuing the obligations deems useful or
14 it may include by reference the terms and conditions set forth in
15 a trust indenture or other document securing the development or
16 redevelopment project tax increment financing obligations.

§7-11B-22. Tax increment financing obligations — terms, conditions.

1 (a) Tax increment financing obligations may not be issued
2 in an amount exceeding the estimated aggregate project costs,
3 including all costs of issuance of the tax increment financing
4 obligations.

5 (b) Tax increment financing obligations shall not be included
6 in the computation of the Constitutional debt limitation of the

7 county commission or municipality issuing the tax increment
8 financing obligations.

9 (c) Tax increment financing obligations shall mature over a
10 period not exceeding thirty years from the date of entry of the
11 county commission's order, or the effective date of the
12 municipal ordinance, creating the development or redevelopment
13 district and approving the development or redevelopment plan,
14 or a period terminating with the date of termination of the
15 development or redevelopment district, whichever period
16 terminates earlier.

17 (d) Tax increment financing obligations may contain a
18 provision authorizing their redemption, in whole or in part, at
19 stipulated prices, at the option of the county commission or
20 municipality issuing the obligations, and, if so, the obligations
21 shall provide the method of selecting the tax increment financing
22 obligations to be redeemed.

23 (e) The principal and interest on tax increment financing
24 obligations may be payable at any place set forth in the
25 resolution, trust indenture or other document governing the
26 obligations.

27 (f) Bonds or notes shall be issued in registered form.

28 (g) Bonds or notes may be issued in any denomination.

29 (h) Each tax increment financing obligation issued under this
30 article is declared to be a negotiable instrument.

31 (i) The tax increment financing obligations may be sold at
32 public or private sale.

33 (j) Insofar as they are consistent with subsections (a), (b) and
34 (c) of this section, the procedures for issuance, form, contents,
35 execution, negotiation and registration of county and municipal

36 industrial or commercial revenue bonds set forth in article two-c,
37 chapter thirteen of this code are incorporated by reference
38 herein.

39 (k) The bonds may be refunded or refinanced and refunding
40 bonds may be issued in any principal amount: *Provided*, That the
41 last maturity of the refunding bonds shall not be later than the
42 last maturity of the bonds being refunded.

§7-11B-29. Joint development or redevelopment districts.

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state would benefit from coordinated road
3 construction efforts by county commissions, municipalities and
4 the Division of Highways.

5 (b) Notwithstanding any other section of this code to the
6 contrary, any two or more county commissions, any two or more
7 municipalities, or any combination thereof, may: (1) Create a
8 combined development or redevelopment district; (2) propose
9 joint project plans; (3) propose joint amendments to an existing
10 project plan for combined development or redevelopment
11 district; and (4) enter into one or more intergovernmental
12 agreements between themselves and/or the Commissioner of
13 Highways to share: (A) Project expenses; and (B) certain
14 property tax collections, on a pro rata or other basis, to facilitate
15 construction of projects within the combined development or
16 redevelopment district and to jointly take such other actions as
17 are authorized in this article.

18 (c) When a project begins in one county and ends in another
19 county of this state, the county commission of each county
20 included in a multicounty project may, by resolution, adopt a
21 written intergovernmental agreement with each county and/or
22 the Commissioner of Highways regarding the proposed
23 multicounty project. When the project begins or passes through

24 the corporate limits of a municipality, the governing body of that
25 municipality may by resolution adopt a written
26 intergovernmental agreement with the county or counties in
27 which the project is located.

28 (d) No county commission or municipality may withdraw
29 from an intergovernmental agreement as long as tax increment
30 financing obligations remain outstanding for which the proceeds
31 were used by any party to the intergovernmental agreement to
32 finance construction of the project for which the written
33 intergovernmental agreement was executed.

34 (e) No withdrawing county commission or municipality shall
35 be entitled to the return of any money or property advanced to
36 the project.

37 (f) Notwithstanding any provision of this code to the
38 contrary, any county commission or municipality that creates a
39 development or redevelopment district may enter into one or
40 more intergovernmental agreements with one or more other
41 counties or municipalities that also create a development or
42 redevelopment district to finance, in whole or in part, one or
43 more projects, to pool tax increment and other revenues to
44 finance, in whole or in part, contiguous projects on a cash basis
45 or to pay debt service on tax increment financing obligations.

46 (g) The obligations of the parties under any
47 intergovernmental agreement executed pursuant to this article
48 are not debt within the meaning of sections six or eight, article
49 X of the Constitution of West Virginia.

50 (h) Any intergovernmental agreement must be approved by
51 resolution adopted by a majority vote of the county commission
52 of each county participating in the agreement, by a majority vote
53 of the governing body of each municipality participating in the
54 agreement and by the Commissioner of Highways.

55 (i) The Commissioner of Highways is authorized to enter
56 into intergovernmental agreements with county commissions and
57 municipalities of this state, or with the federal government or
58 any agency thereof, respecting the financing, planning, and
59 construction of state roads and bridges, including related
60 infrastructure if any, constructed, in whole or in part, pursuant to
61 this article.

§7-11B-30. Application by Division of Highways.

1 (a) The Commissioner of Highways may propose creation by
2 a county commission or municipality of development or
3 redevelopment areas or districts and project plans, or propose
4 amendments to an existing project plans. This plan may include
5 related infrastructure that is necessary or convenient to economic
6 development adjacent to the proposed project.

7 (b) Project plans proposed by the Commissioner of
8 Highways are limited to those related to the construction,
9 reconstruction, improvement or modernization of state roads, as
10 defined in article four, chapter seventeen of this code, that are
11 part of the state road system, as defined in that article or that will
12 become part of the state road system upon completion of the
13 construction. All construction, reconstruction, improvement or
14 modernization and maintenance of state roads shall be done by
15 or under the supervision of the Commissioner of Highways.

16 (c) All road projects that are accepted as part of the state
17 road system, and all real property interests and appurtenances, is
18 under the exclusive jurisdiction and control of the Commissioner
19 of Highways, who may exercise the same rights and authority as
20 he or she has over other transportation facilities in the state road
21 system.

22 (d) Except as provided in an intergovernmental agreement
23 executed by one or more county commissions, municipalities

24 and/or the Commissioner of Highways and as provided in this
25 article, a county commission or municipality may not be
26 required to pay for the cost of constructing, reconstructing,
27 improving, maintaining a road that is part of the state road
28 system as defined in article four, chapter seventeen of this code
29 or to pay any other expense fairly related to that road.

30 (e) The powers conferred by this article on the
31 Commissioner of Highways or the Division of Highways are in
32 addition and supplemental to the powers conferred upon the
33 Commissioner of Highways, the Division of Highways, and the
34 Department of Transportation by the Legislature elsewhere in
35 this code.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-5. Development expenditures.

1 Any county commission that has established an economic
2 opportunity development district under this article may make, or
3 authorize to be made by a district board and other public or
4 private parties, development expenditures as will promote the
5 economic vitality of the district and the general welfare of the
6 county, including, but not limited to, expenditures for the
7 following purposes:

8 (1) Beautification of the district by means including
9 landscaping and construction and erection of fountains, shelters,
10 benches, sculptures, signs, lighting, decorations and similar
11 amenities;

12 (2) Provision of special or additional public services such as
13 sanitation, security for persons and property and the construction
14 and maintenance of public facilities, including, but not limited
15 to, sidewalks, parking lots, parking garages and other public
16 areas;

17 (3) Making payments for principal, interest, issuance costs,
18 any of the costs described in section twenty of this article and
19 appropriate reserves for bonds and other instruments and
20 arrangements issued or entered into by the county commission
21 for financing the expenditures of the district described in this
22 section and to otherwise implement the purposes of this article;

23 (4) Providing financial support for public transportation and
24 vehicle parking facilities open to the general public, whether
25 physically situate within the district's boundaries or on adjacent
26 land;

27 (5) Acquiring, building, demolishing, razing, constructing,
28 repairing, reconstructing, refurbishing, renovating, rehabilitating,
29 expanding, altering, otherwise developing, operating and
30 maintaining real property generally, parking facilities,
31 commercial structures and other capital improvements to real
32 property, fixtures and tangible personal property, whether or not
33 physically situate within the district's boundaries, including, but
34 not limited to, state road improvements pursuant to an
35 intergovernmental agreement with the Commissioner of
36 Highways: *Provided*, That the expenditure directly benefits the
37 district;

38 (6) Developing plans for the architectural design of the
39 district and portions thereof and developing plans and programs
40 for the future development of the district;

41 (7) Developing, promoting and supporting community
42 events and activities open to the general public that benefit the
43 district;

44 (8) Providing the administrative costs for a district
45 management program;

46 (9) Providing for the usual and customary maintenance and
47 upkeep of all improvements and amenities in the district as are

48 commercially reasonable and necessary to sustain its economic
49 viability on a permanent basis;

50 (10) Providing any other services that the county
51 commission or district board is authorized to perform and which
52 the county commission does not also perform to the same extent
53 on a countywide basis;

54 (11) Making grants to the owners or tenants of economic
55 opportunity development district for the purposes described in
56 this section;

57 (12) Making grants to the Division of Highways for road
58 projects benefitting an economic opportunity development
59 district;

60 (13) Acquiring an interest in any entity or entities that own
61 any portion of the real property situate in the district and
62 contributing capital to any entity or entities;

63 (14) Remediation of publicly or privately owned landfills,
64 former coal or other mining sites, solid waste facilities or
65 hazardous waste sites to facilitate commercial development
66 which would not otherwise be economically feasible; and

67 (15) To do any and all things necessary, desirable or
68 appropriate to carry out and accomplish the purposes of this
69 article notwithstanding any provision of this code to the
70 contrary.

**§7-22-7. Application to Development Office for approval of an
economic opportunity development district project.**

1 (a) *General.* — The Development Office shall receive and
2 act on applications filed with it by county commissions pursuant
3 to section six of this article. Each application must include:

- 4 (1) A true copy of the notice described in section six of this
5 article;
- 6 (2) The total cost of the project;
- 7 (3) A reasonable estimate of the number of months needed
8 to complete the project;
- 9 (4) A general description of the capital improvements,
10 additional or extended services and other proposed development
11 expenditures to be made in the district as part of the project;
- 12 (5) A description of the proposed method of financing the
13 development expenditures, together with a description of the
14 reserves to be established for financing ongoing development
15 expenditures necessary to permanently maintain the optimum
16 economic viability of the district following its inception:
17 *Provided*, That the amounts of the reserves may not exceed the
18 amounts that would be required by prevailing commercial capital
19 market considerations;
- 20 (6) A description of the sources and anticipated amounts of
21 all financing, including, but not limited to, proceeds from the
22 issuance of any bonds or other instruments, revenues from the
23 special district excise tax and enhanced revenues from property
24 taxes and fees;
- 25 (7) A description of the financial contribution of the county
26 commission to the funding of development expenditures;
- 27 (8) Identification of any businesses that the county
28 commission expects to relocate their business locations from the
29 district to another place in the state in connection with the
30 establishment of the district or from another place in this state to
31 the district: *Provided*, That for purposes of this article, any
32 entities shall be designated “relocated entities”;

33 (9) Identification of any businesses currently conducting
34 business in the proposed economic opportunity development
35 district that the county commission expects to continue doing
36 business there after the district is created;

37 (10) A good faith estimate of the aggregate amount of
38 consumers sales and service tax that was actually remitted to the
39 Tax Commissioner by all business locations identified as
40 provided in subdivisions (8) and (9) of this subsection with
41 respect to their sales made and services rendered from their then
42 current business locations that will be relocated from, or to, or
43 remain in the district, for the twelve full calendar months next
44 preceding the date of the application: *Provided*, That for
45 purposes of this article, the aggregate amount is designated as
46 “the base tax revenue amount”;

47 (11) A good faith estimate of the gross annual district tax
48 revenue amount;

49 (12) The proposed application of any surplus from all
50 funding sources to further the objectives of this article; and

51 (13) Any additional information the Development Office
52 may require.

53 (b) *Review of applications.* — The Development Office shall
54 review all project proposals for conformance to statutory and
55 regulatory requirements, the reasonableness of the project’s
56 budget and timetable for completion and the following criteria:

57 (1) The quality of the proposed project and how it addresses
58 economic problems in the area in which the project will be
59 located;

60 (2) The merits of the project determined by a cost-benefit
61 analysis that incorporates all costs and benefits, both public and
62 private;

63 (3) Whether the project is supported by significant private
64 sector investment and substantial credible evidence that, but for
65 the existence of sales tax increment financing, the project would
66 not be feasible;

67 (4) Whether the economic opportunity district excise tax
68 dollars will leverage or be the catalyst for the effective use of
69 private, other local government, state or federal funding that is
70 available;

71 (5) Whether there is substantial and credible evidence that
72 the project is likely to be started and completed in a timely
73 fashion;

74 (6) Whether the project will, directly or indirectly, improve
75 the opportunities in the area where the project will be located for
76 the successful establishment or expansion of other industrial or
77 commercial businesses;

78 (7) Whether the project will, directly or indirectly, assist in
79 the creation of additional long-term employment opportunities
80 in the area and the quality of jobs created in all phases of the
81 project, to include, but not be limited to, wages and benefits;

82 (8) Whether the project will fulfill a pressing need for the
83 area, or part of the area, in which the economic opportunity
84 district is located;

85 (9) Whether the county commission has a strategy for
86 economic development in the county and whether the project is
87 consistent with that strategy;

88 (10) Whether the project helps to diversify the local
89 economy;

90 (11) Whether the project is consistent with the goals of this
91 article;

92 (12) Whether the project is economically and fiscally sound
93 using recognized business standards of finance and accounting;
94 and

95 (13) (A) The ability of the county commission and the
96 project developer or project team to carry out the project:
97 *Provided*, That no project may be approved by the Development
98 Office unless the amount of all development expenditures
99 proposed to be made in the first twenty-four months following
100 the creation of the district results in capital investment of more
101 than \$75 million in the district and the county submits clear and
102 convincing information, to the satisfaction of the Development
103 Office, that the investment will be made if the Development
104 Office approves the project and the Legislature authorizes the
105 county commission to levy an excise tax on sales of goods and
106 services made within the economic opportunity district as
107 provided in this article: *Provided, however*, That such minimum
108 capital investment does not apply to projects proposed by the
109 Commissioner of Highways in accordance with section
110 twenty-three, article twenty-two, chapter seven of this code.

111 (B) Notwithstanding any provision of paragraph (A) of this
112 subdivision to the contrary, no project involving remediation
113 may be approved by the Development Office unless the amount
114 of all development expenditures proposed to be made in the first
115 forty-eight months following the creation of the district results
116 in capital investment of more than \$75 million in the district. In
117 addition to the remaining provisions of paragraph (A) of this
118 subdivision the Development Office may not approve a project
119 involving remediation authorized under section five of this
120 article unless the county commission submits clear and
121 convincing information, to the satisfaction of the Development
122 Office, that the proposed remediation expenditures to be
123 financed by the issuance of bonds or notes pursuant to section
124 sixteen of this article do not constitute more than twenty-five

125 percent of the total development expenditures associated with
126 the project.

127 (c) *Additional criteria.* — The Development Office may
128 establish other criteria for consideration when approving the
129 applications.

130 (d) *Action on the application.* — Upon receipt of an
131 application, the Development Office shall promptly request a
132 certification from the Tax Commissioner of the base tax revenue
133 amount and the Tax Commissioner shall provide the certification
134 to the Development Office within thirty days. The Executive
135 Director of the Development Office shall act to approve or not
136 approve any application within thirty days following the receipt
137 of the application and the certification from the Tax
138 Commissioner required by this subsection or the receipt of any
139 additional information requested by the Development Office,
140 whichever is the later.

141 (e) *Certification of project.* — If the Executive Director of
142 the Development Office approves a county's economic
143 opportunity district project application, he or she shall issue to
144 the county commission a written certificate evidencing the
145 approval.

146 The certificate shall expressly state a base tax revenue
147 amount, the gross annual district tax revenue amount and the
148 estimated net annual district tax revenue amount which, for
149 purposes of this article, is the difference between the gross
150 annual district tax revenue amount and the base tax revenue
151 amount, all of which the Development Office has determined
152 with respect to the district's application based on any
153 investigation it considers reasonable and necessary, including,
154 but not limited to, any relevant information the Development
155 Office requests from the Tax Commissioner and the Tax
156 Commissioner provides to the Development Office: *Provided,*

157 That in determining the net annual district tax revenue amount,
158 the Development Office may not use a base tax revenue amount
159 less than that amount certified by the Tax Commissioner but, in
160 lieu of confirmation from the Tax Commissioner of the gross
161 annual district tax revenue amount, the Development Office may
162 use the estimate of the gross annual district tax revenue amount
163 provided by the county commission pursuant to subsection (a) of
164 this section.

165 (f) *Certification of enlargement or reduction of geographic*
166 *boundaries of previously certified district.* — If the Executive
167 Director of the Development Office approves a county's
168 economic opportunity district project application to expand or
169 reduce the geographic boundaries of a previously certified
170 district, he or she shall issue to the county commission a written
171 certificate evidencing the approval.

172 The certificate shall expressly state a base tax revenue
173 amount, the gross annual district tax revenue amount and the
174 estimated net annual district tax revenue amount which, for
175 purposes of this article, is the difference between the gross
176 annual district tax revenue amount and the base tax revenue
177 amount, all of which the Development Office has determined
178 with respect to the district's application based on any
179 investigation it considers reasonable and necessary, including,
180 but not limited to, any relevant information the Development
181 Office requests from the Tax Commissioner and the Tax
182 Commissioner provides to the Development Office: *Provided,*
183 That in determining the net annual district tax revenue amount,
184 the Development Office may not use a base tax revenue amount
185 less than that amount certified by the Tax Commissioner but, in
186 lieu of confirmation from the Tax Commissioner of the gross
187 annual district tax revenue amount, the Development Office may
188 use the estimate of the gross annual district tax revenue amount
189 provided by the county commission pursuant to subsection (a) of
190 this section.

191 (g) *Promulgation of rules.* — The Executive Director of the
192 Development Office may promulgate rules to implement the
193 economic opportunity development district project application
194 approval process and to describe the criteria and procedures it
195 has established in connection therewith. These rules are not
196 subject to the provisions of chapter twenty-nine-a of this code
197 but shall be filed with the Secretary of State.

§7-22-8. Establishment of the economic opportunity development district fund.

1 (a) *General.* — There is hereby created a special revenue
2 account in the State Treasury designated the “Economic
3 Opportunity Development District Fund” which is an
4 interest-bearing account and shall be invested in the manner
5 described in section nine-c, article six, chapter twelve of this
6 code with the interest income a proper credit to the Fund.

7 (b) *District subaccount.* — A separate and segregated
8 subaccount within the account shall be established for each
9 economic opportunity development district and each joint
10 economic opportunity development district that is approved by
11 the Executive Director of the Development Office. In addition to
12 the economic opportunity district excise tax levied and collected
13 as provided in this article, funds paid into the account for the
14 credit of any subaccount may also be derived from the following
15 sources:

16 (1) All interest or return on the investment accruing to the
17 subaccount;

18 (2) Any gifts, grants, bequests, transfers, appropriations or
19 donations which are received from any governmental entity or
20 unit or any person, firm, foundation or corporation; and

21 (3) Any appropriations by the Legislature which are made
22 for this purpose.

§7-22-12. Special district excise tax authorized.

1 (a) *General.* — The county commission of a county,
2 authorized by the Legislature to levy a special district excise tax
3 for the benefit of an economic opportunity development district,
4 may, by order entered of record, impose that tax on the privilege
5 of selling tangible personal property and rendering select
6 services in the district in accordance with this section.

7 (b) *Tax base.* — The base of a special district excise tax
8 imposed pursuant to this section shall be identical to the base of
9 the consumers sales and service tax imposed pursuant to article
10 fifteen, chapter eleven of this code on sales made and services
11 rendered within the boundaries of the district. Sales of gasoline
12 and special fuel are not subject to special district excise tax but
13 remain subject to the tax levied by article fifteen, chapter eleven
14 of this code. Except for the exemption provided in section nine-f
15 of that article, all exemptions and exceptions from the consumers
16 sales and service tax also apply to the special district excise tax.

17 (c) *Tax rate.* — The rate or rates of a special district excise
18 tax levied pursuant to this section shall be identical to the rate or
19 rates of the consumer sales and service tax imposed pursuant to
20 article fifteen, chapter eleven of this code on sales made and
21 services rendered within the boundaries of the district authorized
22 by this section.

23 (d) *Collection by Tax Commissioner.* — The order of the
24 county commission imposing a special district excise tax shall
25 provide for the tax to be collected by the Tax Commissioner in
26 the same manner as the tax levied by section three, article
27 fifteen, chapter eleven of this code is administered, assessed,
28 collected and enforced.

29 (1) The Tax Commissioner may require the electronic filing
30 of returns related to the special district excise tax imposed

31 pursuant to this section, and also may require the electronic
32 payment of the special district excise tax imposed pursuant to
33 this section. The Tax Commissioner may prescribe by rules
34 adopted or proposed pursuant to article three, chapter
35 twenty-nine-a of this code, administrative notices, and forms and
36 instructions, the procedures and criteria to be followed to
37 electronically file those returns and to electronically pay the
38 special district excise tax imposed pursuant to this section.

39 (2) Any rules filed by the State Tax Commissioner relating
40 to the special district excise tax imposed pursuant to this section
41 shall set forth the following:

42 (A) Acceptable indicia of timely payment;

43 (B) Which type of electronic filing method or methods a
44 particular type of taxpayer may or may not use;

45 (C) What type of electronic payment method or methods a
46 particular type of taxpayer may or may not use;

47 (D) What, if any, exceptions are allowable, and alternative
48 methods of payment that may be used for any exceptions;

49 (E) Procedures for making voluntary or mandatory electronic
50 payments or both;

51 (F) Procedures for ensuring that taxpayers new to an
52 economic opportunity development district are included within
53 the Tax Commissioner's database;

54 (G) Procedures for ensuring that taxpayers with multiple
55 locations properly allocate their special district excise taxes to
56 the appropriate economic opportunity development district and
57 reflect the allocation of their returns; and

58 (H) Any other provisions necessary to ensure the timely
59 electronic filing of returns related to the special district excise

60 tax and the making of payments electronically of the special
61 district excise tax imposed pursuant to this section.

62 (3)(A) Notwithstanding the provisions of section five-d,
63 article ten, chapter eleven of this code: (i) So long as bonds are
64 outstanding pursuant to this article, the Tax Commissioner shall
65 provide on a monthly basis to the trustee for bonds issued
66 pursuant to this article information on returns submitted pursuant
67 to this article; and (ii) the trustee may share the information so
68 obtained with the county commission that established the
69 economic opportunity development district that issued the bonds
70 pursuant to this article and with the bondholders and with bond
71 counsel for bonds issued pursuant to this article. The Tax
72 Commissioner and the trustee may enter into a written agreement
73 in order to accomplish exchange of the information.

74 (B) Any confidential information provided pursuant to this
75 subdivision shall be used solely for the protection and
76 enforcement of the rights and remedies of the bondholders of
77 bonds issued pursuant to this article. Any person or entity that is
78 in possession of information disclosed by the Tax Commissioner
79 or shared by the trustee pursuant to subdivision (a) of this
80 subsection is subject to the provisions of section five-d, article
81 ten, chapter eleven of this code as if the person or entity that is
82 in possession of the tax information is an officer, employee,
83 agent or representative of this state or of a local or municipal
84 governmental entity or other governmental subdivision.

85 (C) Notwithstanding any provision of this code to the
86 contrary, so long as bonds are outstanding pursuant to this
87 article, the Tax Commissioner shall allow a designated
88 representative of the county commission that established the
89 economic opportunity development district for which the bonds
90 were issued to audit the returns filed by the taxpayers in the
91 economic opportunity development district no less often than
92 once each quarter of the fiscal year. The Tax Commissioner may

93 require the audit to be conducted at the Tax Commissioner's
94 office, may prohibit copying of any returns, and may require the
95 representatives to enter into a written confidentiality agreement.
96 The Tax Commissioner shall promptly investigate any questions
97 raised by an audit, shall promptly take all actions required to
98 correct any errors, and shall report to the applicable county
99 commission the results of its investigation and actions.

100 (e) *Deposit of net tax collected.* —

101 (1) The order of the county commission imposing a special
102 district excise tax shall provide that the Tax Commissioner
103 deposit the net amount of tax collected in the Special Economic
104 Opportunity Development District Fund to the credit of the
105 county commission's subaccount therein for the economic
106 opportunity development district and that the money in the
107 subaccount may only be used to pay for development
108 expenditures as provided in this article except as provided in
109 subsection (f) of this section.

110 (2) The State Treasurer shall withhold from the county
111 commission's subaccount in the Economic Opportunity
112 Development District Fund and shall deposit in the General
113 Revenue Fund of this state, on or before the twentieth day of
114 each calendar month next following the effective date of a
115 special district excise tax, a sum equal to one twelfth of the base
116 tax revenue amount last certified by the Development Office
117 pursuant to section seven of this article.

118 (f) *Effective date of special district excise tax.* — Any taxes
119 imposed pursuant to the authority of this section are effective on
120 the first day of the calendar month that begins sixty days after
121 the date of adoption of an order entered of record imposing the
122 tax or the first day of any later calendar month expressly
123 designated in the order.

124 (g) *Copies of order.* — Upon entry of an order levying a
125 special district excise tax, a certified copy of the order shall be
126 mailed to the State Auditor, as ex officio the chief inspector and
127 supervisor of public offices, the State Treasurer and the Tax
128 Commissioner.

§7-22-14. Modification of included area; notice; hearing.

1 (a) *General.* — The order creating an economic opportunity
2 development district may not be amended to include additional
3 contiguous property until after the amendment is approved by
4 the executive director of the Development Office in the same
5 manner as an application to approve the establishment of the
6 district is acted upon under section seven of this article and the
7 amendment is authorized by the Legislature. The order creating
8 an economic opportunity development district may not be
9 amended to remove property until after the amendment is
10 approved by the executive director of the Development Office in
11 the same manner as an application to approve the establishment
12 of the district is acted upon under section seven of this article:
13 *Provided,* That any amendment for the purpose of removing
14 property from an economic opportunity development district
15 may not require authorization from the Legislature and shall
16 ensure that any such district after such an amendment remains
17 contiguous. The order which is entered for the purpose of
18 removing parcels from an existing economic opportunity
19 development district may not be effective any earlier than the
20 first day of the calendar month which begins at least thirty days
21 following the entry of the order or such later date as may be
22 specified by the county commission in the order.

23 (b) *Limitations.* — Additional property may not be included
24 in the district unless it is situated within the boundaries of the
25 county and is contiguous to the then current boundaries of the
26 district.

27 (c) *Public hearing required.* —

28 (1) The county commission of any county desiring to amend
29 its order shall designate a time and place for a public hearing
30 upon the proposal to include additional property. The notice
31 shall meet the requirements set forth in section six of this article.

32 (2) At the time and place set forth in the notice, the county
33 commission shall afford the opportunity to be heard to any
34 owners of real property either currently included in or proposed
35 to be added to the existing district and to any other residents of
36 the county.

37 (d) *Application to West Virginia Development Office.* —
38 Following the hearing, the county commission may, by
39 resolution, approve the filing of an application with the
40 Development Office for the inclusion of the additional property
41 in the district or for the removal of the applicable parcels from
42 the district.

43 (e) *Consideration by the Executive Director of the*
44 *Development Office.* — Before the executive director of the
45 Development Office approves inclusion of the additional
46 property in the district, the Development Office shall determine
47 the amount of taxes levied by article fifteen, chapter eleven of
48 this code that were collected by businesses located in the area the
49 county commission proposes to add to the district in the same
50 manner as the base amount of tax was determined when the
51 district was first created. The State Treasurer shall also deposit
52 one twelfth of this additional tax base amount into the General
53 Revenue Fund each month, as provided in section twelve of this
54 article.

55 (f) *Legislative action required to include additional*
56 *property.* — After the Executive Director of the Development
57 Office approves amending the boundaries of the district to

58 include additional property, the Legislature must amend section
59 nine of this article to allow levy of the special district excise tax
60 on business located in geographic area to be included in the
61 district. After the Legislature amends said section, the county
62 commission may then amend its order: *Provided*, That the order
63 may not be effective any earlier than the first day of the calendar
64 month that begins sixty days after the effective date of the act of
65 the Legislature authorizing the levy on the special district excise
66 tax on businesses located in the geographic area to be added to
67 the boundaries of the district for which the tax is levied or a later
68 date as set forth in the order of the county commission.

69 (g) *Collection of special district excise tax.* — All businesses
70 included in a district because of the boundary amendment shall
71 on the effective date of the order, determined as provided in
72 subsection (f) of this section, collect the special district excise
73 tax on all sales on tangible property or services made from
74 locations in the district on or after the effective date of the
75 county commission's order or a later date as set forth in the
76 order.

77 (h) *Minor Modifications.* — Notwithstanding any provision
78 of this article to contrary, a county commission may amend the
79 order creating an economic opportunity development district to
80 make, and may make, modifications to the boundaries of the
81 economic opportunity development district without holding a
82 public hearing or receiving approval of the executive director of
83 the West Virginia Development Office or authorization by the
84 Legislature if the modifications do not increase the total acreage
85 of the economic opportunity development district or result in a
86 change to the base tax revenue amount. The county commission
87 is authorized to levy special district excise taxes on sales of
88 tangible personal property and services made from business
89 locations within the modified boundaries of the economic
90 opportunity development district.

§7-22-23. Joint economic opportunity development districts.

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state would benefit from coordinated road
3 construction efforts by county commissions and municipalities.

4 (b) Notwithstanding any other section of this code to the
5 contrary, any two or more county commissions, any two or more
6 municipalities, or any combination thereof, may: (1) Create a
7 combined economic opportunity development district; (2)
8 propose joint applications for the districts; (3) enter into one or
9 more intergovernmental agreements between themselves and/or
10 the Commissioner of Highways to share: (A) Project expenses;
11 and (B) certain excise tax collections, on a pro rata or other
12 basis, to facilitate construction of projects within the combined
13 economic opportunity development district and to jointly take
14 such other actions as are authorized in the County Economic
15 Opportunity Development District Act.

16 (c) When a project begins in one county and ends in another
17 county of this state, the county commission of each county
18 included in a multicounty project may, by resolution, adopt a
19 written intergovernmental agreement with each county and/or
20 the Commissioner of Highways regarding the proposed
21 multicounty project. When the project begins or passes through
22 the corporate limits of a municipality, the governing body of that
23 municipality may by resolution adopt a written
24 intergovernmental agreement with the county or counties in
25 which the project is located.

26 (d) No county commission or municipality may withdraw
27 from an intergovernmental agreement if bonds or notes, remain
28 outstanding the proceeds of which were used to finance
29 construction of the project for which the written
30 intergovernmental agreement was executed.

31 (e) No withdrawing county commission or municipality is
32 entitled to the return of any money or property advanced to the
33 project.

34 (f) Notwithstanding any provision of this code to the
35 contrary, any county commission or municipality that creates an
36 economic opportunity development district may enter into one
37 or more intergovernmental agreements with one or more other
38 counties or municipalities that also create an economic
39 opportunity development district to finance, in whole or in part,
40 one or more projects, to pool tax increment and other revenues
41 to finance, in whole or in part, contiguous projects on a cash
42 basis or to pay debt service on bonds or notes.

43 (g) The obligations of the parties under any
44 intergovernmental agreement executed pursuant to this article is
45 not debt within the meaning of sections six or eight, article X of
46 the Constitution of West Virginia.

47 (h) Any intergovernmental agreement must be approved by
48 resolution adopted by a majority vote of the county commission
49 of each county participating in the agreement, by a majority vote
50 of the governing body of each municipality participating in the
51 agreement and by the Commissioner of Highways.

52 (i) The Commissioner of Highways is authorized to enter
53 into intergovernmental agreements with county commissions and
54 municipalities of this state, or with the federal government or
55 any agency thereof, respecting the financing, planning, and
56 construction of state roads and bridges, including related
57 infrastructure if any, constructed, in whole or in part, pursuant to
58 this article.

§7-22-24. Application by Division of Highways.

1 (a) The Commissioner of Highways may propose the
2 creation by a county commission of an economic opportunity

3 development district and project plans, or propose amendments
4 to existing project plans. This plan may include related
5 infrastructure that is necessary or convenient to economic
6 development adjacent to the proposed project.

7 (b) Projects proposed by the Commissioner of Highways are
8 limited to those related to the construction, reconstruction,
9 improvement or modernization of state roads, as defined in
10 article four, chapter seventeen of this code, that are part of the
11 state road system, as defined in that article, or that will become
12 part of the state road system upon completion of the
13 construction. All construction, reconstruction, improvement or
14 modernization and maintenance of state roads shall be done by
15 or under the supervision of the Commissioner of Highways.

16 (c) All road projects that are accepted as part of the state
17 road system, and all real property interests and appurtenances,
18 shall be under the exclusive jurisdiction and control of the
19 Commissioner of Highways, who may exercise the same rights
20 and authority as he or she has over other transportation facilities
21 in the state road system.

22 (d) Except as provided in an intergovernmental agreement
23 executed by one or more county commissions, municipalities
24 and/or the Commissioner of Highways and as provided in this
25 article, a county commission or municipality may not be
26 required to pay for the cost of constructing, reconstructing,
27 improving, maintaining a road that is part of the state road
28 system as defined in article four, chapter seventeen of this code
29 or to pay any other expense fairly related to that road.

30 (e) The powers conferred by this article on the
31 Commissioner of Highways or the Division of Highways are in
32 addition and supplemental to the powers conferred upon the
33 Commissioner of Highways, the Division of Highways, and the

34 Department of Transportation by the Legislature elsewhere in
35 this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§8-38-5. Development expenditures.

1 Any municipality that has established an economic
2 opportunity development district under this article may make, or
3 authorize to be made by a district board and other public or
4 private parties, development expenditures as will promote the
5 economic vitality of the district and the general welfare of the
6 municipality, including, but not limited to, expenditures for the
7 following purposes:

8 (1) Beautification of the district by means including
9 landscaping and construction and erection of fountains, shelters,
10 benches, sculptures, signs, lighting, decorations and similar
11 amenities;

12 (2) Provision of special or additional public services such as
13 sanitation, security for persons and property and the construction
14 and maintenance of public facilities, including, but not limited
15 to, sidewalks, parking lots, parking garages and other public
16 areas;

17 (3) Making payments for principal, interest, issuance costs,
18 any of the costs described in section twenty of this article and
19 appropriate reserves for bonds and other instruments and
20 arrangements issued or entered into by the municipality for
21 financing the expenditures of the district described in this section
22 and to otherwise implement the purposes of this article;

23 (4) Providing financial support for public transportation and
24 vehicle parking facilities open to the general public, whether

25 physically situate within the district's boundaries or on adjacent
26 land;

27 (5) Acquiring, building, demolishing, razing, constructing,
28 repairing, reconstructing, refurbishing, renovating, rehabilitating,
29 expanding, altering, otherwise developing, operating and
30 maintaining real property generally, parking facilities,
31 commercial structures and other capital improvements to real
32 property, fixtures and tangible personal property, whether or not
33 physically situate within the district's boundaries including, but
34 not limited to, state road improvements pursuant to an
35 intergovernmental agreement with the Commissioner of
36 Highways: *Provided*, That the expenditure directly benefits the
37 district;

38 (6) Developing plans for the architectural design of the
39 district and portions thereof and developing plans and programs
40 for the future development of the district;

41 (7) Developing, promoting and supporting community
42 events and activities open to the general public that benefit the
43 district;

44 (8) Providing the administrative costs for a district
45 management program;

46 (9) Providing for the usual and customary maintenance and
47 upkeep of all improvements and amenities in the district as are
48 commercially reasonable and necessary to sustain its economic
49 viability on a permanent basis;

50 (10) Providing any other services that the municipality or
51 district board is authorized to perform and which the
52 municipality does not also perform to the same extent on a
53 countywide basis;

54 (11) Making grants to the owners or tenants of economic
55 opportunity development district for the purposes described in
56 this section;

57 (12) Making grants to the Division of Highways for road
58 projects benefitting an economic opportunity development
59 district;

60 (13) Acquiring an interest in any entity or entities that own
61 any portion of the real property situate in the district and
62 contributing capital to any entity or entities;

63 (14) Remediation of publicly or privately owned landfills,
64 former coal or other mining sites, solid waste facilities or
65 hazardous waste sites to facilitate commercial development
66 which would not otherwise be economically feasible; and

67 (15) To do any and all things necessary, desirable or
68 appropriate to carry out and accomplish the purposes of this
69 article notwithstanding any provision of this code to the
70 contrary.

§8-38-7. Application to Development Office for approval of an economic opportunity development district project.

1 (a) *General.* — The Development Office shall receive and
2 act on applications filed with it by municipalities pursuant to
3 section six of this article. Each application must include:

4 (1) A true copy of the notice described in section six of this
5 article;

6 (2) The total cost of the project;

7 (3) A reasonable estimate of the number of months needed
8 to complete the project;

9 (4) A general description of the capital improvements,
10 additional or extended services and other proposed development
11 expenditures to be made in the district as part of the project;

12 (5) A description of the proposed method of financing the
13 development expenditures, together with a description of the
14 reserves to be established for financing ongoing development
15 expenditures necessary to permanently maintain the optimum
16 economic viability of the district following its inception:
17 *Provided*, That the amounts of the reserves may not exceed the
18 amounts that would be required by prevailing commercial capital
19 market considerations;

20 (6) A description of the sources and anticipated amounts of
21 all financing, including, but not limited to, proceeds from the
22 issuance of any bonds or other instruments, revenues from the
23 special district excise tax and enhanced revenues from property
24 taxes and fees;

25 (7) A description of the financial contribution of the
26 municipality to the funding of development expenditures;

27 (8) Identification of any businesses that the municipality
28 expects to relocate their business locations from the district to
29 another place in the state in connection with the establishment of
30 the district or from another place in this state to the district:
31 *Provided*, That for purposes of this article, any entities shall be
32 designated “relocated entities”;

33 (9) Identification of any businesses currently conducting
34 business in the proposed economic opportunity development
35 district that the municipality expects to continue doing business
36 there after the district is created;

37 (10) A good faith estimate of the aggregate amount of
38 consumers sales and service tax that was actually remitted to the

39 Tax Commissioner by all business locations identified as
40 provided in subdivisions (8) and (9) of this subsection with
41 respect to their sales made and services rendered from their then
42 current business locations that will be relocated from, or to, or
43 remain in the district for the twelve full calendar months next
44 preceding the date of the application: *Provided*, That for
45 purposes of this article, the aggregate amount is designated as
46 “the base tax revenue amount”;

47 (11) A good faith estimate of the gross annual district tax
48 revenue amount;

49 (12) The proposed application of any surplus from all
50 funding sources to further the objectives of this article; and

51 (13) Any additional information the Development Office
52 may require.

53 (b) *Review of applications.* — The Development Office shall
54 review all project proposals for conformance to statutory and
55 regulatory requirements, the reasonableness of the project’s
56 budget and timetable for completion and the following criteria:

57 (1) The quality of the proposed project and how it addresses
58 economic problems in the area in which the project will be
59 located;

60 (2) The merits of the project determined by a cost-benefit
61 analysis that incorporates all costs and benefits, both public and
62 private;

63 (3) Whether the project is supported by significant private
64 sector investment and substantial credible evidence that, but for
65 the existence of sales tax increment financing, the project would
66 not be feasible;

67 (4) Whether the economic opportunity development district
68 excise tax dollars will leverage or be the catalyst for the effective

69 use of private, other local government, state or federal funding
70 that is available;

71 (5) Whether there is substantial and credible evidence that
72 the project is likely to be started and completed in a timely
73 fashion;

74 (6) Whether the project will, directly or indirectly, improve
75 the opportunities in the area where the project will be located for
76 the successful establishment or expansion of other industrial or
77 commercial businesses;

78 (7) Whether the project will, directly or indirectly, assist in
79 the creation of additional long-term employment opportunities
80 in the area and the quality of jobs created in all phases of the
81 project, to include, but not be limited to, wages and benefits;

82 (8) Whether the project will fulfill a pressing need for the
83 area, or part of the area, in which the economic opportunity
84 district is located;

85 (9) Whether the municipality has a strategy for economic
86 development in the municipality and whether the project is
87 consistent with that strategy;

88 (10) Whether the project helps to diversify the local
89 economy;

90 (11) Whether the project is consistent with the goals of this
91 article;

92 (12) Whether the project is economically and fiscally sound
93 using recognized business standards of finance and accounting;
94 and

95 (13)(A) The ability of the municipality and the project
96 developer or project team to carry out the project: *Provided*, That

97 no project may be approved by the Development Office unless
98 the amount of all development expenditures proposed to be made
99 in the first twenty-four months following the creation of the
100 district results in capital investment of more than \$75 million in
101 the district and the municipality submits clear and convincing
102 information, to the satisfaction of the Development Office, that
103 the investment will be made if the Development Office approves
104 the project and the Legislature authorizes the municipality to
105 levy an excise tax on sales of goods and services made within the
106 economic opportunity development district as provided in this
107 article: *Provided, however,* That such minimum capital
108 investment does not apply to projects proposed by the
109 Commissioner of Highways in accordance with section
110 twenty-three, article twenty-two, chapter seven of this code.

111 (B) Notwithstanding any provision of paragraph (A) of this
112 subdivision to the contrary, no project involving remediation
113 may be approved by the Development Office unless the amount
114 of all development expenditures proposed to be made in the first
115 forty-eight months following the creation of the district results
116 in capital investment of more than \$75 million in the district. In
117 addition to the remaining provisions of paragraph (A) of this
118 subdivision the Development Office may not approve a project
119 involving remediation authorized under section five of this
120 article unless the municipality submits clear and convincing
121 information, to the satisfaction of the Development Office, that
122 the proposed remediation expenditures to be financed by the
123 issuance of bonds or notes pursuant to section sixteen of this
124 article do not constitute more than twenty-five percent of the
125 total development expenditures associated with the project.

126 (c) *Additional criteria.* — The Development Office may
127 establish other criteria for consideration when approving the
128 applications.

129 (d) *Action on the application.* — The Executive Director of
130 the Development Office shall act to approve or not approve any
131 application within thirty days following the receipt of the
132 application or the receipt of any additional information requested
133 by the Development Office, whichever is the later.

134 (e) *Certification of project.* — If the Executive Director of
135 the Development Office approves a municipality's economic
136 opportunity district project application, he or she shall issue to
137 the municipality a written certificate evidencing the approval.

138 The certificate shall expressly state a base tax revenue
139 amount, the gross annual district tax revenue amount and the
140 estimated net annual district tax revenue amount which, for
141 purposes of this article, is the difference between the gross
142 annual district tax revenue amount and the base tax revenue
143 amount, all of which the Development Office has determined
144 with respect to the district's application based on any
145 investigation it considers reasonable and necessary, including,
146 but not limited to, any relevant information the Development
147 Office requests from the Tax Commissioner and the Tax
148 Commissioner provides to the Development Office: *Provided,*
149 That in determining the net annual district tax revenue amount,
150 the Development Office may not use a base tax revenue amount
151 less than that amount certified by the Tax Commissioner but, in
152 lieu of confirmation from the Tax Commissioner of the gross
153 annual district tax revenue amount, the Development Office may
154 use the estimate of the gross annual district tax revenue amount
155 provided by the municipality pursuant to subsection (a) of this
156 section.

157 (f) *Certification of enlargement or reduction of geographic*
158 *boundaries of previously certified district.* — If the Executive
159 Director of the Development Office approves a municipality's
160 economic opportunity district project application to expand or
161 reduce the geographic boundaries of a previously certified

162 district, he or she shall issue to the municipality a written
163 certificate evidencing the approval.

164 The certificate shall expressly state a base tax revenue
165 amount, the gross annual district tax revenue amount and the
166 estimated net annual district tax revenue amount which, for
167 purposes of this article, is the difference between the gross
168 annual district tax revenue amount and the base tax revenue
169 amount, all of which the Development Office has determined
170 with respect to the district's application based on any
171 investigation it considers reasonable and necessary, including,
172 but not limited to, any relevant information the Development
173 Office requests from the Tax Commissioner and the Tax
174 Commissioner provides to the Development Office: *Provided,*
175 That in determining the net annual district tax revenue amount,
176 the Development Office may not use a base tax revenue amount
177 less than that amount certified by the Tax Commissioner, but, in
178 lieu of confirmation from the Tax Commissioner of the gross
179 annual district tax revenue amount, the Development Office may
180 use the estimate of the gross annual district tax revenue amount
181 provided by the municipality pursuant to subsection (a) of this
182 section.

183 (g) *Promulgation of rules.* — The Executive Director of the
184 Development Office may promulgate rules to implement the
185 economic opportunity development district project application
186 approval process and to describe the criteria and procedures it
187 has established in connection therewith. These rules are not
188 subject to the provisions of chapter twenty-nine-a of this code
189 but shall be filed with the Secretary of State.

§8-38-8. Establishment of the Economic Opportunity Development District Fund.

1 (a) *General.* — There is hereby created a special revenue
2 account in the State Treasury designated the "Economic

3 Opportunity Development District Fund” which is an
4 interest-bearing account and shall be invested in the manner
5 described in section nine-c, article six, chapter twelve of this
6 code with the interest income a proper credit to the Fund.

7 (b) *District subaccount.* — A separate and segregated
8 subaccount within the account shall be established for each
9 economic opportunity development district and each joint
10 economic opportunity development district that is approved by
11 the Executive Director of the Development Office. In addition to
12 the economic opportunity district excise tax levied and collected
13 as provided in this article, funds paid into the account for the
14 credit of any subaccount may also be derived from the following
15 sources:

16 (1) All interest or return on the investment accruing to the
17 subaccount;

18 (2) Any gifts, grants, bequests, transfers, appropriations or
19 donations which are received from any governmental entity or
20 unit or any person, firm, foundation or corporation; and

21 (3) Any appropriations by the Legislature which are made
22 for this purpose.

§8-38-12. Special district excise tax authorized.

1 (a) *General.* — The council of a municipality, authorized by
2 the Legislature to levy a special district excise tax for the benefit
3 of an economic opportunity development district, may, by
4 ordinance, impose that tax on the privilege of selling tangible
5 personal property and rendering select services in the district in
6 accordance with this section.

7 (b) *Tax base.* — The base of a special district excise tax
8 imposed pursuant to this section shall be identical to the base of
9 the consumers sales and service tax imposed pursuant to article

10 fifteen, chapter eleven of this code on sales made and services
11 rendered within the boundaries of the district. Sales of gasoline
12 and special fuel are not subject to special district excise tax, but
13 remain subject to the tax levied by article fifteen, chapter eleven
14 of this code. Except for the exemption provided in section nine-f
15 of article fifteen, chapter eleven of this code, all exemptions and
16 exceptions from the consumers sales and service tax also apply
17 to the special district excise tax.

18 (c) *Tax rate.* — The rate or rates of a special district excise
19 tax levied pursuant to this section shall be stated in an ordinance
20 enacted by the municipality and identical to the rate or rates of
21 the consumers sales and service tax imposed pursuant to article
22 fifteen, chapter eleven of this code on sales rendered within the
23 boundaries of the district authorized by this section.

24 (d) *Collection by Tax Commissioner.* — The ordinance of
25 the municipality imposing a special district excise tax shall
26 provide for the tax to be collected by the Tax Commissioner in
27 the same manner as the tax levied by section three, article
28 fifteen, chapter eleven of this code is administered, assessed,
29 collected and enforced.

30 (1) The State Tax Commissioner may require the electronic
31 filing of returns related to the special district excise tax imposed
32 pursuant to this section and may require the electronic payment
33 of the special district excise tax imposed pursuant to this section.
34 The State Tax Commissioner may prescribe by rules adopted or
35 proposed pursuant to article three, chapter twenty-nine-a of this
36 code, administrative notices, and forms and instructions, the
37 procedures and criteria to be followed to electronically file those
38 returns and to electronically pay the special district excise tax
39 imposed pursuant to this section.

40 (2) Any rules filed by the State Tax Commissioner relating
41 to the special district excise tax imposed pursuant to this section
42 shall set forth the following:

- 43 (A) Acceptable indicia of timely payment;
- 44 (B) Which type of electronic filing method or methods a
45 particular type of taxpayer may or may not use;
- 46 (C) What type of electronic payment method or methods a
47 particular type of taxpayer may or may not use;
- 48 (D) What, if any, exceptions are allowable and alternative
49 methods of payment that may be used for any exceptions;
- 50 (E) Procedures for making voluntary or mandatory electronic
51 payments or both;
- 52 (F) Procedures for ensuring that taxpayers new to an
53 economic opportunity development district are included within
54 the Tax Commissioner's database;
- 55 (G) Procedures for ensuring that taxpayers with multiple
56 locations properly allocate their special district excise taxes to
57 the appropriate economic opportunity development district and
58 reflect the allocation of their returns; and
- 59 (H) Any other provisions necessary to ensure the timely
60 electronic filing of returns related to the special district excise
61 tax and the making of payments electronically of the special
62 district excise tax imposed pursuant to this section.
- 63 (3)(A) Notwithstanding the provisions of section five-d,
64 article ten, chapter eleven of this code: (i) So long as bonds are
65 outstanding pursuant to this article, the Tax Commissioner shall
66 provide on a monthly basis to the trustee for bonds issued
67 pursuant to this article information on returns submitted pursuant
68 to this article; and (ii) the trustee may share the information so
69 obtained with the municipality that established the economic
70 opportunity development district that issued the bonds pursuant
71 to this article and with the bondholders and with bond counsel

72 for bonds issued pursuant to this article. The Tax Commissioner
73 and the trustee may enter into a written agreement in order to
74 accomplish exchange of the information.

75 (B) Any confidential information provided pursuant to this
76 subdivision shall be used solely for the protection and
77 enforcement of the rights and remedies of the bondholders of
78 bonds issued pursuant to this article. Any person or entity that is
79 in possession of information disclosed by the Tax Commissioner
80 or shared by the trustee pursuant to subdivision (a) of this
81 subsection is subject to the provisions of section five-d, article
82 ten, chapter eleven of this code as if the person or entity that is
83 in possession of the tax information is an officer, employee,
84 agent or representative of this state or of a local or municipal
85 governmental entity or other governmental subdivision.

86 (C) Notwithstanding any provision of this code to the
87 contrary, so long as bonds are outstanding pursuant to this
88 article, the Tax Commissioner shall allow a designated
89 representative of the municipality that established the economic
90 opportunity development district for which the bonds were
91 issued to audit the returns filed by the taxpayers in the economic
92 opportunity development district no less often than once each
93 quarter of the fiscal year. The Tax Commissioner may require
94 the audit to be conducted at the Tax Commissioner's office, may
95 prohibit copying of any returns, and may require the
96 representatives to enter into a written confidentiality agreement.
97 The Tax Commissioner shall promptly investigate any questions
98 raised by an audit, shall promptly take all actions required to
99 correct any errors, and shall report to the applicable municipality
100 the results of its investigation and actions.

101 (e) *Deposit of net tax collected.* —

102 (1) The ordinance of the municipality imposing a special
103 district excise tax shall provide that the Tax Commissioner

104 deposit the net amount of tax collected in the special Economic
105 Opportunity Development District Fund to the credit of the
106 municipality's subaccount therein for the economic opportunity
107 development district and that the money in the subaccount may
108 only be used to pay for development expenditures as provided in
109 this article except as provided in subsection (f) of this section.

110 (2)(A) The State Treasurer shall withhold from the
111 municipality's subaccount in the Economic Opportunity
112 Development District Fund and shall deposit in the General
113 Revenue Fund of this state, on or before the twentieth day of
114 each calendar month next following the effective date of a
115 special district excise tax, a sum equal to one twelfth of the base
116 tax revenue amount last certified by the Development Office
117 pursuant to section seven of this article.

118 (B) In addition to the amounts described in paragraph (A) of
119 this subdivision, the Tax Commissioner shall deposit in the
120 General Revenue Fund of this state on the dates specified in
121 paragraph (A) not less than twenty percent nor more than fifty
122 percent of the excess of the special district excise taxes collected
123 during the preceding month above one twelfth of the base tax
124 revenue, said percentage to be fixed by the Development Office
125 in conjunction with its approval of an application in accordance
126 with section seven of this article based on the amount of state
127 funds, if any, to be expended in conjunction with the respective
128 economic opportunity development district project for items
129 including, but not limited to, the acquisition, construction,
130 reconstruction, improvement, enlargement or extension of
131 roadways, rights-of-way, sidewalks, traffic signals, water or
132 sewer lines and other public infrastructure and such other
133 expenditures of state funds identified by the Development
134 Office: *Provided*, That the Development Office has the
135 discretion to reduce the minimum percentage of the excess
136 special district excise taxes deposited by the Tax Commissioner
137 in the General Revenue Fund as outlined above from twenty

138 percent to ten percent in conjunction with its approval of an
139 application in accordance with section seven of this article based
140 on its determination that:

141 (i) The economic development project provides for
142 expenditures in excess of \$100 million;

143 (ii) The economic opportunity development district project
144 does not require the state to expend any additional state funds for
145 items within the district including, but not limited to, the
146 acquisition, construction, reconstruction, improvement,
147 enlargement or extension of roadways, rights-of-way, sidewalks,
148 traffic signals, water or sewer lines and other public
149 infrastructure; and

150 (iii) The economic development project contains a provision
151 for a mixed use development with a housing component with at
152 least ten percent of housing units in the district allocated as
153 affordable housing.

154 (f) *Effective date of special district excise tax.* — Any taxes
155 imposed pursuant to the authority of this section are effective on
156 the first day of the calendar month that begins at least sixty days
157 after the date of enactment of the ordinance imposing the tax or
158 at any later date expressly designated in the ordinance that
159 begins on the first day of a calendar month.

160 (g) *Copies of ordinance.* — Upon enactment of an ordinance
161 levying a special district excise tax, a certified copy of the
162 ordinance shall be mailed to the State Auditor, as ex officio the
163 chief inspector and supervisor of public offices, the State
164 Treasurer and the Tax Commissioner.

§8-38-14. Modification of included area; notice; hearing.

1 (a) *General.* — The ordinance creating an economic
2 opportunity development district may not be amended to include

3 additional contiguous property until after the amendment is
4 approved by the Executive Director of the Development Office
5 in the same manner as an application to approve the
6 establishment of the district is acted upon under section seven of
7 this article. The order creating an economic opportunity
8 development district may not be amended to remove property
9 until after the amendment is approved by the executive director
10 of the Development Office in the same manner as an application
11 to approve the establishment of the district is acted upon under
12 section seven of this article: *Provided*, That any such amendment
13 for the purpose of removing property from an economic
14 opportunity development district shall not require authorization
15 from the Legislature and shall ensure that any such district after
16 such an amendment remains contiguous. The order which is
17 entered for the purpose of removing parcels from an existing
18 economic opportunity development district may not be effective
19 any earlier than the first day of the calendar month which begins
20 at least thirty days following the entry of the order or such later
21 date as may be specified by the county commission in the order.

22 (b) *Limitations.* — Additional property may not be included
23 in the district unless it is situated within the boundaries of the
24 municipality and is contiguous to the then current boundaries of
25 the district.

26 (c) *Public hearing required.* —

27 (1) The council of any municipality desiring to amend its
28 ordinance shall designate a time and place for a public hearing
29 upon the proposal to include additional property. The notice
30 shall meet the requirements set forth in section six of this article.

31 (2) At the time and place set forth in the notice, the
32 municipality shall afford the opportunity to be heard to any
33 owners of real property either currently included in or proposed
34 to be added to the existing district and to any other residents of
35 the municipality.

36 (d) *Application to West Virginia Development Office.* —
37 Following the hearing, the municipality may, by resolution,
38 approve the filing of an application with the Development Office
39 for the inclusion of the additional property in the district or for
40 the removal of the applicable parcels from the district.

41 (e) *Consideration by the Executive Director of the*
42 *Development Office.* — Before the Executive Director of the
43 Development Office approves inclusion of the additional
44 property in the district, the Development Office shall determine
45 the amount of taxes levied by article fifteen, chapter eleven of
46 this code that were collected by businesses located in the area the
47 municipality proposes to add to the district in the same manner
48 as the base amount of tax was determined when the district was
49 first created. The State Treasurer shall also deposit one twelfth
50 of this additional tax base amount into the General Revenue
51 Fund each month, as provided in section twelve of this article.

52 (f) *Legislative action required to include additional*
53 *property.* — After the Executive Director of the Development
54 Office approves amending the boundaries of the district to
55 include additional property, the Legislature must amend section
56 nine of this article to allow levy of the special district excise tax
57 on business located in geographic area to be included in the
58 district. After the Legislature amends said section, the
59 municipality may then amend its ordinance: *Provided*, That the
60 ordinance may not be effective any earlier than the first day of
61 the calendar month that begins sixty days after the effective date
62 of the amended ordinance imposing the levy of the special
63 district excise tax on businesses located in the geographic area
64 to be added to the boundaries of the district for which the tax is
65 levied or the first day of a later calendar month as set forth in the
66 ordinance of the municipality.

67 (g) *Collection of special district excise tax.* — All businesses
68 included in a district because of the boundary amendment shall

69 on the effective date of the ordinance, determined as provided in
70 subsection (f) of this section, collect the special district excise
71 tax on all sales on tangible property or services made from
72 locations in the district on or after the effective date of the
73 municipality's ordinance or a later date as set forth in the
74 ordinance.

75 (h) *Minor modifications.* — Notwithstanding any provision
76 of this article to contrary, a municipality may amend the
77 ordinance creating an economic opportunity development district
78 to make, and may make, modifications to the boundaries of the
79 economic opportunity development district without holding a
80 public hearing or receiving approval of the executive director of
81 the West Virginia Development Office or authorization by the
82 Legislature if the modifications do not increase the total acreage
83 of the economic opportunity development district or result in a
84 change to the base tax revenue amount. The municipality is
85 authorized to levy special district excise taxes on sales of
86 tangible personal property and services made from business
87 locations within the modified boundaries of the economic
88 opportunity development district.

§8-38-23. Joint economic opportunity development districts.

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state would benefit from coordinated road
3 construction efforts by county commissions and municipalities.

4 (b) Notwithstanding any other section of this code to the
5 contrary, any two or more county commissions, any two or more
6 municipalities, or any combination thereof, may: (1) Create a
7 combined economic opportunity development district; (2)
8 propose joint applications for the districts; and (3) enter into one
9 or more intergovernmental agreements between themselves
10 and/or the Commissioner of Highways to share: (A) Project
11 expenses; and (B) certain excise tax collections, on a pro rata or

12 other basis, to facilitate construction of projects within the
13 combined economic opportunity development district and to
14 jointly take such other actions as are authorized in the County
15 Economic Opportunity Development District Act.

16 (c) When a project begins in one county and ends in another
17 county of this state, the county commission of each county
18 included in a multicounty project may, by resolution, adopt a
19 written intergovernmental agreement with each county and/or
20 the Commissioner of Highways regarding the proposed
21 multicounty project. When the project begins or passes through
22 the corporate limits of a municipality, the governing body of that
23 municipality may by resolution adopt a written
24 intergovernmental agreement with the county or counties in
25 which the project is located.

26 (d) No county commission or municipality may withdraw
27 from an intergovernmental agreement as long as bonds or notes,
28 remain outstanding the proceeds of which were used to finance
29 construction of the project for which the written
30 intergovernmental agreement was executed.

31 (e) No withdrawing county commission or municipality is
32 entitled to the return of any money or property advanced to the
33 project.

34 (f) Notwithstanding any provision of this code to the
35 contrary, any county commission or municipality that creates an
36 economic opportunity development district may enter into one
37 or more intergovernmental agreements with one or more other
38 counties or municipalities that also create an economic
39 opportunity development district to finance, in whole or in part,
40 one or more projects, to pool tax increment and other revenues
41 to finance, in whole or in part, contiguous projects on a cash
42 basis or to pay debt service on bonds or notes.

43 (g) The obligations of the parties under any
44 intergovernmental agreement executed pursuant to this article is
45 not debt within the meaning of sections six or eight, article X of
46 the Constitution of West Virginia.

47 (h) Any intergovernmental agreement must be approved by
48 resolution adopted by a majority vote of the county commission
49 of each county participating in the agreement, by a majority vote
50 of the governing body of each municipality participating in the
51 agreement and by the Commissioner of Highways.

52 (i) The Commissioner of Highways is authorized to enter
53 into intergovernmental agreements with county commissions and
54 municipalities of this state, or with the federal government or
55 any agency thereof, respecting the financing, planning, and
56 construction of state roads and bridges, including related
57 infrastructure if any, constructed, in whole or in part, pursuant to
58 this article.

§8-38-24. Application by Division of Highways.

1 (a) The Commissioner of Highways may propose the
2 creation by a county commission of an economic opportunity
3 development district and project plans, or propose amendments
4 to existing project plans.

5 (b) Projects proposed by the Commissioner of Highways are
6 limited to those related to the construction, reconstruction,
7 improvement or modernization of state roads, as defined in
8 article four, chapter seventeen of this code, that are part of the
9 state road system, as defined in that article or that will become
10 part of the state road system upon completion of the
11 construction. All construction, reconstruction, improvement or
12 modernization and maintenance of state roads shall be done by
13 or under the supervision of the Commissioner of Highways.

14 (c) All road projects that are accepted as part of the state
15 road system, and all real property interests and appurtenances,
16 shall be under the exclusive jurisdiction and control of the
17 Commissioner of Highways, who may exercise the same rights
18 and authority as he or she has over other transportation facilities
19 in the state road system.

20 (d) Except as provided in an intergovernmental agreement
21 executed by one or more county commissions, municipalities
22 and/or the Commissioner of Highways and as provided in this
23 article, a county commission or municipality may not be
24 required to pay for the cost of constructing, reconstructing,
25 improving, maintaining a road that is part of the state road
26 system as defined in article four, chapter seventeen of this code
27 or to pay any other expense fairly related to that road.

28 (e) The powers conferred by this article on the
29 Commissioner of Highways or the Division of Highways are in
30 addition and supplemental to the powers conferred upon the
31 Commissioner of Highways, the Division of Highways, and the
32 Department of Transportation by the Legislature elsewhere in
33 this code.

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11a. Administration of special district excise tax; commission authorized.

1 (a) Any municipality or county commission which, pursuant
2 to section twelve, article twenty-two, chapter seven of this code,
3 or section twelve, article thirty-eight, chapter eight of this code
4 imposes a special district excise tax shall, by express provision
5 in the order or ordinance imposing that tax, authorize the State

6 Tax Commissioner to administer, assess, collect and enforce that
7 tax on behalf of and as its agent.

8 (1) The county commission or municipality shall make such
9 authorization by the adoption of a provision in its order or
10 ordinance levying a special district excise tax stating its purpose
11 and referring to this section and providing that the order or
12 ordinance shall be effective on the first day of a month at least
13 sixty days after its adoption.

14 (2) A certified copy of the order or ordinance shall be
15 forwarded to the State Auditor, the State Treasurer and the Tax
16 Commissioner so that it will be received within five days after
17 its adoption or enactment.

18 (b) Any special district excise tax administered under this
19 section shall be administered and collected by the Tax
20 Commissioner in the same manner and subject to the same
21 interest, additions to tax and penalties as provided for the tax
22 imposed in article fifteen of this chapter.

23 (c) All special district excise tax moneys collected by the
24 Tax Commissioner under this section shall be paid into the State
25 Treasury to the credit of each county commission's subaccount
26 in the economic opportunity development district fund created
27 pursuant to section nine, article twenty-two, chapter seven of this
28 code, or to the credit of each municipality's subaccount in the
29 economic opportunity development district fund created
30 pursuant to section nine, article thirty-eight, chapter eight of this
31 code, for the particular economic opportunity development
32 district. The special district excise tax moneys shall be credited
33 to the subaccount of each particular county commission or
34 municipality levying a special district excise tax being
35 administered under this section. The credit shall be made to the
36 subaccount of the county commission or municipality for the
37 economic opportunity development district in which the taxable

38 sales were made and taxable services rendered as shown by the
39 records of the Tax Commissioner and certified by him or her
40 monthly to the State Treasurer, namely, the location of each
41 place of business of every vendor collecting and paying the tax
42 to the Tax Commissioner without regard to the place of possible
43 use by the purchaser.

44 (d) As soon as practicable after the special district excise tax
45 moneys have been paid into the State Treasury in any month for
46 the preceding reporting period, the district board or the county
47 commission or municipality imposing the tax may issue a
48 requisition to the State Auditor requesting issuance of a state
49 warrant for the proper amount in favor of each county
50 commission or municipality entitled to the monthly remittance
51 of its special district excise tax moneys.

52 (1) Upon receipt of the requisition, the Auditor shall issue
53 his or her warrant on the State Treasurer for the funds requested
54 and the State Treasurer shall pay the warrant out of the
55 subaccount.

56 (2) If errors are made in any payment, or adjustments are
57 otherwise necessary, whether attributable to refunds to taxpayers
58 or to some other fact, the errors shall be corrected and
59 adjustments made in the payments for the next six months as
60 follows: One sixth of the total adjustment shall be included in the
61 payments for the next six months. In addition, the payment shall
62 include a refund of amounts erroneously not paid to the county
63 commission or the municipality and not previously remitted
64 during the three years preceding the discovery of the error.

65 (3) A correction and adjustment in payments described in
66 this subsection due to the misallocation of funds by the vendor
67 shall be made within three years of the date of the payment error.

68 (e) Notwithstanding any other provision of this code to the
69 contrary, the Tax Commissioner shall deduct and retain for the

70 benefit of his or her office for expenditure pursuant to
71 appropriation of the Legislature from each payment into the
72 State Treasury, as provided in subsection (c) of this section, one
73 percent thereof as a commission to compensate his or her office
74 for the discharge of the duties described in this section.

CHAPTER 54

**(Com. Sub. for S. B. 339 - By Senators Trump, Kessler, Woelfel,
Palumbo, Romano, Plymale and Yost)**

[Passed March 12, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-2C-1, §4-2C-2 and §4-2C-3, all relating to establishing a judicial compensation commission; establishing as an advisory commission to the Legislature; setting responsibilities for commission; establishing membership of commission; setting terms of service for appointed members; setting eligibility requirements for certain commission members; providing that members of commission are ineligible for appointment to state judicial position while serving on commission; providing for reimbursement of expenses incurred in carrying out responsibilities of commission; providing for filling of vacancies on commission; giving commission authority to make salary recommendations for certain judicial officers to the Legislature; providing for location of commission meetings; setting meeting notice requirements; directing election of a chairperson; setting quorum requirements; permitting commission to request staff assistance from Joint Committee on Government and Finance; permitting commission to request assistance and information from administrative office of Supreme Court of

Appeals; requiring meetings be conducted pursuant to open meetings laws; directing commission to study compensation structure for certain judicial officers for purposes of preparing recommendations; setting forth required factors to be considered in making recommendations regarding compensation; establishing certain dates for preparation and submission of recommendations; providing for filing of commission reports and recommendations with certain offices and entities; allowing a bill enacting commission's salary recommendations to be introduced by the presiding officers of the Senate and House of Delegates in the legislative session following receipt of report; providing for continued study and preparation of recommendations by the commission if the recommendations are not adopted; and providing that commission be adjourned for three years if the complete recommendations of the commission are adopted by the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. JUDICIAL COMPENSATION COMMISSION.

§4-2C-1. Judicial Compensation Commission established; membership.

1 (a) The Judicial Compensation Commission is hereby
2 established as an advisory commission to the West Virginia
3 Legislature. The commission shall be responsible for studying
4 the compensation structure for justices of the Supreme Court of
5 Appeals, circuit court judges, family court judges, magistrates
6 and any other judicial officer subject to election and which office
7 requires the judge to hold a professional license to serve in that
8 position. The commission shall also be responsible for

9 determining and making recommendation as to the adequate
10 compensation for those positions to ensure that highly qualified
11 persons will be attracted to serve on the bench.

12 (b) The commission shall be comprised of the following five
13 members:

14 (1) The Dean of the West Virginia University College of
15 Law;

16 (2) Two individuals appointed by the President of the
17 Senate; and

18 (3) Two individuals appointed by the Speaker of the House
19 of Delegates.

20 (c) Any person appointed to serve on the commission
21 pursuant to subdivisions (2) and (3), subsection (b) of this
22 section shall serve for four years: *Provided*, That no public
23 employee, elected public official, person receiving a pension
24 from the State of West Virginia, member of the West Virginia
25 State Bar or officer of a state or county political party executive
26 committee established pursuant to W.Va. Code §3-1-9 may be
27 appointed pursuant to subdivision (2) or (3) subsection (b) of this
28 section to serve on the commission. The initial appointments to
29 the commission shall be made by July 1, 2016. Upon expiration
30 of any term, the person previously appointed shall continue to
31 serve until his or her successor is duly appointed and qualified
32 to serve on the commission.

33 (d) A member of the commission is not eligible for
34 appointment to a state judicial position as long as he or she is
35 serving as a member of the commission.

36 (e) The members of the commission shall serve without
37 compensation but shall be reimbursed by the Joint Committee on
38 Government and Finance for reasonable expenses incurred in

39 carrying out the responsibilities of the commission. Commission
40 members shall be reimbursed at the same rate established for
41 public employees.

42 (f) In the event of a vacancy on the commission, the
43 unexpired term shall be filled in the same manner used to make
44 the original appointment within sixty days of the vacancy.

§4-2C-2. Commission meetings; where held; how conducted.

1 (a) The commission shall meet in Charleston, West Virginia,
2 at the place and time designated by the chairperson with at least
3 ten days' written notice to the members of the commission.

4 (b) The commission shall meet at the call of the chairperson
5 or at the request of a majority of the members.

6 (c) For purposes of calling the first meeting, the Dean of the
7 West Virginia University College of Law shall serve as the
8 initial chairperson. At its first meeting, the members of the
9 commission will select a chairperson. In the event that the
10 member selected to serve as chairperson ceases to be a member
11 of the commission, the Dean of West Virginia University
12 College of Law shall serve as the chairperson for purposes of
13 calling the next meeting.

14 (d) A majority of the commission members shall constitute
15 a quorum.

16 (e) The commission shall meet as often as is necessary to
17 conduct a thorough review of judicial compensation and prepare
18 the report and recommendations provided for in section three of
19 this article.

20 (f) In furtherance of its duties, the commission may request
21 staff assistance from the Joint Committee on Government and
22 Finance. The Commission may additionally seek assistance and

23 information from the administrative office of the Supreme Court
24 of Appeals as may be necessary in the collection of data and
25 research.

26 (g) All meetings of the commission and all business
27 conducted by the commission shall be subject to the open
28 meetings provisions of article nine-a, chapter six of this code.

**§4-2C-3. Judicial Compensation Commission reports and
recommendations; legislative action.**

1 (a) During any time it is convened, the commission shall
2 study the compensation structure for justices of the Supreme
3 Court of Appeals, circuit court judges, family court judges,
4 magistrates and any other judicial officer subject to election and
5 which office requires the judge to hold a professional license to
6 serve in that position for purposes of making a recommendation
7 concerning appropriate compensation for those judicial officers.

8 (b) In recommending the appropriate salaries of the state's
9 judicial officers, the commission shall consider the following
10 factors:

11 (1) The skill and experience required of the particular
12 judgeship at issue;

13 (2) The value of comparable service performed by justices
14 and judges, as determined by reference to judicial compensation
15 in other states and in the federal government;

16 (3) The value of comparable service performed in the private
17 sector including, but not limited to, private judging, arbitration,
18 and mediation;

19 (4) The compensation of attorneys in the private sector;

20 (5) The cost of living;

21 (6) The compensation presently received by other public
22 officials in the state;

23 (7) The level of overall compensation adequate to attract the
24 most highly qualified individuals in the state, from a diversity of
25 life and professional experiences, to serve the judiciary without
26 unreasonable hardship and with judicial independence unaffected
27 by financial concerns; and

28 (8) Any other information the commission may find relevant
29 in its mission to determine the appropriate compensation for the
30 state's judicial officers.

31 (c) The commission shall prepare and submit its first report
32 containing its recommendations no later than September 1, 2017.
33 The commission shall then prepare and submit subsequent
34 reports on or before September 1 of each year thereafter, except
35 during those years that the commission is adjourned pursuant to
36 the provisions of subsection (f) of this section.

37 (d) The commission shall send a copy of its
38 recommendations to the Governor, the Joint Committee on
39 Government and Finance, the Chief Justice of the Supreme Court
40 of Appeals and the Administrative Director of the Supreme
41 Court of Appeals.

42 (e) In the immediate legislative session following the year in
43 which a recommendation is received from the commission, a bill
44 adopting the salary recommendations made by the commission
45 may be introduced by the presiding officer in both the Senate
46 and the House of Delegates.

47 (f) The commission shall continue to meet and prepare
48 updated recommendations in accordance with the following
49 schedule:

50 (1) If the bill introduced pursuant to subsection (e) of this
51 section is enacted adopting the complete recommendations of the

52 commission, the commission shall then be adjourned for three
53 years from the effective date of the increase.

54 (2) If the bill introduced pursuant to subsection (e) of this
55 section is not enacted or, if that bill is enacted, but adopts
56 salaries less than those which were recommended by the
57 commission, the commission shall continue to meet annually to
58 prepare updated recommendations to provide to the parties
59 identified in subsection (d) of this section.



CHAPTER 55

(Com. Sub. for S. B. 274 - By Senator Walters)

[Passed March 7, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §50-2-1 of the Code of West Virginia, 1931, as amended, relating to increasing the civil jurisdictional amount in magistrate courts from \$5,000 to \$10,000.

Be it enacted by the Legislature of West Virginia:

That §50-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

1 Except as limited herein and in addition to jurisdiction
2 granted elsewhere to magistrate courts, such courts shall have
3 jurisdiction of all civil actions wherein the value or amount in
4 controversy or the value of property sought, exclusive of interest

5 and cost, is not more than \$10,000. Magistrate courts shall have
6 jurisdiction of all matters involving unlawful entry or detainer of
7 real property or involving wrongful occupation of residential
8 rental property, so long as the title to such property is not in
9 dispute. Except as the same may be in conflict with the
10 provisions of this chapter, the provisions of article three, chapter
11 fifty-five of this code, regarding unlawful entry and detainer,
12 shall apply to such actions in magistrate court. Magistrate courts
13 shall have jurisdiction of actions on bonds given pursuant to the
14 provisions of this chapter. Magistrate courts shall have
15 continuing jurisdiction to entertain motions in regard to
16 post-judgment process issued from magistrate court and
17 decisions thereon may be appealed in the same manner as
18 judgments.

19 Magistrate courts do not have jurisdiction of actions in
20 equity, of matters in eminent domain, of matters in which the
21 title to real estate is in issue, of proceedings seeking satisfaction
22 of liens through the sale of real estate, of actions for false
23 imprisonment, of actions for malicious prosecution or of actions
24 for slander or libel or of any of the extraordinary remedies set
25 forth in chapter fifty-three of this code.

26 Magistrates, magistrate court clerks, magistrate court deputy
27 clerks and magistrate assistants shall have the authority to
28 administer any oath or affirmation, to take any affidavit or
29 deposition, unless otherwise expressly provided by law, and to
30 take, under such regulations as are prescribed by law, the
31 acknowledgment of deeds and other writings.

CHAPTER 56

**(H. B. 4740 - By Delegates Weld, Hanshaw,
McCuskey, Fleischauer, Kessinger, Sobonya, Summers,
Zatezalo and J. Nelson)**

[Passed on March 12, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §52-1-11 of the Code of West Virginia, 1931, as amended, relating to excuses from jury service; and permitting that current members of the National Guard or reserves may be excused from jury duty.

Be it enacted by the Legislature of West Virginia:

That §52-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-11. Excuses from jury service.

1 (a) The court, upon request of a prospective juror or on its
2 own initiative, shall determine on the basis of information
3 provided on the juror qualification form or interview with the
4 prospective juror or other competent evidence whether the
5 prospective juror should be excused from jury service. The clerk
6 shall enter this determination in the space provided on the juror
7 qualification form.

8 (b) A person who is not disqualified for jury service under
9 section eight of this article may be excused from jury service by
10 the court upon a showing of undue hardship, extreme

11 inconvenience, or public necessity, for a period the court deems
 12 necessary, at the conclusion of which the person shall reappear
 13 for jury service in accordance with the court's direction.

14 (c) A person who is not disqualified for jury service under
 15 section eight of this article may be excused from jury service by
 16 the court if the person is a current member of the National Guard
 17 or reserves.

CHAPTER 57

**(H. B. 4644 - By Delegates Miller, Border, D. Evans, Statler,
 Moffatt, McCuskey, Sobonya and Rohrbach)**

[Passed March 7, 2016; in effect ninety days from passage.]
 [Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §52-1-17 of the Code of West Virginia, 1931, as amended, relating to deleting subsection (e) therein which provides the sheriff to pay into the State Treasury all jury costs received from the court clerks and that the sheriff shall be held to account in the sheriff's annual settlement for all the moneys.

Be it enacted by the Legislature of West Virginia:

That §52-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PETIT JURIES.

§52-1-17. Reimbursement of jurors.

1 (a) A juror shall be paid mileage, at the rate set by the
 2 Secretary of the Department of Administration, for travel

3 expenses to and from the juror's residence to the courthouse or
4 other place where the court is convened and shall be reimbursed
5 for other expenses incurred as a result of his or her required
6 attendance at sessions of the court at a rate of not less than \$15
7 nor more than \$40, set at the discretion of the circuit court or the
8 chief judge of the circuit court, for each day of required
9 attendance. The reimbursement shall be based on vouchers
10 submitted to the sheriff and shall be paid out of the State
11 Treasury.

12 (b) When a jury in any case is placed in the custody of the
13 sheriff, he or she shall provide the jury with meals and lodging
14 while they are in the sheriff's custody at a reasonable cost to be
15 determined by an order of the court. The costs of the meals and
16 lodging shall be paid out of the State Treasury.

17 (c) Any time a panel of prospective jurors has been required
18 to report to court for the selection of a petit jury in any scheduled
19 matter, the court shall, by specific provision in a court order,
20 assess a jury cost. In both magistrate and circuit court cases the
21 jury cost shall be the actual cost of the jurors' service: *Provided*,
22 That the actual cost of a magistrate jury can only be assessed
23 where the jury request or demand occurs on or after July 1, 2007.
24 For any magistrate court case in which the jury request or
25 demand occurred prior to July 1, 2007, the jury cost assessed
26 shall be \$200. The jury costs shall be assessed against the parties
27 as follows:

28 (1) In every criminal case, against the defendant upon
29 conviction, whether by plea, by bench trial or by jury verdict;

30 (2) In every civil case, against either party or prorated
31 against both parties, at the court's discretion, if the parties settle
32 the case or elect for a bench trial; and

33 (3) In the discretion of the court, and only when fairness and
34 justice so require, a circuit court or magistrate court may forego

35 assessment of the jury fee, but shall set out the reasons for
36 waiving the fee in a written order: *Provided*, That a waiver of the
37 assessment of a jury fee in a case tried before a jury in
38 magistrate court may only be permitted after the circuit court, or
39 the chief judge of the circuit court, has reviewed the reasons set
40 forth in the order by the magistrate and has approved the waiver.

41 (d)(1) The circuit or magistrate court clerk shall by the tenth
42 day of the month following the month of collection remit to the
43 State Treasurer for deposit as described in subdivision (2) of this
44 subsection all jury costs collected and the clerk and the clerk's
45 surety are liable for the collection on the clerk's official bond as
46 for other money coming into the clerk's hands by virtue of the
47 clerk's office. When the amount of the jury costs collected in a
48 magistrate court case exceeds \$200, the magistrate court clerk
49 shall separately delineate the portion of the collected jury costs
50 which exceeds \$200.

51 (2) The jury costs described in subdivision (1) of this
52 subsection shall upon receipt by the State Treasurer be deposited
53 as follows:

54 (A) All jury costs collected in a magistrate court case which
55 exceed \$200 shall be deposited in the State's General Revenue
56 Fund; and

57 (B) The remaining balance of the collected jury costs shall
58 be deposited as follows:

59 (i) One-half shall be deposited into the Parent Education and
60 Mediation Fund created in section six hundred four, article nine,
61 chapter forty-eight of this code; and

62 (ii) One-half shall be deposited into the Domestic Violence
63 Legal Services Fund created in section six hundred three, article
64 twenty-six of chapter forty-eight of this code.

CHAPTER 58

(Com. Sub. for H. B. 4244 - By Delegates Walters, Frich, Westfall, McCuskey, Manchin, Skinner, Shott, Flanigan, Waxman, Perry and B. White)

[Passed February 19, 2016; in effect ninety days from passage.]
[Approved by the Governor on February 25, 2016.]

AN ACT to amend and reenact §31C-2-6 of the Code of West Virginia, 1931, as amended, relating to eliminating the need for a public hearing when no objection is filed on an application from an out of state state-chartered credit union to establish a branch in West Virginia; requiring public notice to be given of application; setting forth requirements for the public notice; and providing for notice to banking institutions and credit unions when requested for in writing.

Be it enacted by the Legislature of West Virginia:

That §31C-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. FORMATION OF CREDIT UNION.

§31C-2-6. Out-of-state credit unions.

- 1 (a) A credit union organized under the laws of another state
- 2 or territory of the United States may conduct business as a credit
- 3 union through a branch or service facility in this state with the
- 4 approval by written order of the commissioner, provided credit
- 5 unions incorporated under this chapter are allowed to do
- 6 business in the other state under conditions similar to these
- 7 provisions. Unless the context clearly requires otherwise, the

8 term “territory of the United States”, as used in this chapter,
9 includes the District of Columbia. The commissioner shall, after
10 filing a public notice of the application, hold a public hearing to
11 consider the application: *Provided*, That a hearing may be
12 waived by the commissioner if no objection to the application is
13 received within ten days after the filing of the public notice.
14 Public notice of the application shall be provided by posting it on
15 the division’s website, filing it with the secretary of state for
16 inclusion in the state register, and mailing or electronically
17 providing a copy to all banking institutions and credit unions
18 who have requested notice of any such application. The request
19 by any such banking institution or credit union to receive such
20 notice shall be in writing and shall request the commissioner to
21 notify it of the receipt by the commissioner of any application to
22 conduct business by a credit union pursuant to this section.

23 (b) Before granting approval, the commissioner shall enter
24 an order finding that the applicant out-of-state credit union:

25 (1) Is a credit union organized and operating under standards
26 recognized as appropriate pursuant to the provisions of this
27 chapter;

28 (2) Is financially solvent and has an adequate capital
29 structure;

30 (3) Has account insurance as required for credit unions
31 incorporated under this chapter;

32 (4) Has a board of directors and supervisory committee with
33 the reputation, character and abilities to provide assurance that
34 the credit union’s affairs will be properly administered;

35 (5) Has in connection with any office of operations in this
36 state made provision for suitable quarters from which to conduct
37 the business of a credit union;

38 (6) Is examined and supervised by a regulatory agency of the
39 state or territory in which it is organized; and

40 (7) Needs to conduct business in this state to adequately
41 serve its members in this state.

42 (c) No out-of-state credit union may conduct business in this
43 state unless it:

44 (1) Complies with the limits on finance charges applicable
45 to credit unions set forth in section two, article seven of this
46 chapter when making loans in this state;

47 (2) Complies with the consumer protection statutes and rules
48 applicable to credit unions incorporated under this chapter;

49 (3) Agrees to furnish the commissioner a copy of the report
50 of examination of its regulatory agency, and if deemed necessary
51 by the commissioner, to submit to an examination by the
52 commissioner, the cost of which shall be paid for by the credit
53 union; and

54 (4) Designates and maintains an agent for the service of
55 process in this state.

56 (d) The commissioner may revoke the approval of a credit
57 union to conduct business in this state if the commissioner finds
58 that:

59 (1) The credit union no longer meets the requirements of
60 subsection (a) of this section;

61 (2) The credit union has violated the laws of this state or
62 lawful rules or orders issued by the commissioner;

63 (3) The credit union has engaged in a pattern of unsafe or
64 unsound credit union practices; or

65 (4) Continued operation by the credit union is likely to have
 66 a substantially adverse impact on the financial, economic or
 67 other interests of residents of this state.

CHAPTER 59

**(Com. Sub. for S. B. 43 - By Senators Williams, Beach,
 Blair, Leonhardt and Miller)**

[Passed March 10, 2016 in effect ninety days from passage.]
 [Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §20-2-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3B-1 of said code, all relating to posted land; and allowing boundaries be posted with certain clearly visible paint markings.

Be it enacted by the Legislature of West Virginia:

That §20-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3B-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-8. Posting unenclosed lands; hunting, etc., on posted land.

1 The owner, lessee or other person entitled to possession of
 2 unenclosed lands may have erected and maintained signs or
 3 placards legibly printed, easily discernible, conspicuously posted
 4 and reasonably spaced or, alternatively, may mark the posted
 5 land as set forth in section one, article three-b, chapter sixty-one

6 of this code, so as to indicate the territory in which hunting,
7 trapping or fishing is prohibited.

8 Any person who enters upon the unenclosed lands of another
9 which have been lawfully posted, for the purpose of hunting,
10 trapping or fishing, shall be guilty of a misdemeanor. The
11 officers charged with the enforcement of the provisions of this
12 chapter shall have the duty to enforce the provisions of this
13 section if requested to do so by such owner, lessee, person or
14 agent, but not otherwise.

CHAPTER 61. CRIMES AND THEIR PUNISHMENTS.

ARTICLE 3B. TRESPASS.

§61-3B-1. Definitions.

1 As used in this article:

2 (1) "Structure" means any building of any kind, either
3 temporary or permanent, which has a roof over it, together with
4 the curtilage thereof.

5 (2) "Conveyance" means any motor vehicle, vessel, railroad
6 car, railroad engine, trailer, aircraft or sleeping car, and "to enter
7 a conveyance" includes taking apart any portion of the
8 conveyance.

9 (3) An act is committed "in the course of committing" if it
10 occurs in an attempt to commit the offense or in flight after the
11 attempt or commission.

12 (4) "Posted land" is land that has:

13 (A) Signs placed not more than five hundred feet apart,
14 along and at each corner of the boundaries of the land. The signs
15 shall be reasonably maintained, with letters of not less than two

16 inches in height and the words “no trespassing”. The signs shall
17 be placed along the boundary line and at all roads, driveways and
18 gates of entry onto the posted land so as to be clearly noticeable
19 from outside of the boundary line; or

20 (B) Boundaries marked with a clearly visible purple painted
21 marking, consisting of one vertical line no less than eight inches
22 in length and two inches in width, and the bottom of the mark
23 not less than three nor more than six feet from the ground or
24 normal water surface. Such marks shall be affixed to
25 immovable, permanent objects that are no more than one
26 hundred feet apart and readily visible to any person approaching
27 the property. Signs shall also be posted at all roads, driveways
28 or gates of entry onto the posted land so as to be clearly
29 noticeable from outside the boundary line.

30 (C) It is not necessary to give notice by posting on any
31 enclosed land or place not exceeding five acres in area on which
32 there is a dwelling house or property that by its nature and use is
33 obviously private in order to obtain the benefits of this article
34 pertaining to trespass on enclosed lands.

35 (5) “Cultivated land” is that land which has been cleared of
36 its natural vegetation and is presently planted with a crop,
37 orchard, grove, pasture or trees or is fallow land as part of a crop
38 rotation.

39 (6) “Fenced land” is that land which has been enclosed by a
40 fence of substantial construction, whether with rails, logs, post
41 and railing, iron, steel, barbed wire, other wire or other material,
42 which stands at least three feet in height. For the purpose of this
43 article, it shall not be necessary to fence any boundary or part of
44 a boundary of any land which is formed by water and is posted
45 with signs pursuant to the provisions of this article.

46 (7) Where lands are posted, cultivated or fenced as described
47 herein, then such lands, for the purpose of this article, shall be
48 considered as enclosed and posted.

49 (8) "Trespass" under this article is the willful unauthorized
50 entry upon, in or under the property of another, but shall not
51 include the following:

52 (A) Entry by the state, its political subdivisions or by the
53 officers, agencies or instrumentalities thereof as authorized and
54 provided by law.

55 (B) The exercise of rights in, under or upon property by
56 virtue of rights-of-way or easements by a public utility or other
57 person owning such right-of-way or easement whether by written
58 or prescriptive right.

59 (C) Permissive entry, whether written or oral, and entry from
60 a public road by the established private ways to reach a residence
61 for the purpose of seeking permission shall not be trespass unless
62 signs are posted prohibiting such entry.

63 (D) Entry performed in the exercise of a property right under
64 ownership of an interest in, under or upon such property.

65 (E) Entry where no physical damage is done to property in
66 the performance of surveying to ascertain property boundaries,
67 and in the performance of necessary work of construction,
68 maintenance and repair of a common property line fence, or
69 buildings or appurtenances which are immediately adjacent to
70 the property line and maintenance of which necessitates entry
71 upon the adjoining owner's property.

CHAPTER 60

**(Com. Sub. for H. B. 4314 - By Delegates Rohrbach,
Stansbury, Bates, Ellington, Householder, Miller, Perdue,
Waxman and B. White)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3-11 of said code; to amend and reenact §60-6-7 and §60-6-8 of said code; and to amend said code by adding thereto a new section, designated §61-10-33, all relating to prohibiting the sale of powdered or crystalline alcohol and pure caffeine products; defining terms; prohibiting the commissioner from listing or stocking powdered alcohol in inventory; creating a criminal offense for anyone who manufactures or sells, aids or abets in the manufacture or sale of powdered alcohol, or possesses, uses or in any other manner provides or furnishes powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; creating a criminal offense for any licensee who sells, possesses, possesses for sale, furnishes or provides any powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; creating a criminal offense for the sale and possession of pure caffeine products; defining relevant terms; providing exclusions; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §60-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60-3-11 of said code be amended and reenacted; that §60-6-7 and §60-6-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-10-33, all to read as follows:

**CHAPTER 60. STATE CONTROL OF
ALCOHOLIC LIQUORS.**

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 “Alcohol” means ethyl alcohol whatever its origin and shall
3 include synthetic ethyl alcohol but not denatured alcohol.

4 “Beer” means any beverage obtained by the fermentation of
5 barley, malt, hops or any other similar product or substitute, and
6 containing more alcohol than that of nonintoxicating beer.

7 “Nonintoxicating beer” means any beverage obtained by the
8 fermentation of barley, malt, hops or similar products or
9 substitute and containing not more alcohol than that specified by
10 section two, article sixteen, chapter eleven of this code.

11 “Wine” means any alcoholic beverage obtained by the
12 fermentation of the natural content of fruits, or other agricultural
13 products, containing sugar.

14 “Spirits” means any alcoholic beverage obtained by
15 distillation and mixed with potable water and other substances
16 in solution and includes brandy, rum, whiskey, cordials and gin.

17 “Alcoholic liquor” includes alcohol, beer, wine and spirits
18 and any liquid or solid capable of being used as a beverage, but
19 shall not include nonintoxicating beer.

20 “Original package” means any closed or sealed container or
21 receptacle used for holding alcoholic liquor.

22 “Sale” means any transfer, exchange or barter in any manner
23 or by any means, for a consideration, and shall include all sales
24 made by principal, proprietor, agent or employee.

25 “Selling” includes solicitation or receipt of orders;
26 possession for sale; and possession with intent to sell.

27 “Person” means an individual, firm, partnership, limited
28 partnership, corporation or voluntary association.

29 “Manufacture” means to distill, rectify, ferment, brew, make,
30 mix, concoct, process, blend, bottle or fill an original package
31 with any alcoholic liquor.

32 “Manufacturer” means any person engaged in the
33 manufacture of any alcoholic liquor, and among others includes
34 a distiller, a rectifier, a wine maker and a brewer.

35 “Brewery” means an establishment where beer is
36 manufactured or in any way prepared.

37 “Winery” means an establishment where wine is
38 manufactured or in any way prepared.

39 “Distillery” means an establishment where alcoholic liquor
40 other than wine or beer is manufactured or in any way prepared.

41 “Public place” means any place, building or conveyance to
42 which the public has, or is permitted to have access, including
43 restaurants, soda fountains, hotel dining rooms, lobbies and
44 corridors of hotels and any highway, street, lane, park or place
45 of public resort or amusement: *Provided*, That the term “public
46 place” shall not mean or include any of the above-named places
47 or any portion or portions thereof which qualify and are licensed
48 under the provisions of this chapter to sell alcoholic liquors for
49 consumption on the premises: *Provided, however*, That the term
50 “public place” shall not mean or include any legally demarcated
51 area designated solely for the consumption of beverages and
52 freshly prepared food that directly connects and adjoins any
53 portion or portions of a premises that qualifies and is licensed

54 under the provisions of this chapter to sell alcoholic liquors for
55 consumption thereupon: *Provided further*, That the term “public
56 place” shall also not include a facility constructed primarily for
57 the use of a Division I college that is a member of the National
58 Collegiate Athletic Association, or its successor, and used as a
59 football, basketball, baseball, soccer or other Division I sports
60 stadium which holds a special license to sell wine pursuant to the
61 provisions of section three, article eight of this chapter, in the
62 designated areas of sale and consumption of wine and other
63 restrictions established by that section and the terms of the
64 special license issued thereunder.

65 “State liquor store” means a store established and operated
66 by the commission under this chapter for the sale of alcoholic
67 liquor in the original package for consumption off the premises.

68 “An agency” means a drugstore, grocery store or general
69 store designated by the commission as a retail distributor of
70 alcoholic liquor for the West Virginia Alcohol Beverage Control
71 Commissioner.

72 “Department” means the organization through which the
73 commission exercises powers imposed upon it by this chapter.

74 “Commissioner” or “commission” means the West Virginia
75 Alcohol Beverage Control Commissioner.

76 “Intoxicated” means having one's faculties impaired by
77 alcohol or other drugs to the point where physical or mental
78 control or both are markedly diminished.

79 “Powdered alcohol” means an alcohol manufactured in a
80 powder or crystalline form for either direct use or reconstitution
81 as an alcoholic liquor or food. For purposes of this chapter,
82 powdered alcohol excludes any material intended for industrial
83 purposes.

ARTICLE 3. SALES BY COMMISSIONER.**§60-3-11. Stock or inventory control.**

1 The commission shall prescribe a method of stock or
2 inventory control that will show the amount of each variety,
3 class and brand of alcoholic liquor on hand in each state store,
4 agency, and warehouse at any time. The commissioner shall not
5 list or stock powdered alcohol in inventory.

ARTICLE 6. MISCELLANEOUS PROVISIONS.**§60-6-7. Specific acts forbidden; indictment.**

1 A person shall not:

2 (1) Manufacture or sell in this state without a license any
3 alcoholic liquor except as permitted by this article;

4 (2) Aid or abet in the manufacture or sale of alcoholic liquor
5 without a license except as permitted by this article;

6 (3) Sell without a license any alcoholic liquor other than
7 permitted by this article;

8 (4) Adulterate any alcoholic liquor by the addition of any
9 drug, methyl alcohol, crude, unrectified or impure form of ethyl
10 alcohol, or other foreign or deleterious substance or liquid;

11 (5) Refill, with alcoholic liquor, any bottle or other container
12 in which alcoholic liquor has been sold at retail in this state;

13 (6) Advertise any alcoholic liquor in this state except in
14 accordance with the rules and regulations of the commissioner;
15 or

16 (7) Distribute, deal in, process, or use crowns, stamps or
17 seals required under the authority of this chapter, except in

18 accordance with the rules and regulations prescribed by the
19 commissioner; or

20 (8) Manufacture or sell, aid or abet in the manufacture or
21 sale, possess, use or in any other manner provide or furnish
22 powdered alcohol.

23 A person who violates any provision of this section shall be
24 guilty of a misdemeanor and, upon conviction shall be fined not
25 less than \$50 nor more than \$500, or confined in jail not less
26 than thirty days nor more than one year or both such fine and
27 imprisonment, for the first offense. A person who violates any
28 provision of this section for the second or any subsequent
29 offense under this section, is guilty of a felony, and upon
30 conviction thereof, shall be imprisoned in a state correction
31 facility for a period not to exceed three years.

32 An indictment for any first violation of subdivisions (1), (2)
33 and (3) of this section, or any of them, shall be sufficient if in
34 form or effect as follows:

35 State of West Virginia

36 County of, to wit:

37 The Grand Jurors of the State of West Virginia, in and for
38 the body of the County of, upon their oaths present that
39, on the day of, 20...., in the said County of
40, did unlawfully, without a State license and without
41 authorization under the Alcohol Beverage Control Act,
42 manufacture and sell, and aid and abet in the manufacture and
43 sale of a quantity of alcoholic liquor, against the peace and
44 dignity of the state.

45 Any indictment under this section shall otherwise be in
46 conformity with section one, article nine, chapter sixty-two of
47 the code.

§60-6-8. Unlawful sale or possession by licensee.

1 A licensed person shall not:

2 (1) Sell alcoholic liquors of a kind other than that which such
3 license or this chapter authorizes him or her to sell;

4 (2) Sell beer to which wine, spirits, or alcohol has been
5 added;

6 (3) Sell wine to which other alcoholic spirits have been
7 added, otherwise than as required in the manufacture thereof
8 under regulations of the commission;

9 (4) Sell alcoholic liquors to a person specified in section
10 twenty-two, article three of this chapter;

11 (5) Sell alcoholic liquors except as authorized by his or her
12 license;

13 (6) Sell any alcoholic liquor when forbidden by the
14 provisions of this chapter;

15 (7) Sell, possess, possess for sale, furnish or provide any
16 powdered alcohol;

17 (8) Keep on the premises covered by his or her license
18 alcoholic liquor other than that which he or she is authorized to
19 sell by such license or by this chapter.

20 A person who violates any provision of this section shall be
21 guilty of a misdemeanor and, upon conviction shall be fined not
22 less than \$50 nor more than \$500, or confined in jail not less
23 than thirty days nor more than one year, or both such fine and
24 imprisonment for the first offense. A person who violates any
25 provision of this section for the second or any subsequent
26 offense under this section, is guilty of a felony, and upon

27 conviction thereof, shall be imprisoned in a state correction
28 facility for a period not to exceed three years.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-33. Prohibition against selling a pure caffeine product.

1 (a) “Pure caffeine product” means a product that is
2 comprised of ninety percent or more caffeine and is
3 manufactured into a crystalline, liquid, or powdered form. “Pure
4 caffeine product” does not include any of the following that
5 contains caffeine and is formulated, manufactured, and labeled
6 in accordance with the laws and regulations enforced by the
7 United States Food and Drug Administration:

8 (1) Coffee, tea, soft drink, energy drink, or any other
9 caffeine-containing beverage;

10 (2) Any energy product.

11 (b) Except as provided in subsection (c), no person shall
12 knowingly possess, sell or offer for sale a pure caffeine product.

13 (c) Subsection (b) does not prohibit a person from
14 possessing, selling or offering for sale any product manufactured
15 in a unit-dose form such as a pill, tablet, or caplet, but only if
16 each unit dose of the product contains not more than two
17 hundred fifty milligrams of caffeine.

18 (d) Nothing in this section prohibits either of the following:

19 (1) Possession of a product described in subsection (c);

20 (2) Possession of a pure caffeine product by any of the
21 following:

- 22 (A) A food processing establishment;
- 23 (B) A manufacturer of a drug that is available without a
24 prescription;
- 25 (C) A laboratory that is licensed by the Board of Pharmacy;
- 26 (D) A laboratory of any agency or department of this state
27 that performs testing, analysis, and other laboratory services on
28 behalf of the state; and
- 29 (E) A postal or delivery service that transports or delivers a
30 pure caffeine product to an entity specified in subsections (A) to
31 (D) of this section.
- 32 (e) A person who violates subsection (b) is guilty of a
33 misdemeanor and, upon conviction thereof, shall be fined not
34 more than \$100.

CHAPTER 61

**(H. B. 4362 - By Delegates Kurcaba, Fleischauer,
Statler, Householder, Espinosa, Overington, Weld,
Summers, Blair, Byrd and Upson)**

[Passed March 5, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 9, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-9d, relating to crimes against the person; establishing the felony offense of strangulation; defining terms; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-9d, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9d. Strangulation; definitions; penalties.

1 (a) As used in this section:

2 (1) “Bodily injury” means substantial physical pain, illness
3 or any impairment of physical condition;

4 (2) “Strangle” means knowingly and willfully restricting
5 another person’s air intake or blood flow by the application of
6 pressure on the neck or throat;

7 (b) Any person who strangles another without that person’s
8 consent and thereby causes the other person bodily injury or loss
9 of consciousness is guilty of a felony and, upon conviction
10 thereof, shall be fined not more than \$2,500 or imprisoned in a
11 state correctional facility not less than one year or more than five
12 years, or both fined and imprisoned.

CHAPTER 62

**(Com. Sub. for S. B. 361 - By Senators Gaunch,
Boso, Mullins, Palumbo, Walters, Williams
and Prezioso)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2016.]

AN ACT to amend and reenact §61-2-10a of the Code of West Virginia, 1931, as amended, relating to prohibiting persons who

have committed crimes against the elderly from performing any court-ordered public service involving the elderly.

Be it enacted by the Legislature of West Virginia:

That §61-2-10a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10a. Violent crimes against the elderly; sentence not subject to suspension or probation.

1 (a) If any person be convicted and sentenced for an offense
2 defined under the provisions of section nine or ten of this article,
3 and if the person shall have committed such offense against a
4 person who is sixty-five years of age or older, then the sentence
5 shall be mandatory and shall not be subject to suspension or
6 probation: *Provided*, That the court may, in its discretion,
7 suspend the sentence and order probation to any person so
8 convicted upon condition that such person perform public
9 service for a period of time deemed appropriate by the court:
10 *Provided, however*, That the public service may not be rendered
11 in or about facilities or programs providing care or services for
12 the elderly: *Provided further*, That the court may apply the
13 provisions of article eleven-a, chapter sixty-two of this code to
14 a person committed to a term of one year or less.

15 (b) The existence of any fact which would make any person
16 ineligible for probation under subsection (a) of this section
17 because of the commission or attempted commission of a felony
18 against a victim sixty-five years of age or older shall not be
19 applicable unless such fact is: (i) Found by the court upon a plea
20 of guilty or nolo contendere; or (ii) found by the jury, if the
21 matter is tried before a jury; or (iii) found by the court, if the
22 matter is tried by the court, without a jury.

CHAPTER 63

**(S. B. 578 - By Senators Boso, Ashley, Blair, Gaunch,
Karnes, Kirkendoll, Maynard, Miller, Mullins, Romano,
Williams, Stollings and Plymale)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2016.]

AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to protection of utility workers and law-enforcement officers from crimes against the person; defining terms; adding law-enforcement officers and utility workers among the list of professionals the malicious assault, unlawful assault, battery or assault of which carries increased criminal penalties; clarifying the criminal offense of battery to require that the perpetrator have knowledge that the victim was acting in his or her official capacity; and clarifying the criminal offense of assault to require that the perpetrator have knowledge that the victim was acting in his or her official capacity.

Be it enacted by the Legislature of West Virginia:

That §61-2-10b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery; and assault on governmental representatives, health care providers, utility workers, law-enforcement officers and emergency medical service personnel; definitions; penalties.

1 (a) For purposes of this section:

2 (1) “Government representative” means any officer or
3 employee of the state or a political subdivision thereof, or a
4 person under contract with a state agency or political subdivision
5 thereof.

6 (2) “Health care worker” means any nurse, nurse
7 practitioner, physician, physician assistant or technician
8 practicing at, and all persons employed by or under contract to
9 a hospital, county or district health department, long-term care
10 facility, physician’s office, clinic or outpatient treatment facility.

11 (3) “Emergency service personnel” means any paid or
12 volunteer firefighter, emergency medical technician, paramedic,
13 or other emergency services personnel employed by or under
14 contract with an emergency medical service provider or a state
15 agency or political subdivision thereof.

16 (4) “Utility worker” means any individual employed by a
17 public utility or electric cooperative or under contract to a public
18 utility, electric cooperative or interstate pipeline.

19 (5) “Law-enforcement officer” has the same definition as
20 this term is defined in W.Va. Code §30-29-1, except for
21 purposes of this section, “law-enforcement officer” shall
22 additionally include those individuals defined as “chief
23 executive” in W.Va. Code §30-29-1.

24 (b) *Malicious assault.* — Any person who maliciously
25 shoots, stabs, cuts or wounds or by any means causes bodily
26 injury with intent to maim, disfigure, disable or kill a
27 government representative, health care worker, utility worker,
28 emergency service personnel or law-enforcement officer acting
29 in his or her official capacity, and the person committing the
30 malicious assault knows or has reason to know that the victim is

31 acting in his or her official capacity is guilty of a felony and,
32 upon conviction thereof, shall be confined in a correctional
33 facility for not less than three nor more than fifteen years.

34 (c) *Unlawful assault.* — Any person who unlawfully but not
35 maliciously shoots, stabs, cuts or wounds or by any means
36 causes a government representative, health care worker, utility
37 worker, emergency service personnel or law-enforcement officer
38 acting in his or her official capacity bodily injury with intent to
39 maim, disfigure, disable or kill him or her and the person
40 committing the unlawful assault knows or has reason to know
41 that the victim is acting in his or her official capacity is guilty of
42 a felony and, upon conviction thereof, shall be confined in a
43 correctional facility for not less than two nor more than five
44 years.

45 (d) *Battery.* — Any person who unlawfully, knowingly and
46 intentionally makes physical contact of an insulting or provoking
47 nature with a government representative, health care worker,
48 utility worker, emergency service personnel or law-enforcement
49 officer acting in his or her official capacity and the person
50 committing the battery knows or has reason to know that the
51 victim is acting in his or her official capacity, or unlawfully and
52 intentionally causes physical harm to that person acting in such
53 capacity and the person committing the battery knows or has
54 reason to know that the victim is acting in his or her official
55 capacity, is guilty of a misdemeanor and, upon conviction
56 thereof, shall be fined not more than \$500 or confined in jail not
57 less than one month nor more than twelve months or both fined
58 and confined. If any person commits a second such offense, he
59 or she is guilty of a felony and, upon conviction thereof, shall be
60 fined not more than \$1,000 or imprisoned in a state correctional
61 facility not less than one year nor more than three years, or both
62 fined and imprisoned. Any person who commits a third
63 violation of this subsection is guilty of a felony and, upon
64 conviction thereof, shall be fined not more than \$2,000 or

65 imprisoned in a state correctional facility not less than two years
66 nor more than five years, or both fined and imprisoned.

67 (e) *Assault.* — Any person who unlawfully attempts to
68 commit a violent injury to the person of a government
69 representative, health care worker, utility worker, emergency
70 service personnel or law-enforcement officer, acting in his or her
71 official capacity and the person committing the battery knows or
72 has reason to know that the victim is acting in his or her official
73 capacity, or unlawfully commits an act which places that person
74 acting in his or her official capacity in reasonable apprehension
75 of immediately receiving a violent injury and the person
76 committing the battery knows or has reason to know that the
77 victim is acting in his or her official capacity, is guilty of a
78 misdemeanor and, upon conviction thereof, shall be confined in
79 jail for not less than twenty-four hours nor more than six months,
80 fined not more than \$200, or both fined and confined.

CHAPTER 64

**(H. B. 4309 - By Delegates Rowan, Border,
Fast, Stansbury, Moye, Campbell, Overington, Romine,
Duke, Pethel and Ferro)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, by adding thereto a new article, designated §55-7J-1, §55-7J-2, §55-7J-3, §55-7J-4, §55-7J-5 and §55-7J-6; and to amend and reenact §61-2-29b of said code, all relating generally to protections against financial exploitation of elderly persons, protected persons and incapacitated adults; establishing a cause of action against a person who

commits an act of financial exploitation against an elderly person, protected person or incapacitated adult; defining terms; restricting certain defenses which, standing alone, are based on legal relationship to an elderly person, protected person or incapacitated adult; providing for court-authorized remedies; authorizing the award of increased damages in certain circumstances; providing for award of costs and attorneys' fees; establishing the standard of proof; establishing the statute of limitations for actions brought under the article; authorizing the court to freeze assets and order injunctive relief; providing options the court may exercise upon a formal finding of exploitation; authorizing the court to require posting security, or additional security, under certain circumstances; clarifying criminal penalties for conviction of certain offenses of financial exploitation of an elderly person, protected person or incapacitated adult; and increasing the criminal penalty for the offense of financial exploitation of \$1,000 or more.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7J-1, §55-7J-2, §55-7J-3, §55-7J-4, §55-7J-5 and §55-7J-6; and to amend and reenact §61-2-29b of said code, all to read as follows:

**CHAPTER 55. ACTIONS, SUITS AND ARBITRATION;
JUDICIAL SALE.**

**ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY
PERSON, PROTECTED PERSON OR
INCAPACITATED ADULT.**

**§55-7J-1. Action for financial exploitation of an elderly person,
protected person or incapacitated adult; definitions.**

- 1 (a) Any elderly person, protected person or incapacitated
- 2 adult against whom an act of financial exploitation has been

3 committed may bring an action under this article against any
4 person who has committed an act of financial exploitation
5 against him or her.

6 (b) For the purposes of this article:

7 (1) “Incapacitated adult” has the same meaning as prescribed
8 under section twenty-nine, article two, chapter sixty-one of this
9 code;

10 (2) “Elderly person” means a person who is sixty-five years
11 or older;

12 (3) “Financial exploitation” or “financially exploit” means
13 the intentional misappropriation or misuse of funds or assets of
14 an elderly person, protected person or incapacitated adult, but
15 shall not apply to a transaction or disposition of funds or assets
16 where the defendant made a good-faith effort to assist the elderly
17 person, protected person or incapacitated adult with the
18 management of his or her money or other things of value; and

19 (4) “Protected person” means any person who is defined as
20 a “protected person” in section four, article one, chapter
21 forty-four-a of this code and who is subject to the protections of
22 chapter forty-four-a or forty-four-c of this code.

**§55-7J-2. Restriction of defenses, standing alone, based on legal
relationship.**

1 Notwithstanding any provision of this code to the contrary,
2 acting in a position of trust and confidence, including, but not
3 limited to, as guardian, conservator, trustee or attorney for or
4 holding power of attorney for an elderly person, protected person
5 or incapacitated adult shall not, standing alone, constitute a
6 defense to an action brought under this article.

§55-7J-3. Court authorized remedies.

1 (a) In an action brought against a person under this article
2 upon a finding that an elderly person, protected person or
3 incapacitated adult has been financially exploited, the court may
4 order:

5 (1) The return of property or assets improperly obtained,
6 controlled or used; and

7 (2) An award of actual damages to the person who brought
8 the action for any damages incurred or for the value of the
9 property or assets lost as a result of the violation or violations of
10 this article.

11 (b) In addition to the remedies provided in subsection (a) of
12 this section, a court may order the following:

13 (1) For violations committed by a person who is not in a
14 position of trust and confidence, payment of two times the
15 amount of damages incurred or value of property or assets lost;
16 and

17 (2) For violations committed by a person in a position of
18 trust and confidence, payment of treble damages.

**§55-7J-4. Attorneys' fees; court costs and burden of proof; statute
of limitations.**

1 (a) The court may award reasonable attorneys' fees and costs
2 to a person that brings an action under this section and prevails.

3 (b) The standard of proof in proving that a person committed
4 financial exploitation in an action pursuant to this article is a
5 preponderance of the evidence.

6 (c) An action under this article shall be brought within two
7 years from the date of the violation or from the date of
8 discovery, whichever is later in time.

§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.

1 (a) An elderly person, protected person or incapacitated adult
2 may bring an action to enjoin the alleged commission of
3 financial exploitation and may petition the court to freeze the
4 assets of the person allegedly committing the financial
5 exploitation in an amount equal to, but not greater than, the
6 alleged value of lost property or assets for purposes of restoring
7 to the victim the value of the lost property or assets. The burden
8 of proof required to freeze the assets of a person allegedly
9 committing financial exploitation shall be a preponderance of the
10 evidence. Upon a finding that the elderly person, protected
11 person or incapacitated adult has been formally exploited, the
12 court may:

13 (1) Grant injunctive relief;

14 (2) Order the violator to, in escrow an amount of money
15 equivalent to the value of the misappropriated assets for
16 distribution to the aggrieved elderly person, protected person or
17 incapacitated adult;

18 (3) Order the violator to return to the elderly person,
19 protected person or incapacitated person any real or personal
20 property which was misappropriated; or

21 (4) Provide for the appointment of a receiver;

22 (b) In an action under section one of this article, the court
23 may void or limit the application of contracts or clauses resulting
24 from the financial exploitation.

25 (c) In an action brought under this article, upon the filing of
26 the complaint or on the appearance of any defendant, claimant
27 or other party, or at any later time, the court may require the
28 plaintiff, defendant, claimant or other party or parties to post

29 security, or additional security, in a sum the court directs to pay
30 all costs, expenses and disbursements that are awarded against
31 that party or that the party may be directed to pay by any
32 interlocutory order, by the final judgment or after appeal.

§55-7J-6. Penalty for violation of injunction; retention of jurisdiction.

1 Any person who violates the terms of an order issued under
2 section five of this article shall be subject to proceeding for
3 contempt of court. The court issuing the injunction may retain
4 jurisdiction if, in its discretion, it determines that to do so is in
5 the best interest of the elderly person, protected person or
6 incapacitated adult. Whenever the court determines that an
7 injunction issued under section five of this article has been
8 violated, the court may award reasonable costs to the party
9 asserting that a violation has occurred.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29b. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.

1 (a) Any person who financially exploits an elderly person,
2 protected person or an incapacitated adult in the amount of less
3 than \$1,000 is guilty of a misdemeanor and, upon conviction
4 thereof, shall be fined not more than \$1,000 or confined in jail
5 for not more than one year, or both fined and confined.

6 (b) Any person who financially exploits an elderly person,
7 protected person or an incapacitated adult in the amount of
8 \$1,000 or more is guilty of a felony and, upon conviction
9 thereof, shall be fined not more than \$10,000 and imprisoned in
10 a state correctional facility not less than two nor more than
11 twenty years.

12 (c) Any person convicted of a violation of this section shall,
13 in addition to any other penalties at law, be subject to an order of
14 restitution.

15 (d) In determining the value of the money, goods, property
16 or services referred to in subsection (a) of this section, it shall be
17 permissible to cumulate amounts or values where such money,
18 goods, property or services were fraudulently obtained as part of
19 a common scheme or plan.

20 (e) Financial institutions and their employees, as defined by
21 section one, article two-a, chapter thirty-one-a of this code and
22 as permitted by subsection (13) section four of said article,
23 others engaged in financially related activities, as defined by
24 section one, article eight-c, chapter thirty-one-a of this code,
25 caregivers, relatives and other concerned persons are permitted
26 to report suspected cases of financial exploitation to state or
27 federal law-enforcement authorities, the county prosecuting
28 attorney and to the Department of Health and Human Resources,
29 Adult Protective Services Division or Medicaid Fraud Division,
30 as appropriate. Public officers and employees are required to
31 report suspected cases of financial exploitation to the appropriate
32 entities as stated above. The requisite agencies shall investigate
33 or cause the investigation of the allegations.

34 (f) When financial exploitation is suspected and to the extent
35 permitted by federal law, financial institutions and their
36 employees or other business entities required by federal law or
37 regulation to file suspicious activity reports and currency
38 transaction reports shall also be permitted to disclose suspicious
39 activity reports or currency transaction reports to the prosecuting
40 attorney of any county in which the transactions underlying the
41 suspicious activity reports or currency transaction reports
42 occurred.

43 (g) Any person or entity that in good faith reports a
44 suspected case of financial exploitation pursuant to this section
45 is immune from civil liability founded upon making that report.

46 (h) For the purposes of this section:

47 (1) “Incapacitated adult” means a person as defined by
48 section twenty-nine of this article;

49 (2) “Elderly person” means a person who is sixty-five years
50 or older;

51 (3) “Financial exploitation” or “financially exploit” means
52 the intentional misappropriation or misuse of funds or assets of
53 an elderly person, protected person or incapacitated adult, but
54 shall not apply to a transaction or disposition of funds or assets
55 where the accused made a good-faith effort to assist the elderly
56 person, protected person or incapacitated adult with the
57 management of his or her money or other things of value; and

58 (4) “Protected person” means any person who is defined as
59 a “protected person” in section four, article one, chapter
60 forty-four-a of this code and who is subject to the protections of
61 chapter forty-four-a or forty-four-c of this code.

62 (i) Notwithstanding any provision of this code to the
63 contrary, acting as guardian, conservator, trustee or attorney for
64 or holding power of attorney for an elderly person, protected
65 person or incapacitated adult shall not, standing alone, constitute
66 a defense to a violation of subsection (a) of this section.

CHAPTER 65

(Com. Sub. for S. B. 567 - By Senators Boso, Ashley, Blair, Gaunch, Kirkendoll, Maynard, Miller, Mullins, Romano, Williams, Stollings, Plymale and Ferns)

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2016.]

AN ACT to amend and reenact §61-3-29 of the Code of West Virginia, 1931, as amended, relating to property crimes committed against property owned by a railroad company or public utility company, or other certain real or personal property; adding oil, timber and timber operations to the list of entities protected under this statute; clarifying that the applicable property covered under this statute be commercial or industrial real or personal property of a railroad company or public utility company; adding storage to the list of uses of certain property covered under this statute; creating a felony offense for knowingly and willfully damaging or destroying any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby hindering, impairing or disrupting, directly or indirectly, the normal operation of any equipment, device, system or service put in place, in whole or in part, to protect, promote or facilitate the health or safety of any person; providing criminal penalties; and providing that a railroad company, public utility, business, or owner of property that is damaged, destroyed or disrupted may be deemed a victim and entitled to restitution, should the court so order, from any person convicted of an offense under this section, pursuant to the Victim Protection Act of 1984.

Be it enacted by the Legislature of West Virginia:

That §61-3-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

1 (a) Any person who knowingly and willfully damages or
2 destroys any commercial or industrial real or personal property
3 owned by a railroad company, or public utility company, or any
4 real or personal property used for producing, generating,
5 transmitting, distributing, treating storing or collecting
6 electricity, natural gas, oil, coal, timber, timber processing,
7 water, wastewater, stormwater, telecommunications or cable
8 service, is guilty of a misdemeanor and, upon conviction thereof,
9 shall be fined not more than \$2,000, or confined in jail not more
10 than one year, or both fined and confined.

11 (b) Any person who knowingly and willfully damages or
12 destroys any commercial or industrial real or personal property
13 owned by a railroad company, or public utility company, or any
14 real or personal property used for producing, generating,
15 transmitting, distributing, treating, storing or collecting
16 electricity, natural gas, oil, coal, timber, timber processing,
17 water, wastewater, stormwater, telecommunications or cable
18 service and thereby creates a substantial risk of serious bodily
19 injury to another or results in the interruption of service to the
20 public is guilty of a felony and, upon conviction thereof, shall be
21 fined not more than \$5,000, or imprisoned in a state correctional

22 facility not less than one nor more than three years, or both fined
23 and imprisoned.

24 (c) Any person who knowingly and willfully damages or
25 destroys any commercial or industrial real or personal property
26 owned by a railroad company, or public utility company, or any
27 real or personal property used for producing, generating,
28 transmitting, distributing, treating, storing or collecting
29 electricity, natural gas, oil, coal, timber, timber processing,
30 water, wastewater, stormwater, telecommunications or cable
31 service and thereby causes serious bodily injury to another is
32 guilty of a felony and, upon conviction thereof, shall be fined not
33 less than \$5,000 nor more than \$50,000, or imprisoned in a state
34 correctional facility not less than one nor more than five years,
35 or both fined and imprisoned.

36 (d) Any person who knowingly and willfully damages or
37 destroys any commercial or industrial real or personal property
38 owned by a railroad company, or public utility company, or any
39 real or personal property used for producing, generating,
40 transmitting, distributing, treating, storing or collecting
41 electricity, natural gas, oil, coal, timber, timber processing,
42 water, wastewater, stormwater, telecommunications or cable
43 service and thereby hinders, impairs or disrupts, directly or
44 indirectly, the normal operation of any equipment, device,
45 system or service put in place, in whole or in part, to protect,
46 promote or facilitate the health or safety of any person is guilty
47 of a felony and, upon conviction thereof, shall be fined not less
48 than \$5,000 nor more than \$10,000, or imprisoned in a state
49 correctional facility for not less than one nor more than five
50 years, or both fined and imprisoned.

51 (e) For purposes of restitution under article eleven-a of this
52 article, a railroad company, public utility, business, or owner of
53 property that is damaged, destroyed or disrupted may be deemed
54 a victim and entitled to restitution, should the court so order,
55 from any person convicted of an offense under this section.

56 (f) Nothing in this section limits or restricts the ability of an
57 entity referred to in subsection (a), (b), (c) or (d) of this section
58 or a property owner or other person who has been damaged or
59 injured as a result of a violation of this section from seeking
60 recovery for damages arising from violation of this section.

CHAPTER 66

**(S. B. 323 - By Senators Trump, Kessler, Woelfel,
Palumbo, Romano and Williams)**

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §61-3B-3 of the Code of West Virginia, 1931, as amended, relating to correcting subsection designations in the statute regarding trespass on property; relettering certain subsections to avoid duplication of subsection designations; and making other stylistic and technical changes.

Be it enacted by the Legislature of West Virginia:

That §61-3B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3B. TRESPASS.

§61-3B-3. Trespass on property other than structure or conveyance.

1 (a) It is an unlawful trespass for any person to knowingly,
2 and without being authorized, licensed or invited, to enter or
3 remain on any property, other than a structure or conveyance, as
4 to which notice against entering or remaining is either given by

5 actual communication to such person or by posting, fencing or
6 cultivation.

7 (b) First offense conviction. — Upon a first trespassing
8 conviction pursuant to subsection (a) of this section, the person
9 is guilty of a misdemeanor and shall be fined not less than \$100
10 nor more than \$500.

11 (c) Second offense conviction. — Upon a second trespassing
12 conviction pursuant to subsection (a) of this section, the person
13 is guilty of a misdemeanor and shall be fined not less than \$500
14 nor more than \$1,000.

15 (d) Third offense conviction. — Upon a third and subsequent
16 trespassing conviction pursuant to subsection (a) of this section,
17 the person is guilty of a misdemeanor and shall be fined not less
18 than \$1,000 nor more than \$1,500.

19 (e) If the offender defies an order to leave, personally
20 communicated to him or her by the owner, tenant or agent of
21 such owner or tenant, or if the offender opens any door, fence or
22 gate, and thereby exposes animals, crops or other property to
23 waste, destruction or freedom, or causes any damage to property
24 by such trespassing on property other than a structure or
25 conveyance, he or she is guilty of a misdemeanor and, upon
26 conviction, shall be fined not less than \$100 nor more than \$500,
27 confined in jail for not more than six months, or both fined and
28 confined.

29 (f) If the offender is armed with a firearm or other dangerous
30 weapon with the unlawful and felonious intent to do bodily
31 injury to a human being during his or her commission of the
32 offense of trespass on property other than a structure or
33 conveyance, such offender, notwithstanding section one, article
34 seven, chapter sixty-one of this code, is guilty of a misdemeanor
35 and, upon conviction, shall be confined in jail for not more than

36 six months, fined not more than \$100, or both confined and
37 fined.

38 (g) Notwithstanding and in addition to any other penalties
39 provided by law, any person who performs or causes damage to
40 property in the course of a willful trespass shall be liable to the
41 property owner in the amount of twice the amount of such
42 damage. However, this article shall not apply in a labor dispute.



CHAPTER 67

**(Com. Sub. for H. B. 4448 - By Delegates Walters,
McCuskey, Frich and Westfall)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §61-3C-14a of the Code of West Virginia, 1931, as amended, relating to violations of the West Virginia Computer Crime and Abuse Act; providing an exception to the prohibition against making contact with a person after being requested by the person to desist from contacting them; and providing that communications made by a lender or debt collector to a consumer regarding an overdue debt of the consumer that do not violate the West Virginia Consumer Credit and Protection Act are not a violation of the West Virginia Computer Crime and Abuse Act.

Be it enacted by the Legislature of West Virginia:

That §61-3C-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND
ABUSE ACT.**

**§61-3C-14a. Obscene, anonymous, harassing and threatening
communications by computer, cell phones and
electronic communication devices; penalty.**

1 (a) It is unlawful for any person, with the intent to harass or
2 abuse another person, to use a computer, mobile phone, personal
3 digital assistant or other electronic communication device to:

4 (1) Make contact with another person without disclosing his
5 or her identity with the intent to harass or abuse;

6 (2) Make contact with a person after being requested by the
7 person to desist from contacting them: *Provided*, That a
8 communication made by a lender or debt collector to a
9 consumer, regarding an overdue debt of the consumer that does
10 not violate chapter forty-six-a of this code, does not violate this
11 subsection;

12 (3) Threaten to commit a crime against any person or
13 property; or

14 (4) Cause obscene material to be delivered or transmitted to
15 a specific person after being requested to desist from sending
16 such material.

17 (b) For purposes of this section:

18 (1) "Electronic communication device" means and includes
19 a telephone, wireless phone, computer, pager or any other
20 electronic or wireless device which is capable of transmitting a
21 document, image, voice, e-mail or text message using such
22 device in an electronic, digital or analog form from one person
23 or location so it may be viewed or received by another person or
24 persons at other locations.

25 (2) “Use of a computer, mobile phone, personal digital
26 assistant or other electronic communication device” includes, but
27 is not limited to, the transmission of text messages, electronic
28 mail, photographs, videos, images or other nonvoice data by
29 means of an electronic communication system, and includes the
30 transmission of such data, documents, messages and images to
31 another’s computer, e-mail account, mobile phone, personal
32 digital assistant or other electronic communication device.

33 (3) “Obscene material” means material that:

34 (A) An average person, applying contemporary adult
35 community standards, would find, taken as a whole, appeals to
36 the prurient interest, is intended to appeal to the prurient interest,
37 or is pandered to a prurient interest;

38 (B) An average person, applying contemporary adult
39 community standards, would find, depicts or describes, in a
40 patently offensive way, sexually explicit conduct consisting of
41 an ultimate sexual act, normal or perverted, actual or simulated,
42 an excretory function, masturbation, lewd exhibition of the
43 genitals, or sadomasochistic sexual abuse; and

44 (C) A reasonable person would find, taken as a whole, lacks
45 literary, artistic, political or scientific value.

46 (c) It is unlawful for any person to knowingly permit a
47 computer, mobile phone or personal digital assistant or other
48 electronic communication device under his or her control to be
49 used for any purpose prohibited by this section.

50 (d) Any offense committed under this section may be
51 determined to have occurred at the place at which the contact
52 originated or the place at which the contact was received or
53 intended to be received.

54 (e) Any person who violates a provision of this section is
55 guilty of a misdemeanor and, upon conviction thereof, shall be

56 fined not more than \$500 or confined in jail not more than six
57 months, or both fined and confined. For a second or subsequent
58 offense, the person is guilty of a misdemeanor and, upon
59 conviction thereof, shall be fined not more than \$1,000 or
60 confined in jail for not more than one year, or both fined and
61 confined.

CHAPTER 68

**(Com. Sub. for H. B. 2366 - By Delegates Rowan, Miller,
Sobonya, P. Smith, Border, Arvon and Storch)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §61-3C-14b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8A-4 of said code, all relating generally to the solicitation of minors by use of a computer; clarifying the law pertaining to the use of a computer to solicit a minor for sexual activity; removing controlled substance violations as an alleged purpose; creating a new felony offense of soliciting a minor through use of a computer for specified illegal sexual acts and committing any overt act designed to bringing himself or herself within the physical presence of the minor or someone believed to be a minor to engage in prohibited sexual activity with the minor or person believed to be a minor; requiring a four year age difference between an adult and minor; establishing penalties; establishing the offense as a lesser included crime; and prohibiting the use or distribution of obscene materials by an adult to solicit or seduce a person who is or is believed to be a minor at least four years younger than the adult for unlawful sexual activity.

Be it enacted by the Legislature of West Virginia:

That §61-3C-14b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8A-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-14b. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties.

1 (a) Any person over the age of eighteen, who knowingly
2 uses a computer to solicit, entice, seduce or lure, or attempt to
3 solicit, entice, seduce or lure, a minor known or believed to be
4 at least four years younger than the person using the computer or
5 a person he or she believes to be such a minor, in order to engage
6 in any illegal act proscribed by the provisions of article eight,
7 eight-b, eight-c or eight-d of this chapter, is guilty of a felony
8 and, upon conviction thereof, shall be fined not more than
9 \$5,000 or imprisoned in a state correctional facility not less than
10 two nor more than ten years, or both.

11 (b) Any person over the age of eighteen who uses a
12 computer in the manner proscribed by the provisions of
13 subsection (a) of this section and who additionally engages in
14 any overt act designed to bring himself or herself into the
15 minor's, or the person believed to be a minor's, physical
16 presence with the intent to engage in violations of article eight,
17 eight-b, eight-c or eight-d of this chapter with such a minor is
18 guilty of a felony and shall be fined not more than \$25,000 or
19 imprisoned in a state correctional facility for a determinate
20 sentence of not less than five nor more than fifteen years, or both
21 fined and imprisoned: *Provided*, That subsection (a) of this
22 section shall be deemed a lesser included offense to that created
23 by this subsection.

ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

§61-8A-4. Use of obscene matter with intent to seduce minor.

1 Any adult, having knowledge of the character of the matter,
2 who knows or believes that a person is a minor at least four years
3 younger than the adult, who distributes, offers to distribute or
4 displays by any means any obscene matter to the minor of person
5 he or she believes to be a minor at least four years younger than
6 the adult, and such distribution, offer to distribute, or display is
7 undertaken with the intent or for the purpose of engaging in a
8 violation of the provisions of article eight, eight-b, eight-c or
9 eight-d of this chapter with the minor or person whom he or she
10 believes is a minor at least four years younger than he or she, is
11 guilty of a felony and, upon conviction thereof, shall be fined not
12 more than \$25,000, or imprisoned in a state correctional facility
13 for not more than five years, or both. For a second and each
14 subsequent commission of such offense, such person is guilty of
15 a felony and, upon conviction, shall be fined not more than
16 \$50,000 or imprisoned in a state correctional facility for not
17 more than ten years, or both.

CHAPTER 69

**(H. B. 4724 - By Delegates Folk, Overington, Zatezalo,
Manchin, Moore, Sobonya, Kessinger, Foster,
Summers, Azinger and McGeehan)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating to adding a requirement for

the likelihood of imminent lawless action of a violent nature that could cause bodily harm to the prerequisites for the crime of intimidation and retaliation.

Be it enacted by the Legislature of West Virginia:

That §61-5-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-27. Intimidation of and retaliation against public officers and employees, jurors and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.

1 (a) *Definitions.* — As used in this section:

2 (1) “Fraudulent” means not legally issued or sanctioned
3 under the laws of this state or of the United States, including
4 forged, false and materially misstated;

5 (2) “Legal process” means an action, appeal, document
6 instrument or other writing issued, filed or recorded to pursue a
7 claim against person or property, exercise jurisdiction, enforce
8 a judgment, fine a person, put a lien on property, authorize a
9 search and seizure, arrest a person, incarcerate a person or direct
10 a person to appear, perform or refrain from performing a
11 specified act. “Legal process” includes, but is not limited to, a
12 complaint, decree, demand, indictment, injunction, judgment,
13 lien, motion, notice, order, petition, pleading, sentence,
14 subpoena, summons, warrant or writ;

15 (3) “Official proceeding” means a proceeding involving a
16 legal process or other process of a tribunal of this state or of the
17 United States;

18 (4) “Person” means an individual, group, association,
19 corporation or any other entity;

20 (5) “Public official or employee” means an elected or
21 appointed official or employee, of a state or federal court,
22 commission, department, agency, political subdivision or any
23 governmental instrumentality;

24 (6) “Recorder” means a clerk or other employee in charge of
25 recording instruments in a court, commission or other tribunal of
26 this state or of the United States; and

27 (7) “Tribunal” means a court or other judicial or
28 quasi-judicial entity, or an administrative, legislative or
29 executive body, or that of a political subdivision, created or
30 authorized under the constitution or laws of this state or of the
31 United States.

32 (b) *Intimidation; harassment.* — It is unlawful for a person
33 to use intimidation, physical force, harassment or a fraudulent
34 legal process or official proceeding, or to threaten to do so where
35 such threat is directed at inciting or producing imminent lawless
36 action of a violent nature that could cause bodily harm and is
37 likely to incite or produce such action or to attempt to do so,
38 with the intent to:

39 (1) Impede or obstruct a public official or employee from
40 performing his or her official duties;

41 (2) Impede or obstruct a juror or witness from performing
42 his or her official duties in an official proceeding;

43 (3) Influence, delay or prevent the testimony of any person
44 in an official proceeding; or

45 (4) Cause or induce a person to: (A) Withhold testimony, or
46 withhold a record, document or other object from an official

47 proceeding; (B) alter, destroy, mutilate or conceal a record,
48 document or other object impairing its integrity or availability
49 for use in an official proceeding; (C) evade an official
50 proceeding summoning a person to appear as a witness or
51 produce a record, document or other object for an official
52 proceeding; or (D) be absent from an official proceeding to
53 which such person has been summoned.

54 (c) *Retaliation.* — It is unlawful for a person to cause injury
55 or loss to person or property, or to threaten to do so where such
56 threat is directed at inciting or producing imminent lawless
57 action of a violent nature that could cause bodily harm and is
58 likely to incite or produce such action or to attempt to do so,
59 with the intent to:

60 (1) Retaliate against a public official or employee for the
61 performance or nonperformance of an official duty;

62 (2) Retaliate against a juror or witness for performing his or
63 her official duties in an official proceeding; or

64 (3) Retaliate against any other person for attending,
65 testifying or participating in an official proceeding, or for the
66 production of any record, document or other object produced by
67 a person in an official proceeding.

68 (d) *Subsection (b) offense.* — A person who is convicted of
69 an offense under subsection (b) is guilty of a misdemeanor and
70 shall be confined in jail for not more than one year or fined not
71 more than \$1,000, or both.

72 (e) *Subsection (c) or subsequent offense.* — A person
73 convicted of an offense under subsection (c) or a second offense
74 under subsection (b) is guilty of a felony and, shall be confined
75 in a correctional facility not less than one nor more than ten
76 years or fined not more than \$2,000, or both.

77 (f) *Civil cause of action.* — A person who violates this
78 section is liable in a civil action to any person harmed by the
79 violation for injury or loss to person or property incurred as a
80 result of the commission of the offense and for reasonable
81 attorney's fees, court costs and other expenses incurred as a
82 result of prosecuting a civil action commenced under this
83 subsection, which is not the exclusive remedy of a person who
84 suffers injury or loss to person or property as a result of a
85 violation of this section.

86 (g) *Civil sanctions.* — In addition to the criminal and civil
87 penalties set forth in this section, any fraudulent official
88 proceeding or legal process brought in a tribunal of this state in
89 violation of this section shall be dismissed by the tribunal and
90 the person may be ordered to reimburse the aggravated person
91 for reasonable attorney's fees, court costs and other expenses
92 incurred in defending or dismissing such action.

93 (1) *Refusal to record.* — A recorder may refuse to record a
94 clearly fraudulent lien or other legal process against a public
95 official or employee or his or her property. The recorder does not
96 have a duty to inspect or investigate whether a lien or other legal
97 process is fraudulent nor is the recorder liable for refusing to
98 record a lien or other legal process that the recorder believes is
99 in violation of this section.

100 (2) If a fraudulent lien or other legal process against a public
101 official or employee or his or her property is recorded then:

102 (A) *Request to release lien.* — The public official or
103 employee may send a written request by certified mail to the
104 person who filed the fraudulent lien or legal process, requesting
105 the person to release or dismiss the lien or legal process. If such
106 lien or legal process is not properly released or dismissed within
107 twenty-one days, then it shall be inferred that the person

108 intended to harass the public official or employee in violation of
109 subsection (b) of this section and shall be subject to the criminal
110 penalties in subsection (d) of this section and any other remedies
111 provided in this section; or

112 (B) *Notice of fraudulent lien.* — A government attorney on
113 behalf of the public official or employee may record a notice of
114 fraudulent lien or legal process with the recorder who accepted
115 the lien or legal process for filing. Such notice shall invalidate
116 the fraudulent lien or legal process and cause it to be removed
117 from the records. No filing fee shall be charged for the filing of
118 the notice.

119 (h) A person's lack of belief in the jurisdiction or authority
120 of this state or of the United States is no defense to prosecution
121 of a civil or criminal action under this section.

122 (i)(1) Nothing in this section prohibits or in any way limits
123 the lawful acts of legitimate public officials or employees.

124 (2) Nothing in this section prohibits or in any way limits a
125 person's lawful and legitimate right to freely assemble, express
126 opinions or designate group affiliation.

127 (3) Nothing in this section prohibits or in any way limits a
128 person's lawful and legitimate access to a tribunal of this state
129 or prevents a person from instituting or responding to a lawful
130 action.

CHAPTER 70

**(Com. Sub. for H. B. 4201 - By Delegates Overington,
Hanshaw, Blair, Shott, Statler, Sobonya, Summers, Weld,
Kessinger, B. White and Fleischauer)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2016.]

AN ACT to amend and reenact §61-8-19a and §61-8-19b of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-8-19c, all relating to increasing the criminal penalties for participating in an animal fighting venture; defining terms; adding conducting, financing, managing, supervising, directing, or knowingly allowing property under one's control to be used for an animal fighting venture to types of prohibited conduct; making unlawful the possession of an animal for the purpose of engaging the animal in an animal fighting venture; providing for penalties; providing for divesting a convicted person of ownership of such animals and making a convicted person liable for all costs of the such animals care and maintenance; making it unlawful to knowingly cause an individual under the age of eighteen to attend an animal fighting venture; providing for penalties; providing penalties for third or subsequent offenses; providing that wagering at an animal fighting venture is a crime; providing for penalties; and providing increased penalties for third or subsequent offenses.

Be it enacted by the Legislature of West Virginia:

That §61-8-19a and §61-8-19b 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 §61-8-19c, all to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19a. Animal fighting ventures prohibited.

1 (a) For the purpose of this article, “animal fighting venture”
2 means any event that involves a fight conducted or to be
3 conducted between at least two animals for purposes of sport,
4 wagering, or entertainment: *Provided*, That it shall not be
5 deemed to include any lawful activity the primary purpose of
6 which involves the use of one or more animals in racing or in
7 hunting another animal: *Provided, however*, That “animal
8 fighting venture” does not include the lawful use of livestock as
9 such is defined in section two, article ten-b, chapter nineteen of
10 this code or exotic species of animals bred or possessed for
11 exhibition purposes when such exhibition purposes do not
12 include animal fighting or training therefor.

13 (b) It is unlawful for any person to conduct, finance, manage,
14 supervise, direct, engage in, be employed at, or sell an admission
15 to any animal fighting venture or to knowingly allow property
16 under his care, custody or control to be so used.

17 (c) It is unlawful for any person to possess an animal with
18 the intent to engage the animal in an animal fighting venture.

19 (d) Any person who violates the provisions of this section is
20 guilty of a misdemeanor and, upon conviction thereof, shall be
21 fined not less than \$300 and not more than \$2,000, or confined
22 in the county jail not exceeding one year, or both so fined and
23 confined: *Provided*, That if the animal is a wild animal, game
24 animal or fur-bearing animal, as defined in section two, article
25 one, chapter twenty of this code, or wildlife not indigenous to
26 West Virginia, or of a canine, feline, porcine, bovine, or equine
27 species whether wild or domesticated, the person who violates
28 the provisions of this section is guilty of a felony and, upon

29 conviction thereof, shall be fined not less than \$2,500 and not
30 more than \$5,000, and imprisoned in a state correctional facility
31 for not less than two nor more than five years, or both fined and
32 imprisoned.

33 (e) Any person convicted of a violation of this section shall
34 be divested of ownership and control of such animals and liable
35 for all costs of their care and maintenance pursuant to section
36 four, article ten, chapter seven of this code.

**§61-8-19b. Attendance at animal fighting ventures prohibited;
penalty.**

1 (a) It is unlawful for any person to knowingly attend or
2 knowingly cause an individual who has not attained the age of
3 eighteen to attend, an animal fighting venture involving animals
4 as defined in section nineteen-a, article eight of this chapter.

5 (b) Any person who violates the provisions of this section is
6 guilty of a misdemeanor and, upon conviction thereof, shall be
7 fined not less than \$300 and not more than \$2,000, or confined
8 in the county or regional jail not more than one year, or both
9 fined and imprisoned.

10 (c) Notwithstanding the provisions of subsection (b) of this
11 section, any person convicted of a third or subsequent violation
12 of subsection (a) of this section is guilty of a felony and, shall be
13 fined not less than \$2,500 and not more than \$5,000, imprisoned
14 in a state correctional facility not less than one year nor more
15 than five years, or both fined and imprisoned.

**§61-8-19c. Wagering at animal fighting venture prohibited;
penalty.**

1 (a) It is unlawful for any person to bet or wager money or
2 any other thing of value in any location or place where an animal
3 fighting venture occurs.

4 (b) Any person who violates the provisions of this section is
5 guilty of a misdemeanor and, upon conviction thereof, shall be
6 fined not less than \$300 and not more than \$2,000, or confined
7 in jail not more than one year, or both fined and imprisoned.

8 (c) Notwithstanding the provisions of subsection (b) of this
9 section, any person who is convicted of a third or subsequent
10 violation of this section is guilty of a felony and, upon
11 conviction thereof, shall be fined not less than \$2,500 and not
12 more than \$5,000, or imprisoned in a state correctional facility
13 not less than one year nor more than five years, or both fined and
14 imprisoned.

CHAPTER 71

**(Com. Sub. for H. B. 2122 - By Delegates Ambler,
Cooper, Householder, Walters, R. Smith,
Canterbury and Gearheart)**

[Passed March 7, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-30, relating to making it illegal for first responders to photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or person being provided medical care or assistance except for enumerated purposes; defining terms; creating a criminal offense for first responders to photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or person being provided public safety services, medical care or assistance unless it is for a legitimate purpose associated with his or her employment; creating a criminal offense for first responders to knowingly disclose any photograph, film,

videotape, record or other reproduction of the image of a human corpse or person being provided public safety services, medical care or assistance unless disclosure is for a legitimate cause associated with his or her employment; providing for exceptions to the criminal offenses; providing for criminal penalties; providing for enhanced penalties for subsequent offenses; and designating provision as “Jonathan’s 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 §61-8-30, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-30. Photography of a corpse or person being provided medical care or assistance; prohibitions; exceptions; Jonathan’s Law.

1 (a) As used in this section:

2 (1) “Disclose” means to sell, manufacture, give, provide,
3 lend, trade, mail, deliver, transfer, publish, distribute, circulate,
4 disseminate, present, exhibit, advertise, offer or otherwise make
5 available or make known to any third party.

6 (2) “First responder” means law-enforcement officers,
7 firefighters, emergency medical services personnel and other
8 similar individuals authorized to respond to calls for public
9 safety services or emergency medical assistance.

10 (b)(1) A first responder who is present at a motor vehicle
11 accident or other emergency situation for the purpose of
12 providing public safety services or medical care or assistance
13 shall not photograph, film, videotape, record or otherwise

14 reproduce in any manner the image of a human corpse or a
15 person being provided medical care or assistance, except for a
16 legitimate law-enforcement purpose, public safety purpose,
17 health care purpose, insurance purpose, legal investigation or
18 legal proceeding involving an injured or deceased person or
19 pursuant to a court order.

20 (2) A first responder shall not knowingly disclose any
21 photograph, film, videotape, record or other reproduction of the
22 image of a human corpse or a person being provided medical
23 care or assistance at the scene of a motor vehicle accident or
24 other emergency situation without prior written consent of the
25 injured person, the person's next-of-kin if the injured person
26 cannot provide consent, or personal representative under law of
27 a deceased person, unless that disclosure is for a legitimate law
28 enforcement purpose, public safety purpose, health care purpose,
29 insurance purpose, legal investigation or legal proceeding
30 involving an injured or deceased person or pursuant to a court
31 order.

32 (3) Any person who violates subdivision (1) or (2) of this
33 subsection is guilty of a misdemeanor and, upon conviction
34 thereof, shall be fined not less than \$50 nor more than \$500. For
35 a second offense, the person is guilty of a misdemeanor and,
36 upon conviction thereof, shall be confined in jail for twenty-four
37 hours and shall be fined not less than \$100 nor more than \$750.
38 For a third or subsequent offense, the person is guilty of a
39 misdemeanor and, upon conviction thereof, shall be confined in
40 jail for not less than twenty-four hours nor more than six months
41 and shall be fined not less than \$1,000 nor more than \$5,000.

42 (c) This section shall be known as "Jonathan's Law".

CHAPTER 72

**(Com. Sub. for H. B. 2205 - By Delegates Howell,
Stansbury, Ambler, Cooper, Miller, Faircloth,
Zatezalo, Blair, Statler and Wagner)**

[Passed March 12, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-31, relating to creating the offense of a psychotherapist, or one fraudulently representing himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a patient or client by means of therapeutic deception; establishing elements of the crime; providing exceptions; providing definitions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-31, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-31. Therapeutic deception; penalties.

- 1 (a) In this section, unless a different meaning plainly is
- 2 required:
- 3 (1) “Client” or “patient” means a person who is being treated
- 4 clinically or medically by a psychotherapist for more than one
- 5 session or initial visit.

6 (2) “Psychotherapist” means any of the following:

7 (A) A psychiatrist licensed pursuant to article three, chapter
8 thirty of this code;

9 (B) A psychologist licensed pursuant to article twenty-one,
10 chapter thirty of this code or a medical psychologist licensed
11 pursuant to article three, chapter thirty of this code;

12 (C) A licensed clinical social worker licensed pursuant to
13 article thirty, chapter thirty of this code; or

14 (D) A mental health counselor licensed pursuant to article
15 thirty-one, chapter thirty of this code.

16 (3) “Sexual contact” has the same meaning as provided in
17 article eight-b, chapter sixty-one of this code.

18 (4) “Sexual intercourse” has the same meaning as provided
19 in article eight-b, chapter sixty-one of this code.

20 (5) “Therapeutic deception” means a representation by the
21 psychotherapist to the patient or client that sexual contact or
22 sexual intercourse with the psychotherapist is consistent with or
23 part of the treatment of the patient or client.

24 (b) It is unlawful for any psychotherapist, or any person who
25 fraudulently represents himself or herself as a psychotherapist,
26 to engage in sexual contact or sexual intercourse with a client or
27 patient by means of therapeutic deception.

28 (c) For purposes of this section, consent of the patient or
29 client is not a defense, regardless of the age of the patient or
30 client.

31 (d) Any person who violates subsection (b) of this section is
32 guilty of a felony and, upon conviction thereof, shall be fined not

33 more than \$10,000.00 or imprisoned in a state correctional
34 facility for not less than one year nor more than five years, or
35 both fined and imprisoned.

CHAPTER 73

(H. B. 2494 - By Delegates Weld, Fast, Sponaugle, Skinner and Shott)

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11-22a, relating to codifying deferred adjudication process for persons charged with felony and misdemeanor offenses in circuit and magistrate court; authorizing courts, upon motion, to defer acceptance and adjudication of entered guilty pleas for certain periods based upon severity of offense; authorizing court to impose such conditions and terms as it deems just and necessary as a condition of participation; authorizing periods of incarceration and participation in referenced programs as conditions of participation in the deferred adjudication process; authorizing acceptance of previously entered guilty plea upon violation of the terms and conditions of deferral; authorizing court to impose additional terms and conditions upon defendant if violation occurs; and clarifying that procedure hereby authorized is distinct from conditional plea under Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

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 §61-11-22a to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.****§61-11-22a. Deferred adjudication.**

1 (a) Upon the entry of a guilty plea to a felony or
2 misdemeanor before a circuit or magistrate court of this state
3 entered in compliance with the provisions of West Virginia Rule
4 of Criminal Procedure 11 or Rule 10 of the West Virginia Rules
5 of Criminal Procedure for Magistrate Courts and applicable
6 judicial decisions, the court may, upon motion, defer acceptance
7 of the guilty plea and defer further adjudication thereon and
8 release the defendant upon such terms and conditions as the
9 court deems just and necessary. Terms and conditions may
10 include, but are not limited to, periods of incarceration, drug and
11 alcohol treatment, counseling and participation in programs
12 offered under articles eleven-a, eleven-b and eleven-c, chapter
13 sixty-two of this code.

14 (b) If the offense to which the plea of guilty is entered is a
15 felony, the circuit court may defer adjudication for a period not
16 to exceed three years. If the offense to which the plea of guilty
17 is entered is a misdemeanor, the court may defer adjudication for
18 a period not to exceed two years.

19 (c) If the defendant complies with the court-imposed terms
20 and conditions he or she shall be permitted to withdraw his or
21 her plea of guilty and the matter dismissed or, as may be agreed
22 upon by the court and the parties, enter a plea of guilty or no
23 contest to a lesser offense.

24 (d) In the event the defendant is alleged to have violated the
25 terms and conditions imposed upon him or her by the court
26 during the period of deferral the prosecuting attorney may file a

27 motion to accept the defendant's plea of guilty and, following
28 notice, a hearing shall be held on the matter.

29 (e) In the event the court determines that there is reasonable
30 cause to believe that the defendant violated the terms and
31 conditions imposed at the time the plea was entered, the court
32 may accept the defendant's plea to the original offense and
33 impose a sentence in the court's discretion in accordance with
34 the statutory penalty of the offense to which the plea of guilty
35 was entered or impose such other terms and conditions as the
36 court deems appropriate.

37 (f) The procedures set forth in this section are separate and
38 distinct from that set forth in West Virginia Rule of Criminal
39 Procedure 11(a)(2).



CHAPTER 74

(S. B. 261 - By Senator Blair)

[Passed February 15, 2016; in effect ninety days from passage.]

[Approved by the Governor on February 25, 2016.]

AN ACT to amend and reenact §5-1-25 of the Code of West Virginia, 1931, as amended, relating to the designation of daylight saving time.

Be it enacted by the Legislature of West Virginia:

That §5-1-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. THE GOVERNOR.

§5-1-25. Designation of daylight saving time as official time.

1 Daylight saving time shall be the statewide official time,
2 commencing at two o'clock antemeridian on the second Sunday
3 of March and terminating at two o'clock antemeridian on the
4 first Sunday of November; this time shall apply to all public
5 schools, institutions of higher learning, agencies, departments
6 and political subdivisions of the state.

CHAPTER 75

**(Com. Sub. for H. B. 4317 - By Delegates Foster,
McGeehan, Butler, Ihle, Azinger, Fast, Moffatt, J. Nelson,
Summers, Waxman and Miller)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §48-9-209 of the Code of West Virginia, 1931, as amended, relating to limiting factors in parenting plans; clarifying the court's consideration of fraudulent reports of domestic violence and child abuse in imposing limits on a parenting plan in order to protect a child from harm; clarifying that a person's withdrawal of or failure to pursue a report of domestic violence or child abuse is not alone sufficient to establish that report as fraudulent; requiring court to impose limits that are reasonably calculated to protect the child or the child's parent from harm if a parent who would otherwise be allocated responsibility under a parenting plan has made one or more fraudulent reports of domestic violence or child abuse; and correcting an internal code reference to clarify a parent's ability to move the court to disclose whether other parent was the source of fraudulent reports of domestic violence or child abuse.

Be it enacted by the Legislature of West Virginia:

That §48-9-209 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. ALLOCATION OF CUSTODIAL
RESPONSIBILITY AND
DECISION - MAKING
RESPONSIBILITY OF CHILDREN.**

**PART II.
PARENTING PLANS.**

§48-9-209. Parenting plan; limiting factors.

1 (a) If either of the parents so requests, or upon receipt of
2 credible information thereof, the court shall determine whether
3 a parent who would otherwise be allocated responsibility under
4 a parenting plan:

5 (1) Has abused, neglected or abandoned a child, as defined
6 by state law;

7 (2) Has sexually assaulted or sexually abused a child as
8 those terms are defined in articles eight-b and eight-d, chapter
9 sixty-one of this code;

10 (3) Has committed domestic violence, as defined in section
11 27-202;

12 (4) Has interfered persistently with the other parent's access
13 to the child, except in the case of actions taken for the purpose
14 of protecting the safety of the child or the interfering parent or
15 another family member, pending adjudication of the facts
16 underlying that belief; or

17 (5) Has made one or more fraudulent reports of domestic
18 violence or child abuse: *Provided*, That a person's withdrawal of
19 or failure to pursue a report of domestic violence or child abuse
20 shall not alone be sufficient to consider that report fraudulent.

21 (b) If a parent is found to have engaged in any activity
22 specified by subsection (a) of this section, the court shall impose
23 limits that are reasonably calculated to protect the child or
24 child's parent from harm. The limitations that the court shall
25 consider include, but are not limited to:

26 (1) An adjustment of the custodial responsibility of the
27 parents, including but not limited to:

28 (A) Increased parenting time with the child to make up for
29 any parenting time the other parent lost as a result of the
30 proscribed activity;

31 (B) An additional allocation of parenting time in order to
32 repair any adverse effect upon the relationship between the child
33 and the other parent resulting from the proscribed activity; or

34 (C) The allocation of exclusive custodial responsibility to
35 one of them;

36 (2) Supervision of the custodial time between a parent and
37 the child;

38 (3) Exchange of the child between parents through an
39 intermediary, or in a protected setting;

40 (4) Restraints on the parent from communication with or
41 proximity to the other parent or the child;

42 (5) A requirement that the parent abstain from possession or
43 consumption of alcohol or nonprescribed drugs while exercising
44 custodial responsibility and in the twenty-four hour period
45 immediately preceding such exercise;

46 (6) Denial of overnight custodial responsibility;

47 (7) Restrictions on the presence of specific persons while the
48 parent is with the child;

49 (8) A requirement that the parent post a bond to secure return
50 of the child following a period in which the parent is exercising
51 custodial responsibility or to secure other performance required
52 by the court;

53 (9) A requirement that the parent complete a program of
54 intervention for perpetrators of domestic violence, for drug or
55 alcohol abuse, or a program designed to correct another factor;
56 or

57 (10) Any other constraints or conditions that the court deems
58 necessary to provide for the safety of the child, a child's parent
59 or any person whose safety immediately affects the child's
60 welfare.

61 (c) If a parent is found to have engaged in any activity
62 specified in subsection (a) of this section, the court may not
63 allocate custodial responsibility or decision-making
64 responsibility to that parent without making special written
65 findings that the child and other parent can be adequately
66 protected from harm by such limits as it may impose under
67 subsection (b) of this section. The parent found to have engaged
68 in the behavior specified in subsection (a) of this section has the
69 burden of proving that an allocation of custodial responsibility
70 or decision-making responsibility to that parent will not
71 endanger the child or the other parent.

72 (d) If the court determines, based on the investigation
73 described in part three of this article or other evidence presented
74 to it, that an accusation of child abuse or neglect, or domestic
75 violence made during a child custody proceeding is false and the
76 parent making the accusation knew it to be false at the time the
77 accusation was made, the court may order reimbursement to be
78 paid by the person making the accusations of costs resulting
79 from defending against the accusations. Such reimbursement
80 may not exceed the actual reasonable costs incurred by the
81 accused party as a result of defending against the accusation and
82 reasonable attorney's fees incurred.

83 (e) (1) A parent who believes he or she is the subject of
84 activities by the other parent described in subdivision (5) of
85 subsection (a), may move the court pursuant to subdivision (4),
86 subsection (b), section one hundred and one, article five, chapter
87 forty-nine of this code for the Department of Health and Human
88 Resources to disclose whether the other parent was the source of
89 the allegation and, if so, whether the department found the report
90 to be:

91 (A) Substantiated;

92 (B) Unsubstantiated;

93 (C) Inconclusive; or

94 (D) Still under investigation.

95 (2) If the court grants a motion pursuant to this subsection,
96 disclosure by the Department of Health and Human Resources
97 shall be in camera. The court may disclose to the parties
98 information received from the department only if it has reason
99 to believe a parent knowingly made a false report.

CHAPTER 76

**(Com. Sub. for S. B. 581 - By Senators Maynard,
Ashley, Laird, Kessler, Palumbo, Woelfel,
Romano and Stollings)**

[Passed March 8, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §48-27-301 of the Code of West Virginia, 1931, as amended; and to amend and reenact §51-2A-2 of said code, all relating to eliminating the sunset provision

terminating the pilot domestic violence court program; continuing domestic violence court initiative designed to prevent domestic violence; expanding the initiative from one pilot court to five courts; permitting Supreme Court of Appeals to determine each domestic violence court is to be located; and making other technical and conforming changes.

Be it enacted by the Legislature of West Virginia:

That §48-27-301 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §51-2A-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART III.

PROCEDURE.

§48-27-301. Jurisdiction.

1 (a) Circuit courts, family courts and magistrate courts have
2 concurrent jurisdiction over domestic violence proceedings as
3 provided in this article.

4 (b) The Supreme Court of Appeals is authorized to assign
5 appropriate judicial officers for five domestic violence courts in
6 any jurisdiction chosen by the Supreme Court of Appeals.
7 Judicial officers so assigned have the authority and jurisdiction
8 to preside over criminal misdemeanor crimes of domestic
9 violence involving family or household members as defined in
10 subdivisions (1) through (6), inclusive, and paragraphs (A), (B)
11 and (H), subdivision (7), section two hundred four of this article,
12 relating to offenses under subsections (b) and (c), section nine,
13 article two, chapter sixty-one of this code, misdemeanor
14 violations of section nine-a, article two, chapter sixty-one of this

15 code, misdemeanor violations of section twenty-eight, article
16 two, chapter sixty-one of this code, misdemeanor offenses under
17 article three, chapter sixty-one of this code where the alleged
18 perpetrator and the victim are said family or household
19 members, subdivisions (7) and (8), section seven, article seven,
20 chapter sixty-one of this code and civil and criminal domestic
21 violence protective order proceedings as provided in this article.
22 The judicial officer chosen for any domestic violence court may
23 be a current or senior status circuit judge, family court judge,
24 temporary family court judge or magistrate. The Supreme Court
25 of Appeals is requested to maintain statistical data to determine
26 the feasibility and effectiveness of any domestic violence court
27 established by the provisions of this section.

28 (c) The assigned judicial officer in a domestic violence court
29 does not have jurisdiction to preside over any felony crimes
30 unless the assigned judicial officer is a circuit court judge.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the
2 following matters:

3 (1) All actions for divorce, annulment or separate
4 maintenance brought under the provisions of article three, four
5 or five, chapter forty-eight of this code except as provided in
6 subsections (b) and (c) of this section;

7 (2) All actions to obtain orders of child support brought
8 under the provisions of articles eleven, twelve and fourteen,
9 chapter forty-eight of this code;

10 (3) All actions to establish paternity brought under the
11 provisions of article twenty-four, chapter forty-eight of this code

12 and any dependent claims related to such actions regarding child
13 support, parenting plans or other allocation of custodial
14 responsibility or decision-making responsibility for a child;

15 (4) All actions for grandparent visitation brought under the
16 provisions of article ten, chapter forty-eight of this code;

17 (5) All actions for the interstate enforcement of family
18 support brought under article sixteen, chapter forty-eight of this
19 code and for the interstate enforcement of child custody brought
20 under the provisions of article twenty of said chapter;

21 (6) All actions for the establishment of a parenting plan or
22 other allocation of custodial responsibility or decision-making
23 responsibility for a child, including actions brought under the
24 Uniform Child Custody Jurisdiction and Enforcement Act, as
25 provided in article twenty, chapter forty-eight of this code;

26 (7) All petitions for writs of habeas corpus wherein the issue
27 contested is custodial responsibility for a child;

28 (8) All motions for temporary relief affecting parenting plans
29 or other allocation of custodial responsibility or decision-making
30 responsibility for a child, child support, spousal support or
31 domestic violence;

32 (9) All motions for modification of an order providing for a
33 parenting plan or other allocation of custodial responsibility or
34 decision-making responsibility for a child or for child support or
35 spousal support;

36 (10) All actions brought, including civil contempt
37 proceedings, to enforce an order of spousal or child support or to
38 enforce an order for a parenting plan or other allocation of
39 custodial responsibility or decision-making responsibility for a
40 child;

41 (11) All actions brought by an obligor to contest the
42 enforcement of an order of support through the withholding from
43 income of amounts payable as support or to contest an affidavit
44 of accrued support, filed with the circuit clerk, which seeks to
45 collect an arrearage;

46 (12) All final hearings in domestic violence proceedings;

47 (13) Petitions for a change of name, exercising concurrent
48 jurisdiction with the circuit court;

49 (14) All proceedings for payment of attorney fees if the
50 family court judge has jurisdiction of the underlying action;

51 (15) All proceedings for property distribution brought under
52 article seven, chapter forty-eight of this code;

53 (16) All proceedings to obtain spousal support brought under
54 article eight, chapter forty-eight of this code;

55 (17) All proceedings relating to the appointment of
56 guardians or curators of minor children brought pursuant to
57 sections three, four and six, article ten, chapter forty-four of this
58 code, exercising concurrent jurisdiction with the circuit court;
59 and

60 (18) All proceedings relating to petitions for sibling
61 visitation.

62 (b) If an action for divorce, annulment or separate
63 maintenance does not require the establishment of a parenting
64 plan or other allocation of custodial responsibility or
65 decision-making responsibility for a child and does not require
66 an award or any payment of child support, the circuit court has
67 concurrent jurisdiction with the family court over the action if,
68 at the time of the filing of the action, the parties also file a
69 written property settlement agreement executed by both parties.

70 (c) If an action for divorce, annulment or separate
71 maintenance is pending and a petition is filed pursuant to the
72 provisions of article six, chapter forty-nine of this code alleging
73 abuse or neglect of a child by either of the parties to the divorce,
74 annulment or separate maintenance action, the orders of the
75 circuit court in which the abuse or neglect petition is filed shall
76 supersede and take precedence over an order of the family court
77 respecting the allocation of custodial and decision-making
78 responsibility for the child between the parents. If no order for
79 the allocation of custodial and decision-making responsibility for
80 the child between the parents has been entered by the family
81 court in the pending action for divorce, annulment or separate
82 maintenance, the family court shall stay any further proceedings
83 concerning the allocation of custodial and decision-making
84 responsibility for the child between the parents and defer to the
85 orders of the circuit court in the abuse or neglect proceedings.

86 (d) If a family court judge is assigned as a judicial officer of
87 a domestic violence court then jurisdiction of all proceedings
88 relating to criminal misdemeanor crimes of domestic violence as
89 referenced in section three hundred one, article twenty-seven,
90 chapter forty-eight of this code involving a family or household
91 member as referenced in subdivisions (1) through (6), inclusive,
92 and paragraphs (A), (B), and (H), subdivision (7), section two
93 hundred four, article twenty-seven, chapter forty-eight of this
94 code shall be concurrent with the circuit and magistrate courts.

95 (e) A family court is a court of limited jurisdiction. A family
96 court is a court of record only for the purpose of exercising
97 jurisdiction in the matters for which the jurisdiction of the family
98 court is specifically authorized in this section and in chapter
99 forty-eight of this code. A family court may not exercise the
100 powers given courts of record in section one, article five of this
101 chapter or exercise any other powers provided for courts of
102 record in this code unless specifically authorized by the
103 Legislature. A family court judge is not a “judge of any court of

104 record” or a “judge of a court of record” as the terms are defined
105 and used in article nine of this chapter.

CHAPTER 77

**(Com. Sub. for H. B. 2444 - By Mr. Speaker (Mr. Armstead),
Miller, Waxman, Azinger, Upson, Kessinger, Summers,
Hanshaw, Kurcaba, Hill and E. Nelson)**

[Passed March 11, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §5B-2-5 of the Code of West Virginia, 1931, as amended, relating to providing assistance to small businesses; requiring that the director of the West Virginia Development Office report biennially and offer recommendations for reducing the burdens imposed on small businesses; and further identifying the report’s contents.

Be it enacted by the Legislature of West Virginia:

That §5B-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-5. Economic development representatives.

1 (a) The executive director may employ economic
2 development representatives to be paid a base salary within
3 legislative appropriations to the West Virginia Development
4 Office, subject to applicable contract provisions pursuant to
5 section four of this article. Economic development
6 representatives may receive performance-based incentives and

7 expenses paid from private funds from a nonprofit corporation
8 contracting with the West Virginia Development Office pursuant
9 to the provisions of section four of this article. The executive
10 director shall establish job descriptions and responsibilities of
11 economic development representatives, subject to the provisions
12 of any contract with a nonprofit corporation entered into
13 pursuant to section four of this article.

14 (b) Notwithstanding any provision of this code to the
15 contrary, economic development representatives employed
16 within the West Virginia Development Office are not subject to
17 the procedures and protections provided by articles six and six-a,
18 chapter twenty-nine of this code. Any employee of the West
19 Virginia Development Office on the effective date of this article
20 who applies for employment as an economic development
21 representative is not entitled to the protections of article six,
22 chapter twenty-nine with respect to hiring procedures and
23 qualifications; and upon accepting employment as an economic
24 development representative, the employee relinquishes the
25 protections provided for in article two, chapter six-c and article
26 six, chapter twenty-nine of this code.

27 (c) On the last Monday in January, in years 2017, 2019 and
28 2021, the executive director shall submit to the Legislature a
29 written report. The executive director shall provide copies of his
30 or her report to the President of the Senate, the Speaker of the
31 House of Delegates, the chair of the Senate Committee on
32 Economic Development and the chair of the House Committee
33 on Small Business, Entrepreneurship and Economic
34 Development. The executive director's report shall do the
35 following:

36 (1) Identify and describe loans, grants or other funding
37 sources that economic development representatives have assisted
38 small businesses acquire during the immediately preceding
39 reporting cycle;

40 (2) Identify and describe generally inquiries, requests for
41 assistance or other matters that other state or federal agencies
42 have presented to the West Virginia Development Office in the
43 immediately preceding reporting cycle in connection with those
44 agencies' efforts to regulate or assist small businesses;

45 (3) Identify and describe issues with formation, registration
46 and licensure requirements that state law imposes on small
47 businesses that small businesses have identified to the West
48 Virginia Development Office in the immediately preceding
49 reporting cycle as burdensome;

50 (4) Identify specific forms, processes or requirements
51 imposed by state law that small businesses have identified to the
52 West Virginia Development Office in the immediately preceding
53 reporting cycle that may be streamlined, simplified, combined or
54 eliminated in order to reduce unnecessary costs, delays or other
55 burdens on small businesses;

56 (5) Propose and describe concrete and specific steps that any
57 branch, agency or level of state government may take to
58 streamline, simplify, combine or eliminate the forms, processes
59 or requirements identified in subdivision (4) of this subsection;
60 and

61 (6) Provide the following information:

62 (A) The number of small businesses counseled by the West
63 Virginia Development Office during the immediately preceding
64 reporting cycle;

65 (B) The number of new businesses created while being
66 counseled by the West Virginia Development Office during the
67 immediately preceding reporting cycle;

68 (C) The number of jobs created by businesses counseled by
69 the West Virginia Development Office during the immediately
70 preceding reporting cycle; and

71 (D) Any other information that, in the opinion of the
72 executive director, demonstrates the performance of the West
73 Virginia Development Office or economic development
74 representatives during the immediately preceding reporting
75 cycle.

CHAPTER 78

**(S. B. 656 - By Senators Laird, Stollings,
Unger, Miller and Palumbo)**

[Passed March 8, 2016; in effect 90 days from passage.]

[Approved by the Governor on March 16, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-15, relating to creating the Upper Kanawha Valley Resiliency and Revitalization Program for a period of five years; finding that there are challenges facing the Upper Kanawha Valley due to the decision to relocate West Virginia University Institute of Technology from Montgomery, West Virginia, to Beckley, West Virginia; establishing revitalization council to organize and prioritize state resources and technical assistance for the Upper Kanawha Valley; directing revitalization council to develop strategies to stimulate economic activity in and around the municipalities in Upper Kanawha Valley in coordination with certain contributing partners to the extent possible; directing revitalization council to annually report to the Governor and the Legislature; directing Development Office and revitalization council to facilitate economic development incentives for the Upper Kanawha Valley; and authorizing Development Office or other state body to provide state property and equipment to businesses investing in the Upper Kanawha Valley at a reduced cost.

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 §5B-2-15, to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-15. Upper Kanawha Valley Resiliency and Revitalization Program.

1 (a) *Definitions.* —

2 (1) *General.* — Terms defined in this section have the
3 meanings ascribed to them by this section, unless a different
4 meaning is clearly required by either the context in which the
5 term is used, or by specific definition in this section.

6 (2) *Terms Defined.* —

7 (A) “Contributing partners” means those entities or their
8 representatives described in subsection (f) of this section.

9 (B) “Program” means the Upper Kanawha Valley Resiliency
10 and Revitalization Program established in this section.

11 (C) “Revitalization council” means those entities or their
12 representatives described in subsection (d) of this section.

13 (D) “Technical assistance” means resources provided by the
14 state, revitalization council, contributing partners or any other
15 individuals or entities providing programming, funding or other
16 support to benefit the Upper Kanawha Valley under the program.

17 (E) “Upper Kanawha Valley” means an area defined by the
18 Development Office that encompasses the areas from Gauley
19 Bridge to Pratt, including the municipalities of Montgomery,
20 Smithers, Pratt and Gauley Bridge or other communities in the
21 vicinity of the West Virginia University Institute of Technology.

22 (F) “Upper Kanawha Valley Resiliency and Revitalization
23 Program” means the entire process undertaken to further the
24 goals of this section, including collaboration development and
25 implementation between the members, contributors and technical
26 assistance resource providers.

27 (b) *Legislative purpose, findings and intent.* —

28 (1) The decision to relocate the historic campus of the West
29 Virginia University Institute of Technology from Montgomery,
30 West Virginia to Beckley, West Virginia will have a dramatic
31 economic impact on the Upper Kanawha Valley.

32 (2) The purpose of this section is to establish the Upper
33 Kanawha Valley Resiliency and Revitalization Program. To
34 further this purpose, this program creates a collaboration among
35 state government, higher education and private and nonprofit
36 sectors to streamline technical assistance capacity, existing
37 services and other resources to facilitate community
38 revitalization in the Upper Kanawha Valley.

39 (3) It is the intent of the Legislature to identify existing state
40 resources that can be prioritized to support the Upper Kanawha
41 Valley, generate thoughtful and responsible ideas to mitigate the
42 negative effects of the departure of the West Virginia Institute of
43 Technology from the Upper Kanawha Valley and help chart a
44 new course and prosperous future for the Upper Kanawha
45 Valley.

46 (c) *Upper Kanawha Valley Resiliency and Revitalization*
47 *Program established; duration of program.* —

48 (1) The Development Office shall establish the Upper
49 Kanawha Valley Resiliency and Revitalization Program in
50 accordance with the provisions of this section, subject to the
51 availability of funding necessary to support the program. The

52 program shall inventory existing assets and resources, prioritize
53 planning and technical assistance, and determine such other
54 assistance as might be available to revitalize communities in the
55 Upper Kanawha Valley.

56 (2) The program shall be established for an initial period of
57 five years from the effective date of this legislation.

58 (d) *Revitalization council created.* — There is hereby created
59 a revitalization council to fulfill the purposes of this section. The
60 revitalization council shall be coordinated by the Development
61 Office in the Department of Commerce and be subject to
62 oversight by the secretary of the department. The following
63 entities shall serve as members of the revitalization council:

64 (1) The Executive Director of the Development Office or
65 their designee, who shall serve as chairperson of the council;

66 (2) The Secretary of the Department of Health and Human
67 Resources or their designee;

68 (3) The Commissioner of the Department of Agriculture or
69 their designee;

70 (4) The Executive Director of the West Virginia Housing
71 Development Fund or their designee;

72 (5) A representative from the Kanawha County commission;

73 (6) A representative from the Fayette County commission;

74 (7) The mayor, or their designee, from the municipalities of
75 Montgomery, Smithers, Pratt and Gauley Bridge;

76 (8) A representative from Bridge Valley Community and
77 Technical College; and

78 (9) A representative from West Virginia University.

79 (e) *Duties of the revitalization council.* —

80 (1) The council shall identify existing state resources that
81 can be prioritized to support economic development efforts in
82 the Upper Kanawha Valley.

83 (2) The council shall direct existing resources in a unified
84 effort and in conjunction with contributing partners, as
85 applicable, to support the Upper Kanawha Valley.

86 (3) The council shall develop a rapid response strategy to
87 attract or develop new enterprises and job creating opportunities
88 in the Upper Kanawha Valley.

89 (4) The council shall conduct or commission a
90 comprehensive assessment of assets available at the campus of
91 the West Virginia Institute of Technology and determine how
92 those assets will be preserved and repurposed.

93 (5) The council shall assist communities in the Upper
94 Kanawha Valley by developing an economic plan to diversify
95 and advance the community.

96 (6) Members of the council shall support both the planning
97 and implementation for the program and shall give priority
98 wherever possible to programmatic activity and discretionary,
99 noncompetitive funding during the period the program remains
100 in effect.

101 (7) Members of the council shall work together to leverage
102 funding or other agency resources to benefit efforts to revitalize
103 the Upper Kanawha Valley.

104 (f) *Contributing partners.* — To the extent possible, the
105 revitalization council shall incorporate the resources and
106 expertise of additional providers of technical assistance to
107 support the program, which shall include but not be limited to:

108 (1) The West Virginia Small Business Development Center;

109 (2) The Center for Rural Health Development;

110 (3) The West Virginia University Brickstreet Center for
111 Entrepreneurship;

112 (4) The West Virginia University Land Use and
113 Sustainability Law Clinic;

114 (5) The West Virginia University Center for Big Ideas;

115 (6) The New River Gorge Regional Development Authority;

116 (7) The Rahall Transportation Institute;

117 (8) The Marshall University Center for Business and
118 Economic Research;

119 (9) TechConnect;

120 (10) The West Virginia Community Development Hub;

121 (11) The West Virginia University Northern Brownfields
122 Assistance Center;

123 (12) West Virginia State University Extension Service; and

124 (13) West Virginia University Extension Service,
125 Community, Economic and Workforce Development.

126 (g) *Reporting and agency accountability.* — The
127 revitalization council, in coordination with its contributing
128 partners, as applicable, shall report annually to the Governor and
129 the Legislature detailing the progress of the technical assistance
130 support provided by the program, the strategic plan for the Upper
131 Kanawha Valley and the results of these efforts.

132 (h) *Economic Incentives for businesses investing in the*
133 *Upper Kanawha Valley.* — The Development Office and the

134 revitalization council, as applicable, will work to educate
135 businesses investing, or interested in investing, in the Upper
136 Kanawha Valley, about the availability of, and access to,
137 economic development assistance, including but not limited to,
138 the economic opportunity tax credit provided in section nineteen,
139 article thirteen-q, chapter eleven of this code; the manufacturing
140 investment tax credit provided under article thirteen-s, chapter
141 eleven of this code; and any other applicable tax credit or
142 development assistance.

143 (i) *Use of state property and equipment; faculty.* — The
144 Development Office or other owner of state property and
145 equipment in the Upper Kanawha Valley is authorized to provide
146 for the low cost and economical use and sharing of state property
147 and equipment, including computers, research labs and other
148 scientific and necessary equipment to assist any business within
149 the Upper Kanawha Valley at a nominal or reduced-cost
150 reimbursements to the state for such use.



CHAPTER 79

(S. B. 426 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §5B-2A-3 and §5B-2A-4 of the Code of West Virginia, 1931, as amended, all relating to continuing Office of Coalfield Community Development within Department of Commerce; allowing Secretary of the Department of Commerce to appoint a chief; and defining a term.

Be it enacted by the Legislature of West Virginia:

That §5B-2A-3 and §5B-2A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-3. Definitions.

1 (a) For the purpose of this article:

2 (1) “Department” means the Department of Environmental
3 Protection established in article one, chapter twenty-two of this
4 code;

5 (2) “Office” means the Office of Coalfield Community
6 Development;

7 (3) “Operator” means the definition in section three, article
8 three, chapter twenty-two of this code;

9 (4) “Renewable and alternative energy” means energy
10 produced or generated from natural or replenishable resources
11 other than traditional fossil fuels or nuclear resources and
12 includes, without limitation, solar energy, wind power,
13 hydropower, geothermal energy, biomass energy, biologically
14 derived fuels, energy produced with advanced coal technologies,
15 coalbed methane, fuel produced by a coal gasification or
16 liquefaction facility, synthetic gas, waste coal, tire-derived fuel,
17 pumped storage hydroelectric power or similar energy sources;
18 and

19 (5) “Secretary” means the Secretary of the Department of
20 Commerce.

21 (b) Unless used in a context that clearly requires a different
22 meaning or as otherwise defined herein, terms used in this article
23 shall have the definitions set forth in this section.

§5B-2A-4. Office of Coalfield Community Development.

- 1 (a) The Office of Coalfield Community Development is
- 2 continued within the Department of Commerce.

- 3 (b) The secretary may appoint a chief to administer the
- 4 office, who serves at the will and pleasure of the secretary.

CHAPTER 80

**(S. B. 461 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed March 8, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §5B-2B-1, §5B-2B-2, §5B-2B-3, §5B-2B-4, §5B-2B-4a, §5B-2B-5, §5B-2B-6 and §5B-2B-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5B-2B-4b, all relating to West Virginia Workforce Development Board; updating West Virginia Workforce Investment Act to West Virginia Innovation and Opportunity Act; defining terms; creating West Virginia Workforce Development Board; providing for composition of West Virginia Workforce Development Board; setting forth requirements for board members; setting forth duties of board; updating reporting requirements; requiring open proceedings of board; and updating language.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-1, §5B-2B-2, §5B-2B-3, §5B-2B-4, §5B-2B-4a, §5B-2B-5, §5B-2B-6 and §5B-2B-9 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-2B-4b, all to read as follows:

**ARTICLE 2B. WEST VIRGINIA WORKFORCE INNOVATION
AND OPPORTUNITY ACT.**

§5B-2B-1. Short title.

1 This article shall be known and may be cited as the West
2 Virginia Workforce Innovation and Opportunity Act.

§5B-2B-2. Definitions.

1 As used in this article, the following terms have the
2 following meanings, unless the context clearly indicates
3 otherwise:

4 “Board” means the West Virginia Workforce Development
5 Board.

6 “Commission” or “Legislative Oversight Commission”
7 means the Legislative Oversight Commission on Workforce
8 Investment for Economic Development created pursuant to
9 section seven of this article.

10 “Local area” means a local workforce investment area.

11 “Local board” means a local workforce development board.

12 “Team” means the workforce investment interagency
13 collaborative team.

14 “WIOA” means the Workforce Innovation and Opportunity
15 Act, 29 U. S. C. §3101, et seq.

§5B-2B-3. West Virginia Workforce Development Board; membership of board; meetings; quorum requirements.

1 (a) The West Virginia Workforce Development Board is
2 hereby created and shall serve as the state's Workforce
3 Development Board, as required by the WIOA. The board shall
4 make general recommendations regarding workforce investment
5 in the state to the Governor and the Legislature.

6 (b) The membership of the board shall meet the
7 requirements of WIOA §101(b) and represent diverse geographic
8 areas of the state, including urban, rural and suburban areas. The
9 board membership includes:

10 (1) The Governor, or his or her designated representative;
11 and

12 (2) The President of the Senate, or his or her designee, and
13 the Speaker of the House of Delegates, or his or her designee,
14 both of whom shall be nonvoting members of the board; and

15 (3) Members appointed by the Governor, with the advice and
16 consent of the Senate, which shall include:

17 (A) Representatives of businesses or organizations, who
18 shall comprise a majority of the board membership, who:

19 (i) Are the owner or chief executive officer for the business
20 or organization, or is an executive with the business or
21 organization with optimum policy-making or hiring authority,
22 and may also be members of a local board as described in WIOA
23 §107(b)(2)(A)(i);

24 (ii) Represent businesses, or organizations that represent
25 businesses described in paragraph (A), subdivision (3),
26 subsection (b) of this section, that, at a minimum, provide

27 employment and training opportunities that include high-quality,
28 work-relevant training and development in in-demand industry
29 sectors or occupations in the state;

30 (iii) Are appointed from a list of potential members proposed
31 by state business organization and business trade associations;
32 and

33 (iv) At a minimum, one member representing small
34 businesses as defined by the U. S. Small Business
35 Administration.

36 (B) Not less than twenty percent of the board shall be
37 representatives of the workforce within the state, which:

38 (i) Shall include two or more representatives of labor
39 organizations appointed from a list proposed by state labor
40 federations;

41 (ii) Shall include one representative who shall be a member
42 of a labor organization or training director from a joint
43 labor-management apprenticeship program, or, if no such joint
44 program exists in the state, a member of a labor organization or
45 training director who is a representative of an apprenticeship
46 program;

47 (iii) May include one or more representatives of
48 community-based organizations that have demonstrated
49 experience and expertise in addressing the employment, training
50 or education needs of individuals with barriers to employment,
51 including organizations that serve veterans or provide or support
52 competitive, integrated employment for individuals with
53 disabilities; and

54 (iv) May include one or more representative of organizations
55 that have demonstrated experience and expertise in addressing
56 the employment, training or education needs of eligible youth,

57 including representative of organizations that serve out-of-school
58 youth.

59 (C) The balance of the members:

60 (i) Shall include representatives of government including:

61 (I) The lead state officials with primary responsibility for
62 each of the core programs. Where the lead official represents
63 more than one core program, that official shall ensure adequate
64 representation of the needs of all core programs under his or her
65 jurisdiction; and

66 (II) Two or more chief elected officials, collectively
67 representing both cities and counties, where appropriate.

68 (ii) May include other appropriate representatives and
69 officials designated by the Governor, such as, but not limited to,
70 state agency officials responsible for one-stop partner programs,
71 economic development or juvenile justice programs in the state,
72 individuals who represent an Indian tribe or tribal organization
73 as defined in WIOA §166(b), and state agency officials
74 responsible for education programs in the state, including chief
75 executive officers of community colleges and other institutions
76 of higher education.

77 (c) The Governor shall select a chairperson for the board
78 from the business representatives on the board described in
79 paragraph (A), subdivision (3), subsection (b) of this section.

80 (d) Initial terms for appointed members of the board are for
81 up to three years as determined by the Governor. All subsequent
82 terms shall be for three years.

83 (e) Members who represent organizations, agencies or other
84 entities described in paragraphs (B) and (C), subdivision (3),
85 subsection (b) of this section shall be individuals who have

86 optimum policy-making authority in the organizations they
87 represent.

88 (f)(1) A board member may not represent more than one of
89 the categories described in:

90 (A) Paragraph (A), subdivision (3), subsection (b) of this
91 section;

92 (B) Paragraph (B), subdivision (3), subsection (b) of this
93 section; or

94 (C) Paragraph (C), subdivision (3), subsection (b) of this
95 section.

96 (2) A board member may not serve as a representative of
97 more than one subcategory under paragraph (B), subdivision (3),
98 subsection (b) of this section.

99 (3) A board member may not serve as a representative of
100 more than one subcategory under paragraph (C), subdivision (3),
101 subsection (b) of this section: *Provided*, That where a single
102 government agency is responsible for multiple required
103 programs, the head of the agency may represent each of the
104 required programs.

105 (g) All required board members, other than the ex officio
106 members of the Legislature, shall have voting privileges. The
107 Governor may also convey voting privileges to nonrequired
108 members.

§5B-2B-4. Duties of the Workforce Development Board.

1 (a) The board shall provide information and guidance to
2 local boards and staff, to enable them to better educate both
3 women and men about higher paying jobs and careers including
4 jobs traditionally dominated by men or women. Such guidance

5 shall promote services provided by the local boards for job
6 seekers that includes:

7 (1) Current information about compensation for jobs and
8 careers that offer high earning potential including jobs that are
9 traditionally dominated by men or women;

10 (2) Counseling, skills development and training
11 opportunities that encourage both women and men to seek
12 employment in such jobs;

13 (3) Referral information to employers offering such jobs; or

14 (4) Information regarding the long-term consequences,
15 including lower social security benefits or pensions, of choosing
16 jobs that offer lower earnings potential and are traditionally
17 dominated by women or men.

18 (b) Under WIOA §101(d), the board shall assist the
19 Governor in the:

20 (1) Development, implementation and modification of the
21 four-year state plan;

22 (2) Review of statewide policies, programs and
23 recommendations on actions that should be taken by the state to
24 align workforce development programs to support a
25 comprehensive and streamlined workforce development system.
26 Such review of policies, programs and recommendations shall
27 include a review and provision of comments on the state plans,
28 if any, for programs and activities of one-stop partners that are
29 not core programs;

30 (3) Development and continuous improvement of the
31 workforce development system, including:

32 (A) Identification of barriers and means for removing
33 barriers to better coordinate, align and avoid duplication among
34 programs and activities;

35 (B) Development of strategies to support career pathways for
36 the purpose of providing individuals, including low-skilled
37 adults, youth and individuals with barriers to employment,
38 including individuals with disabilities, with workforce
39 investment activities, education and supportive services to enter
40 or retain employment;

41 (C) Development of strategies to provide effective outreach
42 to, and improved access for, individuals and employers who
43 could benefit from workforce development system;

44 (D) Development and expansion of strategies to meet the
45 needs of employers, workers and jobseekers, particularly through
46 industry or sector partnerships related to in-demand industry
47 sectors and occupations;

48 (E) Identification of regions, including planning regions for
49 the purpose of WIOA §106(a), and the designation of local areas
50 under WIOA §106 after consultation with local boards and chief
51 elected officials;

52 (F) Development and continuous improvement of the
53 one-stop delivery system in local areas, including providing
54 assistance to local boards, one-stop operators, one-stop partners
55 and providers. Such assistance includes assistance with planning
56 and delivering services, including training and supportive
57 services, to support effective delivery of services to workers,
58 jobseekers and employers; and

59 (G) Development of strategies to support staff training and
60 awareness across the workforce development system and its
61 programs;

62 (4) Development and updating of comprehensive state
63 performance and accountability measures to access core program
64 effectiveness under WIOA §116(b);

65 (5) Identification and dissemination of information on best
66 practices, including best practices for:

67 (A) The effective operation of one-stop centers, relating to
68 the use of business outreach, partnerships and service delivery
69 strategies, including strategies for serving individuals with
70 barriers to employment;

71 (B) The development of effective local boards, which may
72 include information on factors that contribute to enabling local
73 boards to exceed negotiated local levels of performance, sustain
74 fiscal integrity and achieve other measures of effectiveness; and

75 (C) Effective training programs that respond to real-time
76 labor market analysis, that effectively use direct assessment and
77 prior learning assessment to measure an individual's prior
78 knowledge, skills, competencies and experiences for
79 adaptability, to support efficient placement into employment or
80 career pathways;

81 (6) Development and review of statewide policies affecting
82 the coordinated provision of services through the state's one-stop
83 delivery system described in WIOA §121(e), including the
84 development of:

85 (A) Objective criteria and procedures for use by local boards
86 in assessing the effectiveness, physical and programmatic
87 accessibility and continuous improvement of one-stop centers.
88 Where a local board serves as the one-stop operator, the board
89 shall use such criteria to assess and certify the one-stop center;

90 (B) Guidance for the allocation of one-stop center
91 infrastructure funds under WIOA §121(h); and

92 (C) Policies relating to the appropriate roles and
93 contributions of entities carrying out one-stop partner programs
94 within the one-stop delivery system, including approaches to
95 facilitating equitable and efficient cost allocation in the system;

96 (7) Development of strategies for technological
97 improvements to facilitate access to, and improve the quality of
98 services and activities provided through, the one-stop delivery
99 system, including such improvements to:

100 (A) Enhance digital literacy skills (as defined in §202 of the
101 Museum and Library Service Act, 20 U. S. C. §9101);

102 (B) Accelerate acquisition of skills and recognized
103 post-secondary credentials by participants;

104 (C) Strengthen professional development of providers and
105 workforce professionals; and

106 (D) Ensure technology is accessible to individuals with
107 disabilities and individuals residing in remote areas;

108 (8) Development of strategies for aligning technology and
109 data systems across one-stop partner programs to enhance
110 service delivery and improve efficiencies in reporting on
111 performance accountability measures, including design
112 implementation of common intake, data collection, case
113 management information, and performance accountability
114 measurement and reporting processes and the incorporation of
115 local input into such design and implementation to improve
116 coordination of services across one-stop partner programs;

117 (9) Development of allocation formulas for the distribution
118 of funds for employment and training activities for adults and
119 youth workforce investment activities, to local areas as permitted
120 under WIOA §128(b)(3) and §133(b)(3);

121 (10) Preparation of the annual reports described in
122 paragraphs (1) and (2) of WIOA §116(d);

123 (11) Development of the statewide workforce and labor
124 market information system described in §15(e) of the
125 Wagner-Peyser Act, 29 U. S. C. §49, et seq.; and

126 (12) Development of other policies as may promote
127 statewide objectives for and enhance the performance of the
128 workforce development system in the state.

§5B-2B-4a. Report to Legislature.

1 (a) The Legislature finds that:

2 (1) The state needs to take all necessary steps to retain,
3 educate and train West Virginians to have the skills necessary to
4 compete for job opportunities resulting from horizontal drilling;
5 and

6 (2) Specific attention shall be made by the State of West
7 Virginia to train and educate West Virginia citizens that have not
8 historically or traditionally been exposed to the oil and gas
9 industry through training programs offered by community
10 colleges, technical schools and institutions and small business
11 owners. Small business owners shall be made aware by the State
12 of West Virginia of any and all programs and grants available to
13 assist them in training said individuals.

14 (b) To assist in maximizing the economic opportunities
15 available with horizontal drilling, the board shall make a report
16 to the Joint Committee on Government and Finance and the
17 Legislative Oversight Commission on Education Accountability
18 on or before November 1 of each year through 2016, detailing a
19 comprehensive review of the direct and indirect economic
20 impact of employers engaged in the production of horizontal
21 wells in the State of West Virginia, as more specifically defined

22 in article six-a, chapter twenty-two of this code, which shall
23 include:

24 (1) A review of the total number of jobs created;

25 (2) A review of total payroll of all jobs created;

26 (3) The average salary per job type;

27 (4) A review of total economic impact;

28 (5) The board's recommendations for the establishment of
29 an overall workforce investment public education agenda with
30 goals and benchmarks toward maximizing job creation
31 opportunities in the State of West Virginia;

32 (6) A review of number of jobs created for minorities based
33 on race, ethnicity and gender;

34 (7) A review of number of jobs created for individuals
35 reemployed from the State of West Virginia's unemployment
36 rosters;

37 (8) A review of number of jobs created for returning
38 veterans; and

39 (9) A review of number of jobs created for legal West
40 Virginia residents and non-West Virginia residents.

41 (c) To the extent permitted by federal law, and to the extent
42 necessary for the board to comply with this section, the board,
43 Workforce West Virginia, the Division of Labor and the Office
44 of the Insurance Commissioner may enter into agreements
45 providing for the sharing of job data and related information.

§5B-2B-4b. Open meetings; public information.

1 (a) The board shall conduct business in an open manner as
2 required by WIOA §101(g).

- 3 (b) The board shall make available to the public, on a regular
4 basis through electronic means and open meetings, information
5 about the activities and functions of the board including:
- 6 (1) The state plan, or modification to the state plan, prior to
7 submission of the plan or modification of the plan;
- 8 (2) Information regarding membership; and
- 9 (3) Minutes of formal meetings of the board upon request.

§5B-2B-5. State agencies.

1 On or before November 1, any state agency that receives
2 federal or state funding that has been used for workforce
3 investment activities for the past fiscal year shall provide to the
4 board a report, detailing the source and amount of federal, state
5 or other funds received; the purposes for which the funds were
6 provided; the services provided in each regional workforce
7 investment area; the measures used to evaluate program
8 performance, including current and baseline performance data;
9 and any other information requested by the board. All reports
10 submitted pursuant to this section are to be in a form approved
11 by the board.

§5B-2B-6. Administration of board.

- 1 (a) Workforce West Virginia shall provide administrative
2 and other services to the board as the board requires.
- 3 (b) Workforce West Virginia shall facilitate the coordination
4 of board activities and local workforce investment activities,
5 including holding meetings with the executive directors of each
6 local board at least monthly. Any executive director of a local
7 board who participates in a meeting held pursuant to this
8 subsection shall report to his or her local board and the county
9 commission of each county represented by the local board
10 regarding the meeting.

§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the Executive Director of Workforce West Virginia.

1 (a) To provide ongoing attention to addressing issues that
2 will build and continually improve the overall workforce
3 investment system, the Workforce Investment Interagency
4 Collaborative Team is hereby created. The team shall be the
5 single state interagency source for addressing issues or concerns
6 related to building and maintaining the most effective and
7 efficient implementation of WIOA and the overall workforce
8 development system in West Virginia. The team shall focus on
9 how best to collaborate between and among the state agencies
10 directly involved in workforce investment activities and shall
11 develop a strategic plan to that end. The team shall serve as a
12 forum for the board to seek information or recommendations in
13 furtherance of its responsibilities under this article. Workforce
14 West Virginia is the entity which shall convene the team at least
15 monthly and shall provide administrative and other services to
16 the team as the team requires.

17 (b) The team shall consist of members from each agency
18 subject to the reporting provisions of section five of this article.
19 Each agency shall appoint two representatives to the team
20 consisting of the chief official of the department or division and
21 the official within that department or division who is directly
22 responsible for overseeing the workforce investment program or
23 activities at the state level. A designee may be selected to
24 represent a member appointed to the team: *Provided*, That the
25 designee has policy-making decision authority regarding
26 workforce investment activities including program and fiscal
27 issues. The team members have authority to make decisions on
28 behalf of the agency at the level required for the team to address
29 issues and advance system improvements.

30 (c) The team shall coordinate the development of a
31 self-sufficiency standard study for the State of West Virginia.
32 The self-sufficiency standard is to measure how much income is
33 needed for a household of a given composition in a given place
34 to adequately meet its basic needs without public or private
35 assistance. Beginning on November 1, 2004, and every two years
36 thereafter, this study is to be reported to the Speaker of the
37 House of Delegates, the President of the Senate, the board and
38 the Legislative Oversight Commission on Workforce Investment
39 for Economic Development.

40 (d) Beginning January 1, 2003, in order to lawfully continue
41 any workforce investment activities, any agency subject to the
42 reporting provisions of section five of this article shall enter into
43 a memorandum of understanding with the Executive Director of
44 Workforce West Virginia and any local board representing an
45 area of this state in which the agency is engaged in workforce
46 investment activities. To the extent permitted by federal law, the
47 agreements are to maximize coordination of workforce
48 investment activities and eliminate duplication of services on
49 both state and local levels.

50 (e) No memorandum of understanding may be effective for
51 more than one year without annual reaffirmation by the parties.

52 (f) Any state agency entering a memorandum of
53 understanding shall deliver a copy thereof to both the board and
54 the Legislative Oversight Commission.

CHAPTER 81

(Com. Sub. for S. B. 293 - By Senators Walters, Boso and Sypolt)

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §11-13J-3, §11-13J-4, §11-13J-4a, §11-13J-10 and §11-13J-12 of the Code of West Virginia, 1931, as amended, all relating generally to Neighborhood Investment Program Act; changing termination date; defining terms; specifying frequency of required project transferee reports; specifying number of required advisory board meetings; specifying required number of West Virginia Development Office reports to the board; providing criteria for evaluation of projects; providing for report by Tax Commissioner; and specifying frequency of program assessments by the director.

Be it enacted by the Legislature of West Virginia:

That §11-13J-3, §11-13J-4, §11-13J-4a, §11-13J-10 and §11-13J-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-3. Definitions.

- 1 (a) *General.* — When used in this article, or in the
- 2 administration of this article, terms defined in subsection (b) of
- 3 this section have the meanings ascribed to them by this section,
- 4 unless a different meaning is clearly required by either the
- 5 context in which the term is used, or by specific definition in this
- 6 article.

7 (b) *Terms defined.* —

8 “Affiliate” includes all business entities which are affiliates
9 of each other when either directly or indirectly:

10 (A) One business entity controls or has the power to control
11 the other business entity; or

12 (B) A third party or third parties control or have the power
13 to control both affiliates. In determining whether business
14 entities are independently owned and operated and whether or
15 not affiliation exists, consideration shall be given to all
16 appropriate factors, including common ownership, common
17 management and contractual relationships.

18 “Capacity building” means to generally enhance the capacity
19 of the community to achieve improvements and to obtain the
20 community services described in subparagraphs (i) through (v),
21 inclusive, of the definition of that term, as set forth in this
22 subsection. Capacity building includes, but is not limited to,
23 improvement of the means, or capacity, to:

24 (i) Access, obtain and use private, charitable and
25 governmental assistance programs, administrative assistance and
26 private, charitable and governmental resources or funds;

27 (ii) Fulfill legal, bureaucratic and administrative
28 requirements and qualifications for accessing assistance,
29 resources or funds; and

30 (iii) Attract and direct political and community attention to
31 needs of the community for the purpose of increasing access to
32 and use of assistance, resources or funds for a given purpose,
33 goal or need.

34 “Commissioner or Tax Commissioner” are used
35 interchangeably in this article and mean the Tax Commissioner
36 of the State of West Virginia, or his or her delegate.

37 “Community services” means services, provided at no
38 charge whatsoever, of:

39 (i) Providing any type of health, personal finance,
40 psychological or behavioral, religious, legal, marital, educational
41 or housing counseling and advice to economically disadvantaged
42 citizens or a specifically designated group of economically
43 disadvantaged citizens or in an economically disadvantaged area;

44 (ii) Providing emergency assistance or medical care to
45 economically disadvantaged citizens or to a specifically
46 designated group of economically disadvantaged citizens or in
47 an economically disadvantaged area;

48 (iii) Establishing, maintaining or operating recreational
49 facilities, or housing facilities for economically disadvantaged
50 citizens or a specifically designated group of economically
51 disadvantaged citizens or in an economically disadvantaged area;

52 (iv) Providing economic development assistance to
53 economically disadvantaged citizens or a specifically designated
54 group of economically disadvantaged citizens; without regard to
55 whether they are located in an economically disadvantaged area,
56 or to individuals, groups or neighborhood or community
57 organizations, in an economically disadvantaged area; or

58 (v) Providing community technical assistance and capacity
59 building to economically disadvantaged citizens or a specifically
60 designated group of economically disadvantaged citizens, or to
61 individuals, groups or neighborhood or community organizations
62 in an economically disadvantaged area.

63 “Compensation” means wages, salaries, commissions and
64 any other form of remuneration paid to employees for personal
65 services.

66 “Community-based” means:

67 (i) The project is to be managed locally, without national,
68 state, multistate or international affiliations;

69 (ii) The project will benefit local citizens in the immediate
70 geographic area where the project is to operate; and

71 (iii) The sponsor of the project is a local entity, rather than
72 a statewide, national or international organization or an affiliate
73 of a statewide, national or international organization.

74 “Corporation” means any corporation, joint-stock company
75 or association and any business conducted by a trustee or
76 trustees in which interest or ownership is evidenced by a
77 certificate of interest or ownership or similar written instrument.

78 “Crime prevention” means any activity which aids in the
79 reduction of crime.

80 “Delegate” in the phrase “or his or her delegate”, when used
81 in reference to the Tax Commissioner, means any officer or
82 employee of the Tax Division of the Department of Revenue
83 duly authorized by the Tax Commissioner directly, or indirectly
84 by one or more redelegations of authority, to perform the
85 functions mentioned or described in this article.

86 “Direct need programs” means a program, organization or
87 community endowment that serve persons whose annual income
88 is no more than 125 percent of the federal poverty level with
89 self-reliance and independence from government assistance as
90 its primary objective.

91 “Director or Director of the West Virginia Development
92 Office” means the Director of the West Virginia Development
93 Office.

94 “Economically disadvantaged area” means any region of the
95 state with a poverty rate greater than the average statewide

96 poverty rate as determined by the U. S. Census Bureau's most
97 recently published data.

98 "Economically disadvantaged citizen" means a natural
99 person, who during the current taxable year has, or during the
100 immediately preceding taxable year had, an annual gross
101 personal income not exceeding one hundred twenty-five percent
102 of the federal designated poverty level for personal incomes, and
103 who is a domiciliary and resident of this state.

104 "Education" means any type of scholastic instruction to, or
105 scholarship by, an individual that enables that individual to
106 prepare for better life opportunities. Education does not include
107 courses in physical training, physical conditioning, physical
108 education, sports training, sports camps and similar training or
109 conditioning courses, except for physical therapy prescribed by
110 a physician or other person licensed to prescribe courses of
111 medical treatment under this code.

112 "Eligible contribution" consists of:

113 (A)(i) Cash;

114 (ii) Tangible personal property, valued at its fair market
115 value;

116 (iii) Real property, valued at its fair market value;

117 (iv) In-kind professional services, valued at seventy-five
118 percent of fair market value; and

119 (v) Publicly traded common or preferred stock representing
120 ownership in a corporation, valued at its fair market value in
121 accordance with the regulations of the Internal Revenue Service:
122 *Provided*, That contributed stock shall be sold by the project
123 transferee within one hundred eighty days of its receipt.

124 (B) For purposes of this definition, the value of in-kind
125 professional services will not qualify as an eligible contribution
126 unless the services are:

127 (i) Reasonably priced and valued, and reasonably necessary
128 services customarily and normally provided by the contributor
129 in the normal course of business to customers, clients or patients
130 other than those encompassed by the project plan;

131 (ii) Not reimbursable, in whole or in part, from sources other
132 than the tax credit provided under this article; and

133 (iii) Services which are not available without cost elsewhere
134 in the community;

135 (C) “Professional services” means only those services
136 provided directly by a physician licensed to practice in this state,
137 those services provided directly by a dentist licensed to practice
138 in this state, those services provided directly by a lawyer
139 licensed to practice in this state, those services provided directly
140 by a registered nurse, licensed practical nurse, dental hygienist
141 or other health care professional licensed to practice in this state,
142 those services provided directly by a certified public accountant
143 or public accountant licensed to practice in this state, and those
144 services provided directly by an architect licensed to practice in
145 this state;

146 (D) *Minimum contribution.* — No contribution of cash,
147 stock, property or professional services or any combination
148 thereof contributed in any tax year by any taxpayer having a fair
149 market value of less than \$500 qualifies as an eligible
150 contribution;

151 (E) *Maximum contribution.* — No contribution of cash,
152 stock, property or professional services or any combination
153 thereof contributed in any tax year by any taxpayer having a fair
154 market value in excess of \$200,000 qualifies as an eligible
155 contribution; and

156 (F) *Limitations.* — Not more than twenty-five percent of
157 total eligible contributions to a certified project may be in-kind

158 contributions. Not more than twenty-five percent of total eligible
159 contributions made by any taxpayer to any certified project may
160 be in-kind contributions.

161 *Eligible taxpayer.* —

162 (A) “Eligible taxpayer” means any person subject to the
163 taxes imposed by article twenty-one, twenty-three or twenty-four
164 of this chapter which makes an eligible contribution to a
165 qualified charitable organization pursuant to the terms of a
166 certified project plan for the purpose of providing neighborhood
167 assistance, community services or crime prevention, or for the
168 purpose of providing job training or education for individuals not
169 employed by the contributing taxpayer or an affiliate of the
170 contributing taxpayer or a person related to the contributing
171 taxpayer;

172 (B) “Eligible taxpayer” also includes an affiliated group of
173 taxpayers if the group elects to file a consolidated corporation
174 net income tax return under article twenty-four of this chapter
175 and if one or more affiliates included in the affiliated group
176 would qualify as an eligible taxpayer under paragraph (A) of this
177 subdivision.

178 “Emergency assistance” means the provision of basic needs
179 including shelter, clothing, food, water, medical attention or
180 supplies, personal safety, or funds to obtain these to an
181 individual facing circumstances that prevent him or her from
182 securing or maintaining these basic needs.

183 “Includes and including”, when used in a definition
184 contained in this article, shall not be considered to exclude other
185 things otherwise within the meaning of the term defined.

186 “Job training” means instruction to an individual that enables
187 the individual to acquire vocational skills to become employable
188 or able to seek a higher grade of employment.

189 “Natural person or individual” means a human being. The
190 terms “natural person” and “individual” do not mean, and
191 specifically exclude, any corporation, limited liability company,
192 partnership, joint venture, trust, organization, association,
193 agency, governmental subdivision, syndicate, affiliate or
194 affiliation, group, unit or any entity other than a human being.

195 “Neighborhood assistance” means either:

196 (A) Furnishing financial assistance, labor, material and
197 technical advice to aid in the physical or economic improvement
198 of any part or all of an economically disadvantaged area; or

199 (B) Furnishing technical advice to promote higher
200 employment in an economically disadvantaged area.

201 “Neighborhood organization” means any organization:

202 (A) Which is performing community services, as defined in
203 this section; and

204 (B) Which is exempt from income taxation under Section
205 501(c)(3) of the Internal Revenue Code.

206 “Partnership and partner” includes a syndicate, group, pool,
207 joint venture or other unincorporated organization through or by
208 means of which any business, financial operation or venture is
209 carried on, and which is not a trust or estate, a corporation or a
210 sole proprietorship. The term “partner” includes a member in a
211 syndicate, group, pool, joint venture or organization.

212 “Person” includes any natural person, corporation, limited
213 liability company or partnership.

214 “Project transferee” means any neighborhood organization,
215 qualified charitable organization, charitable organization or other
216 organization, entity or person that receives an eligible

217 contribution or part of an eligible contribution from an eligible
218 taxpayer for the purpose of directly or indirectly providing
219 neighborhood assistance, community services or crime
220 prevention, or for the purpose of providing job training or
221 education or other services or assistance pursuant to a project
222 plan. The project transferee is typically the first entity or person
223 receiving eligible contributions from eligible taxpayers under a
224 project plan. However, in the case of eligible contributions of
225 in-kind services or other eligible contributions or portions of
226 those contributions made pursuant to a certified project plan
227 directly to indigent, disadvantaged or needy persons,
228 economically disadvantaged citizens or other persons or
229 organizations under the sponsorship or auspices of any
230 neighborhood organization, qualified charitable organization,
231 charitable organization or other organization, entity or person as
232 a certified project participant, the eligible contributions shall be
233 considered to have been made to the entity, organization or
234 person under whose sponsorship or auspices the eligible
235 contributions are made, and that entity, organization or person is
236 considered to be the project transferee with relation to those
237 eligible contributions. The project transferee is the entity,
238 organization or person that is liable under this article for
239 payment of the project certification fee to the West Virginia
240 Development Office. The term “project transferee” means and
241 includes any considered project transferee, considered as such
242 under the provisions of this article.

243 “Qualified charitable organization” means a neighborhood
244 organization, as defined in this section, which is the sponsor of
245 a project which has received certification by the Director of the
246 West Virginia Development Office pursuant to the requirements
247 of this article: *Provided*, That no organization may qualify as a
248 qualified organization for purposes of this article if the
249 organization is not registered with this state as required under the
250 Solicitation of Charitable Funds Act.

251 “Related person” or “person related to” a stated taxpayer
252 means:

253 (A) An individual, corporation, partnership, affiliate,
254 association or trust or any combination or group thereof
255 controlled by the taxpayer;

256 (B) An individual, corporation, partnership, affiliate,
257 association or trust or any combination or group thereof that is
258 in control of the taxpayer;

259 (C) An individual, corporation, partnership, affiliate,
260 association or trust or any combination or group thereof
261 controlled by an individual, corporation, partnership, affiliate,
262 association or trust or any combination or group thereof that is
263 in control of the taxpayer; or

264 (D) A member of the same controlled group as the taxpayer.

265 For purposes of this article, “control”, with respect to a
266 corporation means ownership, directly or indirectly, of stock
267 possessing fifty percent or more of the total combined voting
268 power of all classes of the stock of the corporation which entitles
269 its owner to vote. “Control”, with respect to a trust, means
270 ownership, directly or indirectly, of fifty percent or more of the
271 beneficial interest in the principal or income of the trust. The
272 ownership of stock in a corporation, of a capital or profits
273 interest in a partnership or association or of a beneficial interest
274 in a trust shall be determined in accordance with the rules for
275 constructive ownership of stock provided in Section 267(c),
276 other than paragraph (3) of that section, of the United States
277 Internal Revenue Code, as amended.

278 “State fiscal year” means a twelve-month period beginning
279 on July 1 and ending on June 30.

280 “Taxpayer” means any person subject to the tax imposed by
281 article twenty-one, twenty-three or twenty-four of this chapter,
282 or any one or combination of the articles of this chapter.

283 “Technical assistance” means:

284 (A) Assistance in understanding, using and fulfilling the
285 legal, bureaucratic and administrative requirements and
286 qualifications which must be negotiated for the purpose of
287 effectively accessing, obtaining and using private, charitable,
288 not-for-profit or governmental assistance, resources or funds,
289 and maximizing the value of the assistance, resources or fund;

290 (B) Assistance provided by any person holding a license
291 under West Virginia law to practice any licensed profession or
292 occupation, by which the person, in the practice of the profession
293 or occupation, assists economically disadvantaged citizens or the
294 persons in an economically disadvantaged area by:

295 (i) Providing any type of health, personal finance,
296 psychological or behavioral, religious, legal, marital, educational
297 or housing counseling and advice to economically disadvantaged
298 citizens or a specifically designated group of economically
299 disadvantaged citizens or in an economically disadvantaged area;

300 (ii) Providing emergency assistance or medical care to
301 economically disadvantaged citizens or to a specifically
302 designated group of economically disadvantaged citizens or in
303 an economically disadvantaged area;

304 (iii) Establishing, maintaining or operating recreational
305 facilities, or housing facilities for economically disadvantaged
306 citizens or a specifically designated group of economically
307 disadvantaged citizens or in an economically disadvantaged area;

308 (iv) Providing economic development assistance to
309 economically disadvantaged citizens or a specifically designated

310 group of economically disadvantaged citizens, without regard to
311 whether they are located in an economically disadvantaged area,
312 or to individuals, groups or neighborhood or community
313 organizations, in an economically disadvantaged area; or

314 (v) Providing community technical assistance and capacity
315 building to economically disadvantaged citizens or a specifically
316 designated group of economically disadvantaged citizens or to
317 individuals, groups or neighborhood or community organizations
318 in an economically disadvantaged area.

**§11-13J-4. Eligibility for tax credits; creation of neighborhood
investment fund; certification of project plans by
the West Virginia Development Office.**

1 (a) A neighborhood organization which seeks to sponsor a
2 project and have that project certified pursuant to this article
3 shall submit to the Director of the West Virginia Development
4 Office an application for certification of a project plan, in such
5 form as the director shall prescribe, setting forth the project to be
6 implemented, the identity of all project participant organizations,
7 the economically disadvantaged citizens or a specifically
8 designated group of economically disadvantaged citizens, to be
9 assisted by the project, or the economically disadvantaged area
10 or areas selected for assistance by the project, the amount of total
11 tax credits to be created by the proposed project pursuant to the
12 receipt of eligible contributions from eligible taxpayers under
13 this article, the amount of the total estimated eligible
14 contributions to be received pursuant to the project and the
15 schedule for implementing the project.

16 (b) *Project certification fee; payment of costs; revolving*
17 *fund.* —

18 (1) (A) *Project certification fee.* — Any project transferee
19 that receives eligible contributions under or pursuant to a

20 certified project plan shall pay to the West Virginia
21 Development Office a project certification fee in the amount of
22 three percent of the amount of the total eligible contributions
23 received by such project transferee pursuant to the certified
24 project plan. The project certification fee shall be paid to the
25 West Virginia Development Office within thirty days of the
26 receipt of any eligible contribution, or portion thereof.

27 (B) *Eligible contributions made through direct service to*
28 *end users or recipients, or contributions to end users or*
29 *recipients.* — In the case of eligible contributions of in-kind
30 services or other eligible contributions or portions thereof made
31 pursuant to a certified project plan and contributed or provided
32 directly to indigent, disadvantaged or needy persons,
33 economically disadvantaged citizens or other persons or
34 organizations made under the sponsorship or auspices of any
35 neighborhood organization, qualified charitable organization,
36 charitable organization or other organization, entity or person as
37 a certified project participant, such eligible contributions shall be
38 deemed to have been made to the entity, organization or person
39 under whose sponsorship or auspices such eligible contributions
40 are made, and that entity, organization or person is deemed to be
41 the project transferee with relation to those eligible
42 contributions. Such deemed project transferee shall be liable for
43 the project certification fee due for such eligible contributions.

44 (C) *Computation of fee based on fair market value.* — In the
45 case of eligible contributions consisting of in-kind services,
46 tangible personal property or realty, the project transferee shall
47 pay to the West Virginia Development Office a project
48 certification fee in the amount of three percent of the fair market
49 value of eligible contributions received pursuant to the certified
50 project plan.

51 (2) *Sanctions for failure to timely pay the project*
52 *certification fee.* — Failure to timely pay the project certification

53 fee imposed by this section shall be grounds for imposition of
54 any of the following sanctions, to be imposed by the Director of
55 the West Virginia Development Office at the discretion of the
56 director:

57 (A) *Prospective revocation of the project certification.* —

58 No tax credit shall be allowed for any project for which
59 certification has been revoked for periods subsequent to the
60 effective date of revocation. Credit taken by any taxpayer in
61 accordance with this article pursuant to the making of an eligible
62 contribution to a project transferee pursuant to a certified project
63 plan prior to the effective date of revocation of project
64 certification shall not be subject to recapture by reason of
65 revocation of the certification. However, such credit shall
66 otherwise be subject to audit and adjustment or recapture in
67 accordance with the requirements of this article.

68 (B) *Retroactive withdrawal of the project certification.* —

69 No tax credit shall be allowed for any project for which
70 certification has been withdrawn. Credit taken by any taxpayer
71 in accordance with this article pursuant to the making of an
72 eligible contribution to a project transferee pursuant to a certified
73 project plan for which certification is later withdrawn pursuant
74 to the provisions of this section shall be subject to recapture
75 upon withdrawal of the certification.

76 (C) *Suspension of the project certification for a stated period*
77 *of time.* —

78 No tax credit shall be allowed for contributions made during
79 the suspension period for a project. Credit taken by any taxpayer
80 in accordance with this article pursuant to the making of an
81 eligible contribution to a project transferee pursuant to a certified
82 project plan prior to or subsequent to the suspension period shall

83 not be subject to recapture by reason of the suspension.
84 However, such credit shall otherwise be subject to audit and
85 adjustment or recapture in accordance with the requirements of
86 this article.

87 (D) *Temporary or permanent disqualification of one or more*
88 *project transferees, neighborhood organizations, qualified*
89 *charitable organizations, charitable organizations or other*
90 *organizations, entities or persons from participation in a*
91 *particular specified certified project. —*

92 No tax credit shall be allowed under this article for any
93 contribution made during the disqualification period to any
94 project transferee, neighborhood organization, qualified
95 charitable organization, charitable organization or other
96 organization, entity or person disqualified under this section
97 from participation in a certified project. Tax credit taken by any
98 taxpayer in accordance with this article pursuant to the making
99 of an eligible contribution to any project transferee,
100 neighborhood organization, qualified charitable organization,
101 charitable organization or other organization, entity or person
102 pursuant to a certified project plan prior to or subsequent to the
103 disqualification period shall not be subject to recapture by reason
104 of the disqualification of the recipient thereof. However, such
105 credit shall otherwise be subject to audit and adjustment or
106 recapture in accordance with the requirements of this article.

107 (E) *Temporary or permanent disqualification of any project*
108 *transferee, neighborhood organization, qualified charitable*
109 *organization, charitable organization or other organization,*
110 *entity or person, or group thereof, from participation in any and*
111 *all certified projects currently in existence or to be formed,*
112 *proposed or certified under this article. —*

113 (i) No tax credit shall be allowed under this article for any
114 contribution made during the disqualification period to any

115 project transferee, neighborhood organization, qualified
116 charitable organization, charitable organization or other
117 organization, entity or person disqualified under this section
118 from participation in any and all certified projects under this
119 article. Tax credit taken by any eligible taxpayer in accordance
120 with this article pursuant to the making of an eligible
121 contribution to the project transferee, neighborhood
122 organization, qualified charitable organization, charitable
123 organization or other organization, entity or person disqualified
124 from participation in any and all certified projects under this
125 article, pursuant to a certified project plan prior to or subsequent
126 to the disqualification period shall not be subject to recapture by
127 reason of the disqualification. However, such credit shall
128 otherwise be subject to audit and adjustment or recapture in
129 accordance with the requirements of this article; and

130 (ii) No certification shall be issued during the
131 disqualification period for any proposed project in which a
132 project transferee, neighborhood organization, qualified
133 charitable organization, charitable organization or other
134 organization, entity or person disqualified under this section
135 from participation in any and all certified projects is listed as a
136 proposed project participant.

137 (F) Any combination of the aforementioned sanctions.

138 (3) *Audits and investigations.* — The West Virginia
139 Development Office or the Department of Revenue, or both, may
140 initiate and carry out investigations or audits of any recipient of
141 any eligible contribution under this article, any eligible taxpayer
142 or any project transferee to determine whether the project
143 certification fee imposed by this section has been paid in
144 accordance with the requirements of this article.

145 (4) *Procedures, failure to timely pay the project certification*
146 *fee upon written demand.* —

147 (A) *Written demand.* — The Director of the West Virginia
148 Development Office shall, upon a reasonable belief that a project
149 transferee has failed to timely pay the fee imposed by this
150 section, issue a written demand for payment thereof, plus interest
151 determined at the interest rate prescribed under section
152 seventeen, article ten of this chapter, in such form as the Director
153 of the West Virginia Development Office may specify. The
154 Director of the West Virginia Development Office may also
155 impose a penalty for failure to timely pay the project
156 certification fee in the amount of twenty percent of the amount
157 of the project certification fee due and interest due. Such demand
158 shall notify the project transferee of the opportunity to show that
159 the project certification fee is not due and owing.

160 (B) *Failure to pay pursuant to written demand.* —

161 Failure of the project transferee to pay any project
162 certification fee due, with interest and penalties, as stated in the
163 written demand for payment of the project certification fee,
164 within thirty days of service of such demand, and failure of the
165 project transferee to prove to the satisfaction of the Director of
166 the West Virginia Development Office that the fee imposed by
167 this section is not due and owing, shall result in a determination
168 by the Director of the West Virginia Development Office that
169 sanctions shall apply.

170 (C) *Notice of pending sanctions.* — Upon the making of a
171 determination by the Director of the West Virginia Development
172 Office that sanctions for failure to pay the project certification
173 fee apply, the Director of the West Virginia Development Office
174 shall serve upon the project transferee from which the project
175 certification fee, or some portion thereof, is due and owing, a
176 notice of pending sanctions. If the project transferee from which
177 the certified project fee, or some portion thereof, is due and
178 owing is not the applicant for project certification, then an
179 informational copy of the notice of pending sanctions shall also
180 be served upon the applicant for project certification.

181 (D) *Service of notice, content of notice.* — The notice of
182 pending sanctions shall be served upon the delinquent project
183 transferee in the same manner as an assessment of tax in
184 accordance with article ten of this chapter. Such notice of
185 pending sanctions shall state the sanctions to be applied in
186 accordance with this section, the effective date or dates of such
187 sanctions, with specific statements of whether any sanction is to
188 be applied retroactively or in part retroactively, and the
189 commencement and termination dates for any suspensions of
190 certification or temporary disqualifications of any program
191 transferee, neighborhood organization, qualified charitable
192 organization, charitable organization or other organization, entity
193 or person to be disqualified under this section from participation
194 in certified projects. The notice of pending sanctions shall state
195 that sanctions shall be imposed sixty days after service of the
196 notice of pending sanctions upon the delinquent project
197 transferee, unless the delinquent project transferee pays the
198 amount of the project certification fee due and owing, plus
199 interest and penalties.

200 (E) *Appeals.* — The project transferee may file an appeal of
201 pending sanctions as if the notice of pending sanctions were an
202 assessment of tax under article ten of this chapter, and the matter
203 on appeal shall be subject to the procedures set forth in article
204 ten of this chapter. On appeal, the burden of proof shall be on the
205 project transferee to prove that the project certification fee and
206 associated interest and penalties are not due and owing. The
207 review on appeal shall be limited to:

208 (i) The issue of whether a failure to timely pay the project
209 certification fee or any portion thereof has occurred, the time
210 period or periods over which such failure occurred, and whether
211 such failure continues to occur;

212 (ii) The amount of the project certification fee and interest
213 due; and

214 (iii) The mathematical and methodological accuracy of the
215 computation of the project certification fee, interest and
216 penalties.

217 (F) *Statutory confidentiality.* — No information, document
218 or proceeding brought pursuant to this section, relating to the
219 liability of any project transferee for the project certification fee,
220 interest or penalties imposed under this section is subject to the
221 confidentiality provisions of article ten of this chapter or any
222 other confidentiality provision of this code. However, any
223 proceeding relating to any amount of tax due or the recapture of
224 tax credit taken under this article or any adjustment of the
225 amount of tax credit taken under this article is subject to the
226 provisions of article ten of this chapter, including all statutory
227 confidentiality provisions, and shall be subject to all other
228 applicable statutory tax confidentiality provisions of this code.

229 (G) *Effect of a final determination, waiver of penalties or*
230 *sanctions.* — The notice of pending sanctions shall become final
231 sixty days after service, unless an appeal is filed under this
232 section, and shall not be subject to further appeal by the recipient
233 thereof. When a determination has become final that a project
234 transferee has failed to timely pay the project certification fee, or
235 any part thereof, the sanctions described in the notice of pending
236 sanctions shall apply, effective as of the date set forth in that
237 notice, unless the project certification fee, interest and penalties
238 due are paid to the West Virginia Development Office within
239 thirty days of the date on which the determination has become
240 final. The twenty percent penalty authorized under this section
241 may be imposed, adjusted, withdrawn or waived, in whole or in
242 part, at the discretion of the Director of the West Virginia
243 Development Office. However, payment of the project
244 certification fee and interest due shall not be subject to waiver.
245 The sanctions for failure to pay the project certification fee
246 authorized under this section may be imposed, adjusted,

247 withdrawn or waived, in whole or in part, at the discretion of the
248 Director of the West Virginia Development Office.

249 (c) Within sixty days after the close of the regular meeting
250 of the Neighborhood Investment Advisory Board at which a
251 complete application for approval of a proposed project is
252 considered by the board, the Director of the West Virginia
253 Development Office shall certify, or deny certification of, the
254 proposed project for which such application has been filed:
255 *Provided*, That applications for which the board requires
256 additional information may be considered at the next regular
257 meeting of the board. Those applications not approved by the
258 director within sixty days of final action of the board shall be
259 deemed disapproved by operation of law.

260 (d) The West Virginia Development Office shall promptly
261 notify an applicant as to whether an application for certification
262 of a project plan has been approved or disapproved.

263 (e) Those prospective qualified charitable organizations
264 which receive certification of a project plan, and which
265 otherwise comply with the requirements of this article so as to
266 become qualified charitable organizations, as defined in section
267 three of this article, may receive eligible contributions, as
268 defined in said section. Eligible taxpayers which make eligible
269 contributions shall receive a tax credit as provided in section five
270 of this article. No tax credit may be granted under this article for
271 any contribution except eligible contributions made to a project
272 which has been certified in accordance with the requirements of
273 this article prior to the making of the contribution. No tax credit
274 may be granted under this article for any contribution which, if
275 allowed, would cause the amount of tax credit generated by the
276 project to exceed the maximum amount of tax credit for which
277 the project was certified as stated in the application for project
278 certification filed with the West Virginia Development Office.

279 (f) All applications for certification of a project filed with
280 the West Virginia Development Office, whether such project is
281 certified or denied certification, are public information which
282 may be viewed and copied by the public and, at the discretion of
283 the West Virginia Development Office, published by the West
284 Virginia Development Office.

285 (g) Project transferees shall file biannual reports with the
286 West Virginia Development Office on the progress of the
287 certified project. The biannual reports shall be filed in a form
288 approved by the director.

289 (h) *Revolving fund.* —

290 (1) For the purpose of permitting payments to be made and
291 costs to be met for operation of the program established by this
292 article, there is hereby created a revolving fund for the West
293 Virginia Development Office, which shall be known as the
294 Neighborhood Investment Fund. All money received by the
295 West Virginia Development Office under this article shall be
296 paid into the State Treasury, and shall be deposited to the credit
297 of the Neighborhood Investment Fund, and shall be expended
298 only for the purposes of defraying the costs of the Neighborhood
299 Investment Program Advisory Board and the West Virginia
300 Development Office in administering the program established
301 pursuant to this article, unless otherwise directed by the
302 Legislature.

303 (2) The Neighborhood Investment Fund shall be
304 accumulated and administered as follows:

305 (A) Payments received under this article shall be deposited
306 into the Neighborhood Investment Fund.

307 (B) Any appropriations made to the Neighborhood
308 Investment Fund shall not be deemed to have expired at the end
309 of any fiscal period.

§11-13J-4a. Neighborhood Investment Program Advisory Board.

1 (a) There is hereby created a Neighborhood Investment
2 Program Advisory Board, which shall consist of twelve voting
3 members and the chairperson.

4 (b) *Chairperson.* —

5 (1) The Director of the West Virginia Development Office,
6 or the designee of the Director of the West Virginia
7 Development Office, shall be the ex officio chairperson of the
8 Neighborhood Investment Program Advisory Board.

9 (2) The chairperson shall vote on actions of the board only
10 in the event of a tie vote, in which case the chairperson's vote
11 shall be the deciding vote.

12 (c) *Board members.* —

13 (1) Four members shall be officers or members of the boards
14 of directors of unrelated corporations which are not affiliated
15 with one another and which are currently licensed to do business
16 in West Virginia.

17 (2) Four members shall be executive directors, officers or
18 members of the boards of directors of unrelated not-for-profit
19 organizations which are not affiliated with one another which
20 currently hold charitable organization status under Section
21 501(c)(3) of the Internal Revenue Code and which are currently
22 licensed to do business in West Virginia.

23 (3) Four members shall be economically disadvantaged
24 citizens of the state that, for the taxable year immediately
25 preceding the year of appointment to the board, had an annual
26 gross personal income that was not more than one hundred
27 twenty-five percent of the federal designated poverty level for
28 personal incomes, and who has been a domiciliary and resident
29 of this state for at least one year at the time of appointment.

30 A member appointed under this subdivision is not
31 disqualified from completion of his or her term if his or her
32 income in the year of appointment or in any year subsequent to
33 the year of appointment exceeds one hundred twenty-five
34 percent of the federal designated poverty level. A member shall
35 not be eligible for reappointment under this subdivision unless
36 he or she meets the original qualifications for appointment:
37 *Provided*, That such member may be reappointed pursuant to
38 qualification under subdivision (1) or (2) of this subsection if the
39 member meets the requirements of subdivision (1) or (2),
40 respectively.

41 (d) *Limitations; terms of members; appointments.* —

42 (1) Not more than four members, exclusive of the
43 chairperson, shall be appointed from any one congressional
44 district. Not more than seven of the members, exclusive of the
45 chairperson, may belong to the same political party. Members
46 shall be eligible for reappointment. However, no member may
47 serve for more than three consecutive terms.

48 (2) *Appointment terms.* —

49 (A) Except for initial appointments described under
50 subdivision (3) of this subsection, and except for midterm
51 special appointments made to fill irregular vacancies on the
52 board, members shall be appointed for terms of three years each.

53 (B) Except for midterm special appointments made to fill
54 irregular vacancies on the board, appointment terms shall begin
55 on July 1 of the beginning year. All appointment terms, special
56 and regular, shall end on June 30 of the ending year.

57 (3) *Selection of members.* —

58 (A) For the initial appointment of members under this
59 subdivision, members shall be selected by the Director of the
60 West Virginia Development Office.

61 (B) At the end of a member's term, the chairperson shall
62 solicit new member nominations from the board and appoint the
63 most appropriate person to serve, in compliance with the
64 requirements set forth in this section.

65 (C) Vacancies on the board shall be filled in the same
66 manner as the original appointments for the duration of the
67 unexpired term.

68 (e) *Quorum; meetings; funding.* —

69 (1) The presence of a majority of the members of the board
70 constitutes a quorum for the transaction of business. The board
71 shall elect from among its members a vice chairperson and such
72 other officers as are necessary.

73 (2) The board shall meet not less than two times during the
74 fiscal year, and additional meetings may be held upon a call of
75 the chairperson or of a majority of the members: *Provided*, That
76 no meeting of the board shall be required if the total amount of
77 tax credits available for the fiscal year have been allotted.

78 (3) Board members shall be reimbursed by the West Virginia
79 Development Office for sums necessary to carry out
80 responsibilities of the board and for reasonable travel expenses
81 to attend board meetings.

82 (f) *Annual report.* — The board shall make a report to the
83 Governor and the Legislature within thirty days of the close of
84 each fiscal year. The report shall include summaries of all
85 meetings of the board, an analysis of the overall progress of the
86 program, fiscal concerns, the relative impact the program is
87 having on the state and any suggestions and policy
88 recommendations that the board may have. The report shall be
89 public information made available to the general public for
90 examination and copying. The board is authorized to publish the
91 annual report, should the board elect to do so.

92 (g) *Duties of the board.* —

93 (1) *Administrative duties.* — The board shall be responsible
94 for advising the West Virginia Development Office concerning
95 the administrative obligations of the program.

96 (2) *Project evaluation and approval; prohibition on project*
97 *promotion.* —

98 (A) The board shall select and approve projects, which may
99 then be certified by the Director of the West Virginia
100 Development Office pursuant to section four of this article.

101 (B) Only projects sponsored by qualified charitable
102 organizations, as defined in section three of this article, may be
103 approved by the board or certified by the Director of the West
104 Virginia Development Office. An applicant that does not hold
105 current status as a charitable organization under Section
106 501(c)(3) of the Internal Revenue Code may not receive project
107 approval from the board, or project certification from the
108 Director of the West Virginia Development Office, for any
109 proposed project. Failure of any applicant to provide convincing
110 documentation proving such status as a charitable organization
111 under Section 501(c)(3) of the Internal Revenue Code shall
112 result in automatic denial of project approval and denial of
113 project certification under this article.

114 (3) *Criteria for evaluation.* — In evaluating projects for
115 approval, the board shall give priority to projects based upon the
116 following criteria. A proposed project shall be favored if:

117 (A) The project is community based.

118 (B) The proposed project will primarily serve low income
119 persons.

120 (C) The proposed project will serve highly distressed
121 neighborhoods or communities.

122 (D) The project plan incorporates collaborative partnerships
123 among nonprofit groups, businesses, government organizations
124 and other community organizations.

125 (E) The applicant or sponsor of the project has demonstrated
126 a proven capacity to deliver the proposed services.

127 (F) The applicant or sponsor of the project historically
128 maintains reasonable administrative costs.

129 (G) The applicant produces a strong showing of need for the
130 services which the proposed project would provide, and
131 produces convincing documentation of that need.

132 (H) The proposed project is innovative, novel, creative or
133 unique in program approach.

134 (I) The proposed project is a direct need program or will
135 provide emergency assistance.

136 (4) If an applicant is directly or indirectly affiliated with one
137 or more board members, those members shall not discuss the
138 proposals with one or more board members, and shall not have
139 a vote when that project is considered for final approval or
140 disapproval.

141 (5) *Project approval by the board.* — Proposed projects
142 shall be approved or denied approval by a majority vote of the
143 board after competitive comparison with proposed projects of
144 other applicants.

145 (h) *Project certification by the Director of the West Virginia*
146 *Development Office.* —

147 (1) Upon issuance of approval for a project by the board, the
148 approved project shall be certified by the Director of the West
149 Virginia Development Office: *Provided*, That no certification

150 may issue for any project, even though the project may have
151 been approved by the board, if the issuance of certification for
152 such project will cause the aggregate amount of tax credits
153 certified to exceed the limitation set forth in this article. No
154 certification may be issued by the Director of the West Virginia
155 Development Office for any project which has not been
156 approved by the board.

157 (2) The West Virginia Development Office shall promptly
158 notify applicants of the issuance of certification for their projects
159 and shall issue tax credit vouchers to certified project applicants
160 in the amount of the tax credit represented by the project.

161 (3) The West Virginia Development Office may provide
162 incidental technical support and guidance to projects certified
163 under this article and may monitor the progress of the projects.
164 The West Virginia Development Office shall make a biannual
165 report to the board on the progress of certified projects and the
166 program generally.

§11-13J-10. Public information relating to tax credit.

1 The Tax Commissioner shall annually publish in the State
2 Register the name of every taxpayer asserting this credit on a tax
3 return, and the amount of any credit asserted on a tax return
4 under this article by each such taxpayer, and the confidentiality
5 provisions of section four-a, article one of this chapter or section
6 five-d, article ten of this chapter, or of any other provision of this
7 code, do not apply to such information.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.

1 Beginning on December 15, 2005, and every third year
2 thereafter, the director shall secure an independent review of the
3 Neighborhood Investment Program created by this article and
4 present the findings to the Joint Committee on Government and

5 Finance. Unless sooner terminated by law, the Neighborhood
6 Investment Program Act terminates on July 1, 2021. There is no
7 entitlement to the tax credit under this article for a contribution
8 made to a certified project after July 1, 2021, and no credit is
9 available to any taxpayer for any contribution made after that
10 date. Taxpayers which have gained entitlement to the credit
11 pursuant to eligible contributions made to certified projects prior
12 to July 1, 2021, shall retain that entitlement and apply the credit
13 in due course pursuant to the requirements and limitations of this
14 article.

CHAPTER 82

(S. B. 618 - By Senators Carmichael, Hall and Unger)

[Passed March 12, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 29, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-15-12b, relating generally to economic development; and allowing Economic Development Authority to refinance indebtedness of certain licensed commercial whitewater outfitters.

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 §31-15-12b, to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-12b. Loans to support tourism.

1 (a) In order to preserve jobs and support tourism, the
2 Economic Development Authority may make loans, consistent
3 with this section.

4 (b) For purpose of this section an applicant is:

5 (1) A licensed entity that has filed an application for a loan
6 under this section no later than July 1, 2016;

7 (2) A licensed entity operating in West Virginia; and

8 (3) A licensed entity that operates a resort comprised of at
9 least seventy-five acres and employing a minimum of one
10 hundred employees.

11 (c) The proceeds of the loans:

12 (1) May be used only to refinance the existing indebtedness
13 of qualifying applicants; and

14 (2) May not exceed the outstanding indebtedness of the
15 qualifying applicants as of January 1, 2016.

16 (d) The loans shall be:

17 (1) Made under terms and conditions established by the
18 Economic Development Authority.

19 (2) Collateralized as determined by the Economic
20 Development Authority.

21 (e) The total refinancing provided pursuant to this section by
22 the Economic Development Authority shall not exceed 2.5
23 percent of the Economic Development Authority's direct loan
24 portfolio.

CHAPTER 83

**(Com. Sub. for H. B. 2897 - By Delegates Weld, Foster,
Kessinger, Hill, Blair and Ihle)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §59-1-2c, relating to creating Young Entrepreneur Reinvestment Act; waiving certain fees for individuals under thirty creating certain business organizations, and expire the waiver of those 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 section, designated §59-1-2c, to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2c. Young Entrepreneur Reinvestment Act; certain fees waived.

1 (a) Beginning on July 1, 2016, a person who is under the age
2 of thirty who resides within West Virginia is exempt from
3 paying the fees provided in section two of this article for filing:

4 (1) Articles of incorporation of a domestic, for-profit
5 corporation, for which he or she is an incorporator;

6 (2) Articles of incorporation of a domestic, nonprofit
7 corporation for which he or she is an incorporator;

8 (3) Articles of organization of a domestic limited liability
9 company, for which he or she is a member;

10 (4) Agreement of a domestic general partnership, for which
11 he or she is a partner; or

12 (5) Certificate of a domestic limited partnership, for which
13 he or she is a partner.

14 (b) This section is effective until and through June 30, 2018.
15 After June 30, 2018, this section is no longer in force and effect.

CHAPTER 84

**(S. B. 459 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed March 10, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended, relating to requiring promulgation of a rule to provide for payment of tuition by county boards of education to Mountaineer Challenge Academy for students graduating with a high school diploma from Mountaineer Challenge Academy.

Be it enacted by the Legislature of West Virginia:

That §18-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.

1 (a) The state board shall promulgate rules for the
2 accreditation, classification and standardization of all schools in
3 the state, except institutions of higher education, and shall
4 determine the minimum standards for granting diplomas and
5 certificates of proficiency by those schools.

6 (1) The certificates of proficiency shall include specific
7 information regarding the graduate's skills, competence and
8 readiness for employment or honors and advanced education and
9 shall be granted, along with the diploma, to every eligible high
10 school graduate.

11 (2) The certificate of proficiency shall include the program
12 of study major completed by the student only for those students
13 who have completed the required major courses, or higher level
14 courses, advanced placement courses, college courses or other
15 more rigorous substitutes related to the major, and the
16 recommended electives.

17 (b) An institution of less than collegiate or university status
18 may not grant any diploma or certificate of proficiency on any
19 basis of work or merit below the minimum standards prescribed
20 by the state board.

21 (c) A charter or other instrument containing the right to issue
22 diplomas or certificates of proficiency may not be granted by the
23 State of West Virginia to any institution or other associations or
24 organizations of less than collegiate or university status within
25 the state until the condition of granting or issuing the diplomas
26 or other certificates of proficiency has first been approved in
27 writing by the state board.

28 (d) The state board shall promulgate a rule for the approval
29 of alternative education programs for disruptive students who are
30 at risk of not succeeding in the traditional school structure.

31 (1) This rule may provide for the waiver of other policies of
32 the state board, the establishment and delivery of a
33 nontraditional curriculum, the establishment of licensure
34 requirements for alternative education program teachers, and the
35 establishment of performance measures for school accreditation.

36 (2) This rule shall provide uniform definitions of disruptive
37 student behavior and uniform standards for the placement of
38 students in alternative settings or providing other interventions
39 including referrals to local juvenile courts to correct student
40 behavior so that they can return to a regular classroom without
41 engaging in further disruptive behavior.

42 (e) The state board shall establish up to five pilot projects at
43 the elementary or middle school levels, or both, that employ
44 alternative schools or other placements for disruptive students to
45 learn appropriate behaviors so they can return to the regular
46 classroom without further disrupting the learning environment.
47 The state board shall report to the Legislative Oversight
48 Commission on Education Accountability by December 1, 2010,
49 on its progress in establishing the pilot projects and by
50 December 1 in each year after that for the duration of the pilot
51 projects on the effect of the projects on maintaining student
52 discipline.

53 (f) If a student attends an approved alternative education
54 program or the Mountaineer Challenge Academy, which is
55 designated as a special alternative education program pursuant
56 to section twenty-four, article one-b, chapter fifteen of this code,
57 and the student graduates or passes the General Equivalency
58 Development (GED) Tests within five years of beginning ninth
59 grade, that student shall be considered graduated for the
60 purposes of calculating the high school graduation rate used for
61 school accreditation and school system approval, subject to the
62 following:

63 (1) The student shall be considered graduated only to the
64 extent that this is not in conflict with any provision of federal
65 law relating to graduation rates;

66 (2) If the state board determines that this is in conflict with
67 a provision of federal law relating to graduation rates, the state
68 board shall request a waiver from the United States department
69 of education; and

70 (3) If the waiver is granted, notwithstanding the provisions
71 of subdivision (1) of this subsection, the student graduating or
72 passing the General Educational Development (GED) Tests
73 within five years shall be considered graduated.

74 (g) The state board shall promulgate a rule to support the
75 operation of the National Guard Youth Challenge Program
76 operated by the Adjutant General and known as the Mountaineer
77 Challenge Academy which is designated as a special alternative
78 education program pursuant to section twenty-four, article one-b,
79 chapter fifteen of this code for students who are at risk of not
80 succeeding in the traditional school structure. The rule shall set
81 forth policies and procedures applicable only to the Mountaineer
82 Challenge Academy that provide for, but are not limited to, the
83 following:

84 (1) Implementation of provisions set forth in section
85 twenty-four, article one-b, chapter fifteen of this code;

86 (2) Precedence of the policies and procedures designated by
87 the National Guard Bureau for the operation of the Mountaineer
88 Challenge Academy special alternative education program;

89 (3) Consideration of a student participating in the
90 Mountaineer Challenge Academy special alternative education
91 program at full enrollment status in the referring county for the
92 purposes of funding and calculating attendance and graduation
93 rates, subject to the following:

94 (A) The student shall be considered at full enrollment status
95 only for the purposes of calculating attendance and graduation
96 rates to the extent that this is not in conflict with any provision
97 of federal law relating to attendance or graduation rates;

98 (B) If the state board determines that this is in conflict with
99 a provision of federal law relating to attendance or graduation
100 rates, the state board shall request a waiver from the United
101 States Department of Education;

102 (C) If the waiver is granted, notwithstanding the provisions
103 of paragraph (A) of this subdivision, the student shall be
104 considered at full enrollment status in the referring county for
105 the purposes of calculating attendance and graduation rates; and

106 (D) Consideration of the student at full enrollment status in
107 the referring county is for the purposes of funding and
108 calculating attendance and graduation rates only. For any other
109 purpose, a student participating in the academy is considered
110 withdrawn from the public school system;

111 (4) Articulation of the knowledge, skills and competencies
112 gained through alternative education so that students who return
113 to regular education may proceed toward attainment or may
114 attain the standards for graduation without duplication;

115 (5) Consideration of eligibility to take the General
116 Educational Development (GED) Tests by qualifying within the
117 extraordinary circumstances provisions established by state
118 board rule for a student participating in the Mountaineer
119 Challenge Academy special alternative education program who
120 does not meet any other criteria for eligibility; and

121 (6) Payment of tuition by a county board to the Mountaineer
122 Challenge Academy for each student graduating from the
123 academy with a high school diploma that resides in that county

124 board's school district. For purposes of this subdivision,
125 "tuition" means an amount equal to seventy-five percent of the
126 amount allotted per pupil under the school aid formula.

127 (h) Nothing in this section or the rules promulgated under
128 this section compels the Mountaineer Challenge Academy to be
129 operated as a special alternative education program or to be
130 subject to any other laws governing the public schools except by
131 its consent.

132 (i) The Legislature makes the following findings regarding
133 students at risk:

134 (1) *Defeated and discouraged learners.* —

135 (A) Any child who is unlikely to graduate on schedule with
136 both the skills and self esteem necessary to exercise meaningful
137 options in the areas of work, leisure, culture, civic affairs and
138 personal relationships may be defined as being an at-risk student;

139 (B) Problems associated with students at risk often begin for
140 them in the early grades as they gradually fall further behind in
141 the essential skills of reading, writing and math;

142 (C) These problems may be accompanied by such behavior
143 patterns as poor attendance, inattentiveness, negative attitudes
144 and acting out in class. These patterns are both symptoms of and
145 added catalysts for students to become increasingly defeated and
146 discouraged learners;

147 (D) By the middle grades, students with growing skill
148 deficits usually know they are behind other students and have
149 good reason to feel discouraged. A growing lack of self
150 confidence and self worth, limited optimism for the future,
151 avoidance of school and adults and a dimming view of the
152 relationship between effort and achievement are among the
153 characteristics of defeated and discouraged learners;

154 (E) Public schools are expected to address the needs of all
155 students, minimizing the likelihood that they will become at risk
156 and giving additional attention to those who do; however, the
157 circumstances involved with a child becoming at risk often are
158 complex and may include influences both within and outside of
159 the school environment; and

160 (F) In fragile homes, a child who is at risk and is becoming
161 a discouraged and defeated learner often lacks adequate support
162 and may develop peer relationships that further exacerbate the
163 difficulty of reengaging him or her in learning, school and
164 responsible social behavior.

165 (2) The Legislature further finds that the public schools
166 should not be deterred from seeking and assisting with
167 enrollment of students in an alternative program that helps
168 remedy the discouragement, lessens skill deficits and facilitates
169 a successful return to public school.

170 For this purpose, subject to approval of the county
171 superintendent, a student enrolled in the public schools of the
172 county may continue to be enrolled while also enrolled in an
173 alternative program subject to the following conditions:

174 (1) The alternative program is approved by the state board;

175 (2) The student meets the general description of an at-risk
176 student and exhibits behaviors and characteristics associated
177 with a discouraged and defeated learner;

178 (3) The alternative program complies with all requests of the
179 county superintendent for information on the educational
180 program and progress of the student;

181 (4) The alternative program includes a family involvement
182 component in its program. This component shall include, but is
183 not limited to, providing for student and parent participation in

184 activities that help address the challenging issues that have
185 hindered the student's engagement and progress in learning;

186 (5) The alternative program includes an on-site boarding
187 option for students;

188 (6) The alternative program provides an individualized
189 education program for students that is designed to prepare them
190 for a successful transition back into the public schools; and

191 (7) The parents or legal guardian of the student make
192 application for enrollment of the student in the alternative
193 program, agree to the terms and conditions for enrollment, and
194 enroll the student in the program.



CHAPTER 85

**(Com. Sub. for H. B. 4261 - By Delegates Shott,
McCuskey, Cowles, O'Neal, Butler, Marcum, Shaffer,
Sobonya, Folk, Overington and Azinger)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §18-2-5h of the Code of West Virginia, 1931, as amended, relating to student data; prohibiting the West Virginia Department of Education from transferring confidential student information or certain redacted data to any federal, state or local agency or other person or entity; establishing exception when the department enters into a contract that governs student or redacted data with a contractor for the purposes of state level reporting; establishing exception that, in the event the ACT or the SAT tests are adopted as the state summative assessment,

allows the ACT or the College Board to use certain information; requiring written consent if information classified as confidential is required; and requiring consent contain a detailed list of confidential information required and the purpose of its requirement.

Be it enacted by the Legislature of West Virginia:

That §18-2-5h of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5h. Student Data Accessibility, Transparency and Accountability Act.

1 (a) Title. C This section shall be known and may be cited as
2 the “Student Data Accessibility, Transparency and
3 Accountability Act.”

4 (b) *Definitions.* — As used in this section, the following
5 words have the meanings ascribed to them unless the context
6 clearly implies a different meaning:

7 (1) “Board” means the West Virginia Board of Education;

8 (2) “Department” means the West Virginia Department of
9 Education;

10 (3) “Student Data system” means the West Virginia
11 Department of Education statewide longitudinal data system;

12 (4) “Aggregate data” means data collected that is reported at
13 the group, cohort, or institutional level with a data set of
14 sufficient size that no information for an individual parent or
15 student is identifiable;

16 (5) “Redacted data” means a student dataset in which parent
17 and student identifying information has been removed;

18 (6) “State-assigned student identifier” means the unique
19 student identifier assigned by the state to each student that shall
20 not be or include the Social Security number of a student in
21 whole or in part;

22 (7) “Student data” means data collected or reported at the
23 individual student level included in a student’s educational
24 record;

25 (8) “Provisional student data” means new student data
26 proposed for inclusion in the student data system;

27 (9) “School district” means a county board of education, the
28 West Virginia Schools for the Deaf and Blind and the West
29 Virginia Department of Education with respect to the education
30 programs under its jurisdiction that are not in the public schools;

31 (10) “Directory information” means the following individual
32 student information that is subject to disclosure for
33 school-related purposes only: Student name, address, telephone
34 number, date and place of birth, major field of study,
35 participation in officially recognized activities and sports, weight
36 and height of members of athletic teams, dates of attendance,
37 indication of “graduate” or “nongraduate,” degrees and awards
38 receives, most recent previous school attended, and photograph.

39 (11) “Confidential student information” means data relating
40 to a person’s Social Security number, or other identification
41 number issued by a state or federal agency, except for the
42 state-assigned student identifier as defined in this section,
43 religious affiliation, whether the person or a member of their
44 household owns or possesses a firearm, whether the person or
45 their family are or were recipients of financial assistance from a
46 state or federal agency, medical, psychological or behavioral
47 diagnoses, criminal history, criminal history of parents, siblings
48 or any members of the person’s household, vehicle registration

49 number, driver's license number, biometric information,
50 handwriting sample, credit card numbers, consumer credit
51 history, credit score, or genetic information;

52 (12) "Affective computing" means human-computer
53 interaction in which the device has the ability to detect and
54 appropriately respond to its user's emotions and other stimuli;
55 and

56 (13) "Fair Information Practice Principles" are United States
57 Federal Trade Commission guidelines that represent widely
58 accepted concepts concerning fair information practice in an
59 electronic marketplace.

60 (c) Data Inventory B State Responsibilities. C The
61 Department of Education shall:

62 (1) Create, publish, and make publicly available a data
63 inventory and dictionary or index of data elements with
64 definitions of individual student data fields in the student data
65 system to include, but not be limited to:

66 (A) Any individual student data required to be reported by
67 state and federal education mandates;

68 (B) Any individual student data which has been proposed in
69 accordance with paragraph (A), subdivision (7) of this
70 subsection for inclusion in the student data system with a
71 statement regarding the purpose or reason and legal authority for
72 the proposed collection; and

73 (C) Any individual student data that the department collects
74 or maintains with no current identified purpose;

75 (2) Develop, publish, and make publicly available policies
76 and procedures to comply with all relevant state and federal
77 privacy laws and policies, including, but not limited to, the

78 Federal Family Educational Rights and Privacy Act (FERPA)
79 and other relevant privacy laws and policies. The policies and
80 procedures specifically shall include, but are not limited to:

81 (A) Access to student and redacted data in the statewide
82 longitudinal data system shall be restricted to:

83 (i) The authorized staff of the department and the contractors
84 working on behalf of the department who require access to
85 perform their assigned duties as required by law and defined by
86 interagency data-sharing agreements;

87 (ii) District administrators, teachers and school personnel
88 who require access to perform their assigned duties;

89 (iii) Students and their parents; and

90 (iv) The authorized staff of other West Virginia state
91 agencies as required by law and defined by interagency
92 data-sharing agreements;

93 (B) Ensure that any inter-agency data-sharing agreements
94 shall be posted on the Department website, and parents shall be
95 notified of their right to opt out of sharing the child's data
96 pursuant to agreements.

97 (C) Use only aggregate data in public reports or in response
98 to record requests in accordance with this section;

99 (D) Unless otherwise prohibited by law, develop criteria for
100 the approval of research and data requests from state and local
101 agencies, the Legislature, researchers working on behalf of the
102 department, and the public. Student data maintained by the
103 department shall remain redacted; and

104 (E) Notification to students and parents regarding student
105 privacy rights under federal and state law;

106 (3) Unless otherwise provided by law, the department shall
107 not transfer confidential student information or redacted data that
108 is confidential under this section to any federal, state or local
109 agency or other person or entity, public or private, with the
110 following exceptions:

111 (A) A student transfers out-of-state or a school or school
112 district seeks help with locating an out-of-state transfer;

113 (B) A student leaves the state to attend an out-of-state
114 institution of higher education or training program;

115 (C) A student registers for or takes a national or multistate
116 assessment;

117 (D) A student voluntarily participates in a program for which
118 a data transfer is a condition or requirement of participation;

119 (E) The department enters into a contract that governs
120 databases, assessments, student or redacted data, special
121 education or instructional supports with an in-state or
122 out-of-state contractor for the purposes of state level reporting;

123 (F) A student is classified as “migrant” for federal reporting
124 purposes;

125 (G) A federal agency is performing a compliance review; or

126 (H) In the event that the ACT or the SAT tests are adopted
127 for use as the state summative assessment, nothing in this article
128 prevents the ACT or the College Board from using a student’s
129 assessment results and necessary directory or other permissible
130 information under this Act. If information classified as
131 confidential is required, the ACT, SAT or College Board shall
132 obtain affirmative written consent from the student if the student
133 is eighteen years of age or older, or from the student’s parent or
134 guardian if the student is under eighteen years of age. The

135 consent shall contain a detailed list of confidential information
136 required and the purpose of its requirement.

137 (4) Develop a detailed data security plan that includes:

138 (A) Guidelines for the student data system and for individual
139 student data including guidelines for authentication of authorized
140 access;

141 (B) Privacy compliance standards;

142 (C) Privacy and security audits;

143 (D) Breach planning, notification and procedures;

144 (E) Data retention and disposition policies; and

145 (F) Data security policies including electronic, physical, and
146 administrative safeguards, such as data encryption and training
147 of employees;

148 (5) Ensure routine and ongoing compliance by the
149 department with FERPA, other relevant privacy laws and
150 policies, and the privacy and security policies and procedures
151 developed under the authority of this act, including the
152 performance of compliance audits;

153 (6) Ensure that any contracts that govern databases,
154 assessments or instructional supports that include student or
155 redacted data and are outsourced to private vendors include
156 express provisions that safeguard privacy and security and
157 include penalties for noncompliance; and

158 (7) Notify the Governor and the Legislature annually of the
159 following:

160 (A) New student data proposed for inclusion in the state
161 student data system. Any proposal by the Department of

162 Education to collect new student data must include a statement
163 regarding the purpose or reason and legal authority for the
164 proposed collection. The proposal shall be announced to the
165 general public for a review and comment period of at least sixty
166 days and approved by the state board before it becomes
167 effective. Any new student data collection approved by the state
168 board is a provisional requirement for a period sufficient to
169 allow schools and school districts the opportunity to meet the
170 new requirement;

171 (B) Changes to existing data collections required for any
172 reason, including changes to federal reporting requirements
173 made by the U.S. Department of Education and a statement of
174 the reasons the changes were necessary;

175 (C) An explanation of any exceptions granted by the state
176 board in the past year regarding the release or out-of-state
177 transfer of student or redacted data; and

178 (D) The results of any and all privacy compliance and
179 security audits completed in the past year. Notifications
180 regarding privacy compliance and security audits shall not
181 include any information that would itself pose a security threat
182 to the state or local student information systems or to the secure
183 transmission of data between state and local systems by exposing
184 vulnerabilities.

185 (8) Notify the Governor upon the suspicion of a data security
186 breach or confirmed breach and upon regular intervals as the
187 breach is being managed. The parents shall be notified as soon
188 as possible after the suspected or confirmed breach.

189 (9) Prohibit the collection of confidential student
190 information as defined in subdivision ten of subsection (b) of
191 this section.

192 (d) *Data Inventory B District Responsibilities.* — A school
193 district shall not report to the state the following individual
194 student data:

- 195 (1) Juvenile delinquency records;
- 196 (2) Criminal records;
- 197 (3) Medical and health records; and
- 198 (4) Student biometric information.

199 (e) *Data Inventory B School Responsibilities.* — Schools
200 shall not collect the following individual student data:

- 201 (1) Political affiliation and beliefs;
- 202 (2) Religion and religious beliefs and affiliations;
- 203 (3) Any data collected through affective computing;
- 204 (4) Any data concerning the sexual orientation or beliefs
205 about sexual orientation of the student or any student's family
206 member; and
- 207 (5) Any data concerning firearm's ownership by any
208 member of a student's family.

209 (f) *Data Governance Manager.* C The state superintendent
210 shall appoint a data governance manager, who shall report to and
211 be under the general supervision of the state superintendent. The
212 data governance manager shall have primary responsibility for
213 privacy policy, including:

- 214 (1) Assuring that the use of technologies sustain, and do not
215 erode, privacy protections relating to the use, collection, and
216 disclosure of student data;

217 (2) Assuring that student data contained in the student data
218 system is handled in full compliance with the Student Data
219 Accessibility, Transparency, and Accountability Act, FERPA,
220 and other state and federal privacy laws;

221 (3) Evaluating legislative and regulatory proposals involving
222 collection, use, and disclosure of student data by the Department
223 of Education;

224 (4) Conducting a privacy impact assessment on proposed
225 rules of the state board and department in general and on the
226 privacy of student data, including the type of personal
227 information collected and the number of students affected;

228 (5) Coordinating with the general counsel of the state board
229 and department, other legal entities, and organization officers to
230 ensure that programs, policies, and procedures involving civil
231 rights, civil liberties, and privacy considerations are addressed
232 in an integrated and comprehensive manner;

233 (6) Preparing a report to the Legislature on an annual basis
234 on activities of the department that affect privacy, including
235 complaints of privacy violations, internal controls, and other
236 matters;

237 (7) Establishing department-wide policies necessary for
238 implementing Fair Information Practice Principles to enhance
239 privacy protections;

240 (8) Working with the Office of Data Management and
241 Analysis, the general counsel, and other officials in engaging
242 with stakeholders about the quality, usefulness, openness, and
243 privacy of data;

244 (9) Establishing and operating a department-wide Privacy
245 Incident Response Program to ensure that incidents are properly
246 reported, investigated and mitigated, as appropriate;

247 (10) Establishing and operating a process for parents to file
248 complaints of privacy violations;

249 (11) Establishing and operating a process to collect and
250 respond to complaints of privacy violations and provides redress,
251 as appropriate; and

252 (12) Providing training, education and outreach to build a
253 culture of privacy across the department and transparency to the
254 public.

255 The data governance manager shall have access to all
256 records, reports, audits, reviews, documents, papers,
257 recommendations, and other materials available to the
258 department that relate to programs and operations with respect
259 to his or her responsibilities under this section and shall make
260 investigations and reports relating to the administration of the
261 programs and operations of the department as are necessary or
262 desirable.

263 (g) *Parental rights regarding child's information and*
264 *education record.* — Parents have the right to inspect and review
265 their child's education record maintained by the school and to
266 request student data specific to their child's educational record.
267 School districts must provide parents or guardians with a copy
268 of their child's educational record upon request. Whenever
269 possible, an electronic copy of the educational record must be
270 provided if requested and the identity of the person requesting
271 the information is verified as the parent or guardian.

272 The state board shall develop guidance for school district
273 policies that:

274 (1) Annually notify parents of their right to request student
275 information;

276 (2) Ensure security when providing student data to parents;

277 (3) Ensure student data is provided only to the authorized
278 individuals;

279 (4) Detail the timeframe within which record requests must
280 be provided;

281 (5) Ensure that school districts have a plan to allow parents
282 to view and access data specific to their child's educational
283 record and that any electronic access provided is restricted to
284 eligible parties;

285 (6) Ensure compliance in the collection, use and disclosure
286 of directory information and providing parents or guardians with
287 a form to limit the information concerning their child in
288 directory and subject to release; and

289 (7) Informing parents of their rights and the process for
290 filing complaints of privacy violations.

291 (h) *State Board Rules.* — The state board shall adopt rules
292 necessary to implement the provisions of the Student Data
293 Accessibility, Transparency, and Accountability Act.

294 (i) *Effect on Existing Data.* — Upon the effective date of this
295 section, any existing student data collected by the Department of
296 Education shall not be considered a new student data collection
297 under this section.

CHAPTER 86

**(H. B. 4730 - By Delegates Espinosa, Hamrick,
Kurcaba, Hicks, Ellington, Blackwell, Statler
and Rohrbach)**

[Passed March 12, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-12, relating to computer science courses of instruction; making legislative findings; requiring submission by state board of plan for implementation of computer science instruction and learning standards in public schools to legislative oversight commission prior to 2017 legislative session; and specifying areas of recommendations to be included in plan.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-12, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-12. Computer science courses of instruction; learning standards; state board plan development.

- 1 (a) Legislative findings:
- 2 (1) Computer technology increasingly is pervasive in nearly
- 3 every function of society from consumer products to
- 4 transportation, communications, electrical infrastructure,
- 5 logistics, agriculture, medical treatments, research, security and
- 6 financial transactions;

7 (2) The U. S. Bureau of Labor Statistics predicts that by
8 2024, there will be more than 800,000 new jobs in the STEM
9 fields and more than two-thirds of these directly will be in
10 computing occupations;

11 (3) Studying computer science prepares students to enter
12 many career areas, both within and outside of computing,
13 teaching them logical reasoning, algorithmic thinking, design
14 and structured problem solving skills applicable in many
15 contexts from science and engineering to the humanities and
16 business;

17 (4) Computer science is an established discipline at the
18 collegiate and post-graduate levels but, unfortunately, computer
19 science concepts and courses have not kept pace in the K-12
20 curriculum to the point that the nation faces a serious shortage of
21 computer scientists at all levels that is likely to continue for the
22 foreseeable future; and

23 (5) Organizations such as the Computer Science Teachers
24 Association, the International Society for Technology in
25 Education and technology industry leaders have developed
26 recommendations for standards, curriculum and instructional
27 resources for computer technology learning in K-12 schools.

28 (b) Prior to the 2017 regular legislative session, the state
29 board shall submit a plan to the Legislative Oversight
30 Commission on Education Accountability for the
31 implementation of computer science instruction and learning
32 standards in the public schools. The Plan shall include at least
33 the following:

34 (1) Recommendations for a core set of learning standards
35 designed to provide the foundation for a complete computer
36 science curriculum and its implementation at the K-12 level
37 including, but not limited to:

38 (A) Introducing the fundamental concepts of computer
39 science to all students, beginning at the elementary school level;

40 (B) Presenting computer science at the secondary school
41 level in a way that is both accessible and worthy of an academic
42 curriculum credit and may fulfill a computer science, math, or
43 science graduation credit;

44 (C) Encouraging schools to offer additional secondary-level
45 computer science courses that will allow interested students to
46 study facets of computer science in more depth and prepare them
47 for entry into the work force or college; and

48 (D) Increasing the availability of rigorous computer science
49 for all students.

50 (2) Recommendations for teaching standards and secondary
51 certificate endorsements if necessary for teachers to deliver
52 curriculum appropriate to meet the standards;

53 (3) Recommendations for units of instruction or courses in
54 academic and vocational technical settings that complement any
55 existing K–12 computer science and IT curricula where they are
56 already established, especially the Advanced Placement
57 computer science curricula and professional IT certifications;
58 and

59 (4) Proposals for implementation of the recommendations
60 over a period not to exceed four years and estimates of any
61 associated additional costs.

62 (c) Nothing in this section requires adoption or
63 implementation of any specific recommendation or any level of
64 appropriation by the Legislature.

CHAPTER 87

**(Com. Sub. for H. B. 4301 - By Delegates Espinosa,
Westfall, Ambler, Cooper, D. Evans, Statler, Hamrick,
Kurcaba, Rohrbach, Upson and Householder)**

[Passed March 11, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-36, relating to a framework for initiating comprehensive transformation of school leadership; making legislative findings that provide a context for leadership that promotes instructional improvement; stating purpose of section as framework for development of needed statutory and policy changes; stating further purpose to initiate transformation through general statement of legislative intent; providing certain expectations; stating intent for process of broad stakeholder input; requiring convening of stakeholders to assist state board; listing minimum issues to be considered for state recommendations; and requiring reports and recommendations to Legislature and Governor.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-36, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-36. Framework for initiating comprehensive transformation of school leadership.

1 (a) *Legislative findings.* —

2 (1) The report and recommendations of Imagine West
3 Virginia on Transforming School Leadership in West Virginia
4 are clearly on point that school leadership and the essential role
5 of the principal in achieving a high performing school are well
6 documented, long studied and too often set aside. The report and
7 recommendations also clearly recognize the value of providing
8 teachers with authentic opportunities and resources to lead,
9 influence professional practice, and assume shared responsibility
10 for school and classroom improvement. The recommendations
11 related to school leadership, the role, preparation and selection
12 of the principal and a career ladder for teacher leaders once again
13 bring the importance of strong school-level instructional
14 leadership, including mechanisms for career advancement for
15 teachers in leadership roles, to the forefront of discussions on
16 school improvement. The state board posted the report
17 recommendations for comment with the intent of providing a
18 starting point for deeper deliberation and stakeholder input.

19 (2) Among the general conclusions of the Education
20 Efficiency Audit of West Virginia's Primary and Secondary
21 Education System is the need to drive more educational
22 decision-making down to the level closest to the students, to the
23 classroom and building level, allowing principals to lead and
24 teachers to deliver the most effective curriculum for their
25 students, and then holding them accountable for student success.
26 Such a system heightens the imperative for strong school
27 leadership. The school climate and culture observed in high
28 quality schools reflects strong leadership that develops shared
29 beliefs and values among the staff, high expectations for all, and
30 a safe, orderly and engaging environment. A key concept in
31 developing good school leadership and then holding schools
32 accountable for student performance is that they have the
33 authority, resources and flexibility to affect the outcome.

34 (3) An increasing body of knowledge concludes that unless
35 teachers are collectively involved in the planning and

36 implementation of school improvement, it is unlikely to be
37 sustained. Successful schools are distinguishable from
38 unsuccessful ones by the frequency and extent to which teachers
39 discuss professional practices, collectively design materials and
40 inform and critique one another. Even successful schools must
41 be self-renewing systems, learning organizations marked by
42 deliberate effort to identify helpful knowledge and spread its use
43 within the organization. Again, leadership by the principal
44 combined with authentic roles for teacher leaders are necessary
45 ingredients.

46 (4) The school responsibilities for accreditation adopted by
47 the state board to implement West Virginia's performance based
48 accreditation system embodied in section five, article two-e of
49 this chapter, the Process for Improving Education, include a
50 collective and collaborative process for continuous school
51 improvement led by the principal. The process includes data
52 analysis, goal setting, strategic planning, progress review and
53 results analysis. It includes identifying what and where
54 improvement is needed, establishing goals and a strategic plan
55 for improved student learning, defining the roles and
56 responsibilities of all team members, securing the professional
57 development needed to achieve the goals, and sharing the
58 responsibility and rewards for the results. The principal must
59 foster and develop distributed leadership in order to focus
60 collective action for improved school performance. The school's
61 faculty and members of the Local School Improvement Council
62 must participate effectively in the self-assessment and annual
63 and cyclical reviews of school performance to effect a process of
64 continuous improvement.

65 (5) The prior studies and Imagine WV report in which they
66 are cited recognize that the job of principal has become
67 overwhelming. The report focuses on instructional leadership as
68 the most important role of the principal, but notes that it has
69 become a less prominent function in the overall job of being a

70 principal. The diminished time devoted to instructional
71 leadership has been a gradual crowding out by other necessary
72 functions, rather than a conscience choice. Just as important for
73 high performing schools is the strong leadership role necessary
74 for operations management, establishing the climate and culture
75 of the school as a learning environment, and instructional
76 leadership. All require strong leadership skills, but in a different
77 context. They require different skill sets, all of which are needed
78 to lead high quality schools. The reality, however, is that these
79 many responsibilities inherent in the operation of high quality
80 schools compete for time and it is difficult for principals to do
81 them all well. Various scenarios have been discussed for
82 enabling a heightened focus on instructional leadership,
83 including the introduction of school manager positions or the
84 broader use of assistant principals in all schools to allow greater
85 principal attention to instructional improvement. A further
86 scenario builds upon the research that high quality schools are
87 distinguishable by the collective and collaborative involvement
88 of teachers in sustained school improvement. It brings a
89 heightened focus on instructional leadership to assist, and under
90 direction of, the principal by providing authentic opportunities
91 for teacher leaders to participate and assume greater
92 responsibility. This scenario involves various approaches to
93 reward excellent teaching, to provide the time necessary for
94 excellent teachers to lead instructional improvement, and to
95 enable excellent teachers to advance in their teaching careers and
96 levels of compensation through instructional leadership positions
97 without leaving the classroom completely.

98 (6) Emerging research and policy direction toward
99 distributed leadership and shared responsibility for results as
100 cited in these findings, elevate the focus for all teachers on
101 instructional improvement, and particularly for excellent
102 teachers to assume instructional leadership roles. In most
103 schools today, excellent teachers rarely have authority, time, or

104 sustained incentives to lead while teaching. Developing models
105 for supporting new teacher induction, for professional
106 development and mentoring for struggling teachers, and for
107 teacher collaboration on instructional improvement all involve
108 a role for teacher leaders. As professional educators, teachers
109 should have an established structure through which they can
110 advance their careers as experienced instructional leaders
111 without leaving classroom teaching completely. Like other
112 professionals, teachers should be afforded an opportunity to take
113 on more responsibility, share their expertise with other less
114 experienced teachers and advance their teaching career as
115 teacher leaders. Like other professions, teaching should provide
116 for a routine progression of continuing education for license
117 maintenance and opportunities for salary advancement as
118 additional knowledge, skill and expertise are acquired that
119 directly affect student learning. Examples of leadership roles
120 that may be performed by teachers include serving on the school
121 leadership team, leading collective and collaborative processes
122 for strategic improvement planning, leading teacher
123 collaboration processes within the school day, leading the faculty
124 senate, serving on the local school improvement council,
125 supervising student teachers, serving as mentors and models for
126 new and struggling teachers and teachers-in-residence, and
127 helping arrange school level professional development. Ideally,
128 in an opportunity culture for teachers, career paths and teacher
129 pay will recognize and reward the value of excellent teaching
130 and teacher leadership roles for extending excellent teaching to
131 all students consistently.

132 (7) Education is a human resources intensive endeavor. It
133 competes for talented professionals with other occupations with
134 higher levels of compensation, particularly in the STEM fields.
135 While opportunities for career advancement and added
136 compensation for teachers under career ladder type arrangements
137 may improve the attractiveness of the profession for excellent

138 teachers, it will not replace the need for general salary increases.
139 In West Virginia and nationally, the enrollments in college and
140 university teacher preparation programs are declining. For West
141 Virginia particularly, the need to recruit and retain excellent
142 teachers is exacerbated by the increasing numbers of retirements
143 of a very senior teaching force. Increasingly important will be
144 a variety of methods for encouraging and supporting an interest
145 in the teaching profession, preparing the next generation of
146 educators, actively recruiting top talent graduating from teacher
147 preparation programs and supporting their development through
148 the first years of their careers. In the human resources intensive
149 business of education, human resource development should not
150 be left to chance.

151 (b) *Legislative purpose, intent, process for stakeholder*
152 *input; items for recommendation.* —

153 (1) The purpose of this section is to provide a framework for
154 development of the statutory and policy changes needed to
155 support and sustain a comprehensive transformation of school
156 leadership. A further purpose of this section is to initiate the
157 comprehensive transformation of school leadership through a
158 general statement of legislative intent to pursue this change in
159 public policy and, thereby, provide assurances and parameters
160 under which the work toward this change may proceed. It is
161 expected that the transformation will affect both the public
162 education system and the educator preparation programs at
163 institutions of higher education to develop, prepare and
164 credential teacher, principal and administrative leaders to
165 accomplish a systemic change in school leadership. It is
166 expected that the transformation will involve multiple, and in
167 some cases sequential, steps that may require a period of years
168 to accomplish to ensure that the necessary supports are in place
169 to enable school leaders to meet the expectations of new roles
170 and responsibilities and to finance the necessary improvements.

171 (2) It is further expected that the transformation will involve
172 roles and responsibilities for leadership that may not match the
173 certification and training of all of those currently in leadership
174 positions. Therefore, the options for implementation will need to
175 take the existing legacy into account to minimize cost and
176 system disruption while bringing new models of leadership for
177 instructional improvement to every school expeditiously.
178 Finally, it is expected that district size and resources, school size
179 and programmatic level, existing leadership positions, and
180 differences in school performance may all be factors that will
181 affect the transformation of school leadership within the various
182 school systems and they should be afforded ample local
183 flexibility for establishing priorities and implementation within
184 their schools.

185 (3) The findings set forth in subsection (a) of this section
186 provide a context for considering a leadership framework that
187 promotes instructional improvement and for determining the
188 statutory and policy changes needed to enable it. It is the intent
189 of the Legislature to begin this transformation through a process
190 of broad stakeholder input to consider and make
191 recommendations to accomplish this task. Therefore, the state
192 board shall convene the relevant stakeholders, including, but not
193 limited to, principals, teachers, superintendents, county board
194 members, educator preparation program personnel, legislators or
195 their designees and a Governor's designee to assist the state
196 board in developing state board policies, practices and
197 recommended statutory changes consistent with the findings of
198 this section. Among the issues the state board shall consider are:

199 (A) Issues relating to principal leadership that include, but
200 are not limited to, the following:

201 (i) A clear definition of the role and responsibilities of
202 principals and assistant principals in statute and policy that
203 include leadership for instructional improvement;

204 (ii) The role and responsibilities of the principal as the
205 legally responsible party in charge of the school with the added
206 need for authority and flexibility to delegate responsibilities to
207 accomplish a distributed leadership model for instructional
208 improvement;

209 (iii) Leadership standards that include the essential role of
210 the principal for leadership in developing a culture of collegiality
211 and professionalism among the staff so that improving student
212 learning is a shared responsibility;

213 (iv) The scope of topics to be covered in the preparation
214 programs and certifications for principals and assistant
215 principals;

216 (v) A process of preparing new principals that may include
217 clinical experiences and mentoring through a partnership
218 between higher education and county boards. It may include a
219 commitment of county board resources to assist in the training,
220 as well as a commitment from the candidate to stay in the system
221 for some period of time;

222 (vi) The additional school-level tools needed to give good
223 principals the flexibility and authority necessary for success,
224 including additional independent, school-level authority needed
225 to adequately fulfill the responsibilities;

226 (vii) A method of implementation under which the capacity
227 of the principal for leading is a condition precedent to
228 implementation of methods for distributed leadership;

229 (viii) Limitations on the employment of new principals to
230 those candidates prepared and credentialed under the new
231 standards, or some comparable standards approved by the state
232 board, and limitations on the applicability of Master's degrees in
233 education administration for advanced salary classification if

234 earned after a certain date following state board approval of a
235 new preparation program; and

236 (ix) Differentiation and improvements in the salary
237 schedules and increments for principals subject to the newly
238 defined roles and responsibilities for school leadership;

239 (B) Issues relating to teacher leadership that include, but are
240 not limited to, the following:

241 (i) Various approaches that reward excellent teaching,
242 provide authentic opportunities for excellent teachers to
243 influence professional practice and enable excellent teachers to
244 advance in their teaching careers and compensation without
245 leaving the classroom completely including, but are not limited
246 to, incentive increments, career lattice steps and career ladder
247 positions;

248 (ii) Incentive increments in the salary scale for advanced
249 degrees, approved course work or advanced certification in the
250 teacher's area of certification and for excellent teaching;

251 (iii) Career lattice steps that provide extra pay and/or extra
252 time for teachers for specific types of assignments made by the
253 principal or, in some cases, by the faculty senate for instructional
254 and school improvement work. These types of steps may not be
255 permanent and may change or involve different teachers and
256 team members from time to time depending on the needs of the
257 school and the ability of teachers to participate;

258 (iv) Career ladder steps that are permanent steps for master
259 teachers who possess the appropriate leadership certification to
260 progress in teacher leadership positions with additional
261 compensation and reduced teaching load to assume duties under
262 the direction of the principal without leaving the classroom
263 completely;

264 (v) A clear definition in statute and policy of the role and
265 responsibilities of career ladder teacher leaders that includes
266 leadership for instructional improvement;

267 (vi) Career ladder teacher leader standards that include the
268 essential role of leadership in developing a culture of collegiality
269 and professionalism among the staff so that improving student
270 learning is a shared responsibility;

271 (vii) The scope of topics to be covered in the preparation
272 programs and certifications for career ladder teacher leaders;

273 (viii) Appropriate limitations on the number of teachers in
274 career lattice positions and on the number of teachers in career
275 ladder positions, separately, for schools of different size and
276 programmatic level; and

277 (ix) An additional incentive increment in the salary scale for
278 excellent teachers and principals who accept transfer to a low
279 performing school for a certain number of years;

280 (C) Issues relating to a leadership development pipeline that
281 include, but are not limited to, the following:

282 (i) A comprehensive leadership development process for
283 school systems to identify, recruit and train outstanding
284 leadership candidates consistent with numbers needed to meet
285 the projected needs of the school system;

286 (ii) A method for school-level identification of those
287 teachers who most clearly demonstrate budding leadership
288 qualities as potential candidates for development into the career
289 ladder teacher leaders, assistant principals and principals of the
290 future;

291 (iii) Appropriate school district and higher education
292 partnerships for preparation, support and credentialing at each

293 step so the focus on instructional leadership will become
294 pervasive; and

295 (iv) Allowances that may be necessary to fill positions
296 during the transition to new leadership models; and

297 (D) Issues related to local and state systems of support that
298 include, but are not limited to, the following:

299 (i) Information management tools that enhance the capacity
300 of school leaders and leadership teams to quickly assemble
301 performance information on student learning and other aspects
302 of the school's learning environment into the actionable
303 intelligence needed for strategic planning, adjusting instructional
304 strategies and focusing on individual student needs;

305 (ii) School-level tools or resources that give principals a
306 flexible, timely and targeted way to meet the professional
307 development needs of teachers at their school;

308 (iii) Methods to help ensure the uniformity and inter-rater
309 reliability of the portion of the professional personnel
310 performance evaluation based on teaching standards;

311 (iv) Additional state-level infrastructure that may be needed
312 to support the additional credentialing and monitoring of course
313 work and degree attainment for salary progressions and new
314 leadership positions;

315 (v) Methods to support, encourage and facilitate school-level
316 leadership for instructional improvement, to endorse and
317 encourage innovation to improve the success of all students
318 rather than rely on top-down enforcement of one size fits all
319 approaches to education; and

320 (vi) Methods to establish an emphasis on human resource
321 management including, but not limited to, approaches to

322 improve the position posting and recruitment of new graduates
323 for shortage area positions, and improving the retention of new
324 professional personnel.

325 (c) *Reports and recommendations to Legislature and*
326 *Governor.* —

327 (1) Not later than regular session of the Legislature, 2018,
328 the state board shall make a report to the Joint Standing
329 Committee on Education and the Governor on transforming
330 school leadership including, at a minimum:

331 (A) Recommendations on a general leadership structure and
332 definitions of the roles and responsibilities for principals and
333 teacher leaders;

334 (B) Identification of affected statutes and policies, including
335 pending and completed policy revisions, and recommendations
336 for statutory amendments, if any, needed to effectuate its
337 recommendations;

338 (C) An outline of sequential implementation of the changes
339 needed to transform school leadership, and recommendations for
340 phased implementation, if any; and

341 (D) The estimated costs of implementation of the
342 recommendations and statutory changes necessary to effectuate
343 the recommendations along with potential funding sources from
344 improved efficiencies or other cost savings from the 5
345 elimination of unnecessary operations or programs.

CHAPTER 88

**(Com. Sub. for S. B. 369 - By Senators Sypolt,
Boso, Plymale, Prezioso and Williams)**

[Passed February 22, 2016; in effect 90 days from passage.]
[Approved by the Governor on March 2, 2016.]

AN ACT to repeal §18-2-5g of the Code of West Virginia, 1931, as amended; to repeal §18-2E-3g of said code; to repeal §18B-5-8 of said code; to amend and reenact §18-2E-5 of said code; to amend and reenact §18-2I-5 of said code; to amend and reenact §18-3-12 of said code; to amend and reenact §18-5-44 of said code; to amend and reenact §18-20-5 and §18-20-8 of said code; to amend and reenact §18A-2-3 of said code; to amend and reenact §18A-4-7a of said code; to amend and reenact §18A-5-1a of said code; to amend and reenact §18B-1-10 of said code; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-1D-8 of said code; to amend said code by adding thereto a new section, designated §18B-1D-8a; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-2C-3 of said code; to amend and reenact §18B-3D-2 of said code; to amend and reenact §18B-10-1 of said code; to amend and reenact §18B-13-5 of said code; to amend and reenact §18B-18-6 of said code; to amend and reenact §18C-3-4 of said code; to amend and reenact §18C-5-7 of said code; and to amend and reenact §18C-7-5 of said code, all relating to legislative education reporting requirements; repealing obsolete section providing for establishment of a special five-year demonstration professional development school project for improving academic achievement including requirement for status reports to commission; repealing requirement for review, evaluation and report to commission on reports required to be written by principals and teachers; repealing section requiring

Higher Education Policy Commission to report to commission on in-state and out-of-state contracts and purchases; removing requirement for Office of Education Performance Audits to report to commission on each appeal of on-site review findings; removing requirement for report to the commission on the effectiveness of staff development resulting from expenditures from Strategic Staff Development Fund; removing requirement for status report to commission relating to Special Community Development School Pilot Program; removing requirement for report to commission on progress of implementation of early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the pupil enters the program; removing requirement for report to the commission and the Joint Committee on Government and Finance that addresses, at a minimum, certain early childhood education program issues; removing requirement for State Superintendent of Schools to review the rules, policies and standards of the state and federal law for serving the needs of certain exceptional children and removing requirement for report to commission on the findings of the review along with an accounting of the services provided and the costs thereof; removing requirement for annual report to commission, the Joint Committee on Education, the Legislative Commission on Juvenile Law, and other agencies, as appropriate, which recommends policies, procedures and legislation for effectively providing early intervention services and reports on the status of existing programs; removing requirement for State Board of Education to review the status of employing prospective employable professional personnel and the requirement for an annual report to the commission which must include certain minimum prospective employable professional personnel-related items; removing requirement that county board of education submit a copy of its policy defining which policies are lateral positions to the state board within thirty days of any adoption or modification and the requirement that the state board compile a report and submit the report to the commission; removing the

requirement that county boards report the number of students determined to be dangerous students to the state board and the requirement that the state board compile the statistics and report its findings to the commission; removing the reporting requirements on the cooperative relationship between Potomac State College and Eastern West Virginia Community and Technical College; removing the requirement that the Higher Education Policy Commission report on its performance, capital investment priorities, and recommendations for statutory changes; removing numerous reports from list of reports that are not required to be made annually to the Legislature and requiring remaining reports on list to be combined with other reports, including certain personnel, classification, compensation and human resources reports, all capital appropriation requests, priorities and campus and state capital development plans, all academic related matters and reports, and all financial aid reports; permitting the Commission to modify deadlines for statutory or rule mandated reports without a statutory or rule-making change as long as provided within calendar year; removing requirement that Council collect and analyze data, report on community and technical college performance in every region, and report on progress toward meeting goals and objectives; removing annual requirement that Council report on its performance, capital investment priorities and recommendations for statutory changes; removing annual requirement that Council report on progress toward meeting statutory goals and whether statewide independently accredited community and technical college should be created; removing requirement for status report on workforce development initiatives; removing requirement for annual report on auxiliary fees; removing requirement that Higher Education Policy Commission report on technical assistance and associated costs provided to qualified businesses within the higher education and industry partnership; removing requirement for annual status report on the Eminent Scholars Endowment Trust Fund; removing requirement of an annual report on number of nursing scholarship recipients;

removing requirement to report on status of Higher Education Adult Part-Time Student Grant Program; and removing requirement for annual recommendation to encourage PROMISE recipients to live and work in West Virginia after graduation.

Be it enacted by the Legislature of West Virginia:

That §18-2-5g of the Code of West Virginia, 1931, as amended, be repealed; that §18-2E-3g of said code be repealed; that §18B-5-8 of said code be repealed; that §18-2E-5 of said code be amended and reenacted; that §18-2I-5 of said code be amended and reenacted; that §18-3-12 of said code be amended and reenacted; that §18-5-44 of said code be amended and reenacted; that §18-20-5 and §18-20-8 of said code be amended and reenacted; that §18A-2-3 of said code be amended and reenacted; that §18A-4-7a of said code be amended and reenacted; that §18A-5-1a of said code be amended and reenacted; that §18B-1-10 of said code be amended and reenacted; that §18B-1B-4 of said code be amended and reenacted; that §18B-1D-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1D-8a; that §18B-2B-6 of said code be amended and reenacted; that §18B-2C-3 of said code be amended and reenacted; that §18B-3D-2 of said code be amended and reenacted; that §18B-10-1 of said code be amended and reenacted; that §18B-13-5 of said code be amended and reenacted; that §18B-18-6 of said code be amended and reenacted; that §18C-3-4 of said code be amended and reenacted; that §18C-5-7 of said code be amended and reenacted; and that §18C-7-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits;

**school accreditation and school system approval;
intervention to correct low performance.**

1 (a) *Legislative findings, purpose and intent.* — The
2 Legislature makes the following findings with respect to the
3 process for improving education and its purpose and intent in the
4 enactment of this section:

5 (1) The process for improving education includes four
6 primary elements, these being:

7 (A) Standards which set forth the knowledge and skills that
8 students should know and be able to perform as the result of a
9 thorough and efficient education that prepares them for the
10 twenty-first century, including measurable criteria to evaluate
11 student performance and progress;

12 (B) Assessments of student performance and progress
13 toward meeting the standards;

14 (C) A system of accountability for continuous improvement
15 defined by high-quality standards for schools and school systems
16 articulated by a rule promulgated by the state board and outlined
17 in subsection (c) of this section that will build capacity in
18 schools and districts to meet rigorous outcomes that assure
19 student performance and progress toward obtaining the
20 knowledge and skills intrinsic to a high-quality education rather
21 than monitoring for compliance with specific laws and
22 regulations; and

23 (D) A method for building the capacity and improving the
24 efficiency of schools and school systems to improve student
25 performance and progress;

26 (2) As the constitutional body charged with the general
27 supervision of schools as provided by general law, the state
28 board has the authority and the responsibility to establish the

29 standards, assess the performance and progress of students
30 against the standards, hold schools and school systems
31 accountable and assist schools and school systems to build
32 capacity and improve efficiency so that the standards are met,
33 including, when necessary, seeking additional resources in
34 consultation with the Legislature and the Governor;

35 (3) As the constitutional body charged with providing for a
36 thorough and efficient system of schools, the Legislature has the
37 authority and the responsibility to establish and be engaged
38 constructively in the determination of the knowledge and skills
39 that students should know and be able to do as the result of a
40 thorough and efficient education. This determination is made by
41 using the process for improving education to determine when
42 school improvement is needed by evaluating the results and the
43 efficiency of the system of schools, by ensuring accountability
44 and by providing for the necessary capacity and its efficient use;

45 (4) In consideration of these findings, the purpose of this
46 section is to establish a process for improving education that
47 includes the four primary elements as set forth in subdivision (1)
48 of this subsection to provide assurances that the high-quality
49 standards are, at a minimum, being met and that a thorough and
50 efficient system of schools is being provided for all West
51 Virginia public school students on an equal education
52 opportunity basis; and

53 (5) The intent of the Legislature in enacting this section and
54 section five-c of this article is to establish a process through
55 which the Legislature, the Governor and the state board can
56 work in the spirit of cooperation and collaboration intended in
57 the process for improving education, to consult and examine the
58 performance and progress of students, schools and school
59 systems and, when necessary, to consider alternative measures
60 to ensure that all students continue to receive the thorough and
61 efficient education to which they are entitled. However, nothing

62 in this section requires any specific level of funding by the
63 Legislature.

64 (b) *Electronic county and school strategic improvement*
65 *plans.* — The state board shall promulgate a rule consistent with
66 the provisions of this section and in accordance with article
67 three-b, chapter twenty-nine-a of this code establishing an
68 electronic county strategic improvement plan for each county
69 board and an electronic school strategic improvement plan for
70 each public school in this state. Each respective plan shall be for
71 a period of no more than five years and shall include the mission
72 and goals of the school or school system to improve student,
73 school or school system performance and progress, as
74 applicable. The strategic plan shall be revised annually in each
75 area in which the school or system is below the standard on the
76 annual performance measures. The plan shall be revised when
77 required pursuant to this section to include each annual
78 performance measure upon which the school or school system
79 fails to meet the standard for performance and progress, the
80 action to be taken to meet each measure, a separate time line and
81 a date certain for meeting each measure, a cost estimate and,
82 when applicable, the assistance to be provided by the department
83 and other education agencies to improve student, school or
84 school system performance and progress to meet the annual
85 performance measure.

86 The department shall make available to all public schools
87 through its website or the West Virginia Education Information
88 System an electronic school strategic improvement plan
89 boilerplate designed for use by all schools to develop an
90 electronic school strategic improvement plan which incorporates
91 all required aspects and satisfies all improvement plan
92 requirements of the No Child Left Behind Act.

93 (c) *High-quality education standards and efficiency*
94 *standards.* — In accordance with the provisions of article

95 three-b, chapter twenty-nine-a of this code, the state board shall
96 adopt and periodically review and update high-quality education
97 standards for student, school and school system performance and
98 processes in the following areas:

- 99 (1) Curriculum;
 - 100 (2) Workplace readiness skills;
 - 101 (3) Finance;
 - 102 (4) Transportation;
 - 103 (5) Special education;
 - 104 (6) Facilities;
 - 105 (7) Administrative practices;
 - 106 (8) Training of county board members and administrators;
 - 107 (9) Personnel qualifications;
 - 108 (10) Professional development and evaluation;
 - 109 (11) Student performance, progress and attendance;
 - 110 (12) Professional personnel, including principals and central
111 office administrators, and service personnel attendance;
 - 112 (13) School and school system performance and progress;
 - 113 (14) A code of conduct for students and employees;
 - 114 (15) Indicators of efficiency; and
 - 115 (16) Any other areas determined by the state board.
- 116 (d) *Comprehensive statewide student assessment program.*
117 — The state board shall establish a comprehensive statewide

118 student assessment program to assess student performance and
119 progress in grades three through twelve. The assessment
120 program is subject to the following:

121 (1) The state board shall promulgate a rule in accordance
122 with the provisions of article three-b, chapter twenty-nine-a of
123 this code establishing the comprehensive statewide student
124 assessment program;

125 (2) Prior to the 2014-2015 school year, the state board shall
126 align the comprehensive statewide student assessment for all
127 grade levels in which the test is given with the college-readiness
128 standards adopted pursuant to section thirty-nine, article two of
129 this chapter or develop other aligned tests to be required at each
130 grade level so that progress toward college readiness in
131 English/language arts and math can be measured;

132 (3) The state board may require that student proficiencies be
133 measured through the ACT EXPLORE and the ACT PLAN
134 assessments or other comparable assessments, which are
135 approved by the state board and provided by future vendors;

136 (4) The state board may require that student proficiencies be
137 measured through the West Virginia writing assessment at any
138 grade levels determined by the state board to be appropriate; and

139 (5) The state board may provide, through the statewide
140 assessment program, other optional testing or assessment
141 instruments applicable to grade levels kindergarten through
142 grade twelve which may be used by each school to promote
143 student achievement. The state board annually shall publish and
144 make available, electronically or otherwise, to school curriculum
145 teams and teacher collaborative processes the optional testing
146 and assessment instruments.

147 (e) *State annual performance measures for school and*
148 *school system accreditation.* —

149 The state board shall promulgate a rule in accordance with
150 the provisions of article three-b, chapter twenty-nine-a of this
151 code that establishes a system to assess and weigh annual
152 performance measures for state accreditation of schools and
153 school systems. The state board also may establish performance
154 incentives for schools and school systems as part of the state
155 accreditation system. On or before December 1, 2013, the state
156 board shall report to the Governor and to the Legislative
157 Oversight Commission on Education Accountability the
158 proposed rule for establishing the measures and incentives of
159 accreditation and the estimated cost therefore, if any. Thereafter,
160 the state board shall provide an annual report to the Governor
161 and to the Legislative Oversight Commission on Education
162 Accountability on the impact and effectiveness of the
163 accreditation system. The rule for school and school system
164 accreditation proposed by the board may include, but is not
165 limited to, the following measures:

166 (1) Student proficiency in English and language arts, math,
167 science and other subjects determined by the board;

168 (2) Graduation and attendance rate;

169 (3) Students taking and passing AP tests;

170 (4) Students completing a career and technical education
171 class;

172 (5) Closing achievement gaps within subgroups of a school's
173 student population; and

174 (6) Students scoring at or above average attainment on SAT
175 or ACT tests.

176 (f) *Indicators of efficiency.* — In accordance with the
177 provisions of article three-b, chapter twenty-nine-a of this code,
178 the state board shall adopt by rule and periodically review and

179 update indicators of efficiency for use by the appropriate
180 divisions within the department to ensure efficient management
181 and use of resources in the public schools in the following areas:

182 (1) Curriculum delivery including, but not limited to, the use
183 of distance learning;

184 (2) Transportation;

185 (3) Facilities;

186 (4) Administrative practices;

187 (5) Personnel;

188 (6) Use of regional educational service agency programs and
189 services, including programs and services that may be
190 established by their assigned regional educational service agency
191 or other regional services that may be initiated between and
192 among participating county boards; and

193 (7) Any other indicators as determined by the state board.

194 (g) *Assessment and accountability of school and school*
195 *system performance and processes.* — In accordance with the
196 provisions of article three-b, chapter twenty-nine-a of this code,
197 the state board shall establish by rule a system of education
198 performance audits which measures the quality of education and
199 the preparation of students based on the annual measures of
200 student, school and school system performance and progress.
201 The system of education performance audits shall provide
202 information to the state board, the Legislature and the Governor,
203 upon which they may determine whether a thorough and
204 efficient system of schools is being provided. The system of
205 education performance audits shall include:

206 (1) The assessment of student, school and school system
207 performance and progress based on the annual measures
208 established pursuant to subsection (e) of this section;

209 (2) The evaluation of records, reports and other information
210 collected by the Office of Education Performance Audits upon
211 which the quality of education and compliance with statutes,
212 policies and standards may be determined;

213 (3) The review of school and school system electronic
214 strategic improvement plans; and

215 (4) The on-site review of the processes in place in schools
216 and school systems to enable school and school system
217 performance and progress and compliance with the standards.

218 (h) *Uses of school and school system assessment*
219 *information.* — The state board shall use information from the
220 system of education performance audits to assist it in ensuring
221 that a thorough and efficient system of schools is being provided
222 and to improve student, school and school system performance
223 and progress. Information from the system of education
224 performance audits further shall be used by the state board for
225 these purposes, including, but not limited to, the following:

226 (1) Determining school accreditation and school system
227 approval status;

228 (2) Holding schools and school systems accountable for the
229 efficient use of existing resources to meet or exceed the
230 standards; and

231 (3) Targeting additional resources when necessary to
232 improve performance and progress.

233 The state board shall make accreditation information
234 available to the Legislature, the Governor, the general public and
235 to any individual who requests the information, subject to the
236 provisions of any act or rule restricting the release of
237 information.

238 (i) *Early detection and intervention programs.* — Based on
239 the assessment of student, school and school system performance
240 and progress, the state board shall establish early detection and
241 intervention programs using the available resources of the
242 Department of Education, the regional educational service
243 agencies, the Center for Professional Development and the
244 Principals Academy, or other resources as appropriate, to assist
245 underachieving schools and school systems to improve
246 performance before conditions become so grave as to warrant
247 more substantive state intervention. Assistance shall include, but
248 is not limited to, providing additional technical assistance and
249 programmatic, professional staff development, providing
250 monetary, staffing and other resources where appropriate.

251 (j) *Office of Education Performance Audits.* —

252 (1) To assist the state board in the operation of a system of
253 education performance audits, the state board shall establish an
254 Office of Education Performance Audits consistent with the
255 provisions of this section. The Office of Education Performance
256 Audits shall be operated under the direction of the state board
257 independently of the functions and supervision of the State
258 Department of Education and state superintendent. The Office of
259 Education Performance Audits shall report directly to and be
260 responsible to the state board in carrying out its duties under the
261 provisions of this section.

262 (2) The office shall be headed by a director who shall be
263 appointed by the state board and who serves at the will and
264 pleasure of the state board. The annual salary of the director
265 shall be set by the state board and may not exceed eighty percent
266 of the salary of the State Superintendent of Schools.

267 (3) The state board shall organize and sufficiently staff the
268 office to fulfill the duties assigned to it by law and by the state
269 board. Employees of the State Department of Education who are

270 transferred to the Office of Education Performance Audits shall
271 retain their benefits and seniority status with the Department of
272 Education.

273 (4) Under the direction of the state board, the Office of
274 Education Performance Audits shall receive from the West
275 Virginia education Information System staff research and
276 analysis data on the performance and progress of students,
277 schools and school systems, and shall receive assistance, as
278 determined by the state board, from staff at the State Department
279 of Education, the regional education service agencies, the Center
280 for Professional Development, the Principals Academy and the
281 School Building Authority to carry out the duties assigned to the
282 office.

283 (5) In addition to other duties which may be assigned to it by
284 the state board or by statute, the Office of Education
285 Performance Audits also shall:

286 (A) Assure that all statewide assessments of student
287 performance used as annual performance measures are secure as
288 required in section one-a of this article;

289 (B) Administer all accountability measures as assigned by
290 the state board, including, but not limited to, the following:

291 (i) Processes for the accreditation of schools and the
292 approval of school systems; and

293 (ii) Recommendations to the state board on appropriate
294 action, including, but not limited to, accreditation and approval
295 action;

296 (C) Determine, in conjunction with the assessment and
297 accountability processes, what capacity may be needed by
298 schools and school systems to meet the standards established by

299 the state board and recommend to the state board plans to
300 establish those needed capacities;

301 (D) Determine, in conjunction with the assessment and
302 accountability processes, whether statewide system deficiencies
303 exist in the capacity of schools and school systems to meet the
304 standards established by the state board, including the
305 identification of trends and the need for continuing
306 improvements in education, and report those deficiencies and
307 trends to the state board;

308 (E) Determine, in conjunction with the assessment and
309 accountability processes, staff development needs of schools and
310 school systems to meet the standards established by the state
311 board and make recommendations to the state board, the Center
312 for Professional Development, the regional educational service
313 agencies, the Higher Education Policy Commission and the
314 county boards;

315 (F) Identify, in conjunction with the assessment and
316 accountability processes, school systems and best practices that
317 improve student, school and school system performance and
318 communicate those to the state board for promoting the use of
319 best practices. The state board shall provide information on best
320 practices to county school systems; and

321 (G) Develop reporting formats, such as check lists, which
322 shall be used by the appropriate administrative personnel in
323 schools and school systems to document compliance with
324 applicable laws, policies and process standards as considered
325 appropriate and approved by the state board, which may include,
326 but is not limited to, the following:

327 (i) The use of a policy for the evaluation of all school
328 personnel that meets the requirements of sections twelve and
329 twelve-a, article two, chapter eighteen-a of this code;

330 (ii) The participation of students in appropriate physical
331 assessments as determined by the state board, which assessment
332 may not be used as a part of the assessment and accountability
333 system;

334 (iii) The appropriate licensure of school personnel; and

335 (iv) The appropriate provision of multicultural activities.

336 Information contained in the reporting formats is subject to
337 examination during an on-site review to determine compliance
338 with laws, policies and standards. Intentional and grossly
339 negligent reporting of false information are grounds for
340 dismissal of any employee.

341 (k) *On-site reviews.* —

342 (1) The system of education performance audits shall include
343 on-site reviews of schools and school systems which shall be
344 conducted only at the specific direction of the state board upon
345 its determination that circumstances exist that warrant an on-site
346 review. Any discussion by the state board of schools to be
347 subject to an on-site review or dates for which on-site reviews
348 will be conducted may be held in executive session and is not
349 subject to the provisions of article nine-a, chapter six of this code
350 relating to open governmental proceedings. An on-site review
351 shall be conducted by the Office of Education Performance
352 Audits of a school or school system for the purpose of making
353 recommendations to the school and school system, as
354 appropriate, and to the state board on such measures as it
355 considers necessary. The investigation may include, but is not
356 limited to, the following:

357 (A) Verifying data reported by the school or county board;

358 (B) Examining compliance with the laws and policies
359 affecting student, school and school system performance and
360 progress;

361 (C) Evaluating the effectiveness and implementation status
362 of school and school system electronic strategic improvement
363 plans;

364 (D) Investigating official complaints submitted to the state
365 board that allege serious impairments in the quality of education
366 in schools or school systems;

367 (E) Investigating official complaints submitted to the state
368 board that allege that a school or county board is in violation of
369 policies or laws under which schools and county boards operate;
370 and

371 (F) Determining and reporting whether required reviews and
372 inspections have been conducted by the appropriate agencies,
373 including, but not limited to, the State Fire Marshal, the Health
374 Department, the School Building Authority and the responsible
375 divisions within the department of education, and whether noted
376 deficiencies have been or are in the process of being corrected.

377 (2) The Director of the Office of Education Performance
378 Audits shall notify the county superintendent of schools five
379 school days prior to commencing an on-site review of the county
380 school system and shall notify both the county superintendent
381 and the principal five school days before commencing an on-site
382 review of an individual school: *Provided*, That the state board
383 may direct the Office of Education Performance Audits to
384 conduct an unannounced on-site review of a school or school
385 system if the state board believes circumstances warrant an
386 unannounced on-site review.

387 (3) The Office of Education Performance Audits shall
388 conduct on-site reviews which are limited in scope to specific
389 areas in which performance and progress are persistently below
390 standard as determined by the state board unless specifically
391 directed by the state board to conduct a review which covers
392 additional areas.

393 (4) The Office of Education Performance Audits shall
394 reimburse a county board for the costs of substitutes required to
395 replace county board employees who serve on a review team.

396 (5) At the conclusion of an on-site review of a school
397 system, the director and team leaders shall hold an exit
398 conference with the superintendent and shall provide an
399 opportunity for principals to be present for at least the portion of
400 the conference pertaining to their respective schools. In the case
401 of an on-site review of a school, the exit conference shall be held
402 with the principal and curriculum team of the school and the
403 superintendent shall be provided the opportunity to be present.
404 The purpose of the exit conference is to review the initial
405 findings of the on-site review, clarify and correct any
406 inaccuracies and allow the opportunity for dialogue between the
407 reviewers and the school or school system to promote a better
408 understanding of the findings.

409 (6) The Office of Education Performance Audits shall report
410 the findings of an on-site review to the county superintendent
411 and the principals whose schools were reviewed within thirty
412 days following the conclusion of the on-site review. The Office
413 of Education Performance Audits shall report the findings of the
414 on-site review to the state board within forty-five days after the
415 conclusion of the on-site review. A school or county that
416 believes one or more findings of a review are clearly inaccurate,
417 incomplete or misleading, misrepresent or fail to reflect the true
418 quality of education in the school or county or address issues
419 unrelated to the health, safety and welfare of students and the
420 quality of education, may appeal to the state board for removal
421 of the findings. The state board shall establish a process for it to
422 receive, review and act upon the appeals.

423 (7) The Legislature finds that the accountability and
424 oversight of some activities and programmatic areas in the
425 public schools are controlled through other mechanisms and

426 agencies and that additional accountability and oversight may be
427 unnecessary, counterproductive and impair necessary resources
428 for teaching and learning. Therefore, the Office of Education
429 Performance Audits may rely on other agencies and mechanisms
430 in its review of schools and school systems.

431 (l) *School accreditation.* —

432 (1) The state board shall establish levels of accreditation to
433 be assigned to schools. The establishment of levels of
434 accreditation and the levels shall be subject to the following:

435 (A) The levels will be designed to demonstrate school
436 performance in all the areas outlined in this section and also
437 those established by the state board;

438 (B) The state board shall promulgate legislative rules in
439 accordance with the provisions of article three-b, chapter
440 twenty-nine-a of this code to establish the performance and
441 standards required for a school to be assigned a particular level
442 of accreditation; and

443 (C) The state board will establish the levels of accreditation
444 in such a manner as to minimize the number of systems of
445 school recognition, both state and federal, that are employed to
446 recognize and accredit schools.

447 (2) The state board annually shall review the information
448 from the system of education performance audits submitted for
449 each school and shall issue to every school a level of
450 accreditation as designated and determined by the state board.

451 (3) The state board, in its exercise of general supervision of
452 the schools and school systems of West Virginia, may exercise
453 any or all of the following powers and actions:

454 (A) To require a school to revise its electronic strategic plan;

455 (B) To define extraordinary circumstances under which the
456 state board may intervene directly or indirectly in the operation
457 of a school;

458 (C) To appoint monitors to work with the principal and staff
459 of a school where extraordinary circumstances are found to exist
460 and to appoint monitors to assist the school principal after
461 intervention in the operation of a school is completed;

462 (D) To direct a county board to target resources to assist a
463 school where extraordinary circumstances are found to exist;

464 (E) To intervene directly in the operation of a school and
465 declare the position of principal vacant and assign a principal for
466 the school who will serve at the will and pleasure of the state
467 board. If the principal who was removed elects not to remain an
468 employee of the county board, then the principal assigned by the
469 state board shall be paid by the county board. If the principal
470 who was removed elects to remain an employee of the county
471 board, then the following procedure applies:

472 (i) The principal assigned by the state board shall be paid by
473 the state board until the next school term, at which time the
474 principal assigned by the state board shall be paid by the county
475 board;

476 (ii) The principal who was removed is eligible for all
477 positions in the county, including teaching positions, for which
478 the principal is certified, by either being placed on the transfer
479 list in accordance with section seven, article two, chapter
480 eighteen-a of this code, or by being placed on the preferred recall
481 list in accordance with section seven-a, article four, chapter
482 eighteen-a of this code; and

483 (iii) The principal who was removed shall be paid by the
484 county board and may be assigned to administrative duties,

485 without the county board being required to post that position
486 until the end of the school term; and

487 (F) Other powers and actions the state board determines
488 necessary to fulfill its duties of general supervision of the
489 schools and school systems of West Virginia.

490 (4) The county board may take no action nor refuse any
491 action if the effect would be to impair further the school in
492 which the state board has intervened.

493 (m) *School system approval.* — The state board annually
494 shall review the information submitted for each school system
495 from the system of education performance audits and issue one
496 of the following approval levels to each county board: Full
497 approval, temporary approval, conditional approval or
498 nonapproval.

499 (1) Full approval shall be given to a county board whose
500 schools have all been given full, temporary or conditional
501 accreditation status and which does not have any deficiencies
502 which would endanger student health or safety or other
503 extraordinary circumstances as defined by the state board. A
504 fully approved school system in which other deficiencies are
505 discovered shall remain on full accreditation status for the
506 remainder of the approval period and shall have an opportunity
507 to correct those deficiencies, notwithstanding other provisions of
508 this subsection.

509 (2) Temporary approval shall be given to a county board
510 whose education system is below the level required for full
511 approval. Whenever a county board is given temporary approval
512 status, the county board shall revise its electronic county
513 strategic improvement plan in accordance with subsection (b) of
514 this section to increase the performance and progress of the
515 school system to a full approval status level. The revised plan
516 shall be submitted to the state board for approval.

517 (3) Conditional approval shall be given to a county board
518 whose education system is below the level required for full
519 approval, but whose electronic county strategic improvement
520 plan meets the following criteria:

521 (A) The plan has been revised in accordance with subsection
522 (b) of this section;

523 (B) The plan has been approved by the state board; and

524 (C) The county board is meeting the objectives and time line
525 specified in the revised plan.

526 (4) Nonapproval status shall be given to a county board
527 which fails to submit and gain approval for its electronic county
528 strategic improvement plan or revised electronic county strategic
529 improvement plan within a reasonable time period as defined by
530 the state board or which fails to meet the objectives and time line
531 of its revised electronic county strategic improvement plan or
532 fails to achieve full approval by the date specified in the revised
533 plan.

534 (A) The state board shall establish and adopt additional
535 standards to identify school systems in which the program may
536 be nonapproved and the state board may issue nonapproval
537 status whenever extraordinary circumstances exist as defined by
538 the state board.

539 (B) Whenever a county board has more than a casual deficit,
540 as defined in section one, article one of this chapter, the county
541 board shall submit a plan to the state board specifying the county
542 board's strategy for eliminating the casual deficit. The state
543 board either shall approve or reject the plan. If the plan is
544 rejected, the state board shall communicate to the county board
545 the reason or reasons for the rejection of the plan. The county
546 board may resubmit the plan any number of times. However, any
547 county board that fails to submit a plan and gain approval for the

548 plan from the state board before the end of the fiscal year after
549 a deficit greater than a casual deficit occurred or any county
550 board which, in the opinion of the state board, fails to comply
551 with an approved plan may be designated as having nonapproval
552 status.

553 (C) Whenever nonapproval status is given to a school
554 system, the state board shall declare a state of emergency in the
555 school system and shall appoint a team of improvement
556 consultants to make recommendations within sixty days of
557 appointment for correcting the emergency. When the state board
558 approves the recommendations, they shall be communicated to
559 the county board. If progress in correcting the emergency, as
560 determined by the state board, is not made within six months
561 from the time the county board receives the recommendations,
562 the state board shall intervene in the operation of the school
563 system to cause improvements to be made that will provide
564 assurances that a thorough and efficient system of schools will
565 be provided. This intervention may include, but is not limited to,
566 the following:

567 (i) Limiting the authority of the county superintendent and
568 county board as to the expenditure of funds, the employment and
569 dismissal of personnel, the establishment and operation of the
570 school calendar, the establishment of instructional programs and
571 rules and any other areas designated by the state board by rule,
572 which may include delegating decision-making authority
573 regarding these matters to the state superintendent;

574 (ii) Declaring that the office of the county superintendent is
575 vacant;

576 (iii) Declaring that the positions of personnel who serve at
577 the will and pleasure of the county superintendent as provided in
578 section one, article two, chapter eighteen-a of this code, are
579 vacant, subject to application and reemployment;

580 (iv) Delegating to the state superintendent both the authority
581 to conduct hearings on personnel matters and school closure or
582 consolidation matters and, subsequently, to render the resulting
583 decisions and the authority to appoint a designee for the limited
584 purpose of conducting hearings while reserving to the state
585 superintendent the authority to render the resulting decisions;

586 (v) Functioning in lieu of the county board of education in
587 a transfer, sale, purchase or other transaction regarding real
588 property; and

589 (vi) Taking any direct action necessary to correct the
590 emergency including, but not limited to, the following:

591 (I) Delegating to the state superintendent the authority to
592 replace administrators and principals in low performing schools
593 and to transfer them into alternate professional positions within
594 the county at his or her discretion; and

595 (II) Delegating to the state superintendent the authority to fill
596 positions of administrators and principals with individuals
597 determined by the state superintendent to be the most qualified
598 for the positions. Any authority related to intervention in the
599 operation of a county board granted under this paragraph is not
600 subject to the provisions of article four, chapter eighteen-a of
601 this code.

602 (n) Notwithstanding any other provision of this section, the
603 state board may intervene immediately in the operation of the
604 county school system with all the powers, duties and
605 responsibilities contained in subsection (m) of this section, if the
606 state board finds the following:

607 (1) That the conditions precedent to intervention exist as
608 provided in this section; and that delaying intervention for any
609 period of time would not be in the best interests of the students
610 of the county school system; or

611 (2) That the conditions precedent to intervention exist as
612 provided in this section and that the state board had previously
613 intervened in the operation of the same school system and had
614 concluded that intervention within the preceding five years.

615 (o) *Capacity*. — The process for improving education
616 includes a process for targeting resources strategically to
617 improve the teaching and learning process. Development of
618 electronic school and school system strategic improvement
619 plans, pursuant to subsection (b) of this section, is intended, in
620 part, to provide mechanisms to target resources strategically to
621 the teaching and learning process to improve student, school and
622 school system performance. When deficiencies are detected
623 through the assessment and accountability processes, the
624 revision and approval of school and school system electronic
625 strategic improvement plans shall ensure that schools and school
626 systems are efficiently using existing resources to correct the
627 deficiencies. When the state board determines that schools and
628 school systems do not have the capacity to correct deficiencies,
629 the state board shall take one or more of the following actions:

630 (1) Work with the county board to develop or secure the
631 resources necessary to increase the capacity of schools and
632 school systems to meet the standards and, when necessary, seek
633 additional resources in consultation with the Legislature and the
634 Governor;

635 (2) Recommend to the appropriate body including, but not
636 limited to, the Legislature, county boards, schools and
637 communities methods for targeting resources strategically to
638 eliminate deficiencies identified in the assessment and
639 accountability processes. When making determinations on
640 recommendations, the state board shall include, but is not limited
641 to, the following methods:

642 (A) Examining reports and electronic strategic improvement
643 plans regarding the performance and progress of students,

644 schools and school systems relative to the standards and
645 identifying the areas in which improvement is needed;

646 (B) Determining the areas of weakness and of
647 ineffectiveness that appear to have contributed to the
648 substandard performance and progress of students or the
649 deficiencies of the school or school system and requiring the
650 school or school system to work collaboratively with the West
651 Virginia Department of Education State System of Support to
652 correct the deficiencies;

653 (C) Determining the areas of strength that appear to have
654 contributed to exceptional student, school and school system
655 performance and progress and promoting their emulation
656 throughout the system;

657 (D) Requesting technical assistance from the School
658 Building Authority in assessing or designing comprehensive
659 educational facilities plans;

660 (E) Recommending priority funding from the School
661 Building Authority based on identified needs;

662 (F) Requesting special staff development programs from the
663 Center for Professional Development, the Principals Academy,
664 higher education, regional educational service agencies and
665 county boards based on identified needs;

666 (G) Submitting requests to the Legislature for appropriations
667 to meet the identified needs for improving education;

668 (H) Directing county boards to target their funds
669 strategically toward alleviating deficiencies;

670 (I) Ensuring that the need for facilities in counties with
671 increased enrollment are appropriately reflected and
672 recommended for funding;

673 (J) Ensuring that the appropriate person or entity is held
674 accountable for eliminating deficiencies; and

675 (K) Ensuring that the needed capacity is available from the
676 state and local level to assist the school or school system in
677 achieving the standards and alleviating the deficiencies.

678 (p) *Building leadership capacity* — To help build the
679 governance and leadership capacity of a county board during an
680 intervention in the operation of its school system by the state
681 board, and to help assure sustained success following return of
682 control to the county board, the state board shall require the
683 county board to establish goals and action plans, subject to
684 approval of the state board, to improve performance sufficiently
685 to end the intervention within a period of not more than five
686 years. The state superintendent shall maintain oversight and
687 provide assistance and feedback to the county board on
688 development and implementation of the goals and action plans.
689 At a minimum, the goals and action plans shall include:

690 (A) An analysis of the training and development activities
691 needed by the county board and leadership of the school system
692 and schools for effective governance and school improvement;

693 (B) Support for the training and development activities
694 identified which may include those made available through the
695 state superintendent, regional education service agencies, Center
696 for Professional Development, West Virginia School Board
697 Association, Office of Education Performance Audits, West
698 Virginia Education Information System and other sources
699 identified in the goals and action plans. Attendance at these
700 activities included in the goals and action plans is mandatory as
701 specified in the goals and action plans; and

702 (C) Active involvement by the county board in the
703 improvement process, working in tandem with the county

704 superintendent to gather, analyze and interpret data, write
705 time-specific goals to correct deficiencies, prepare and
706 implement action plans and allocate or request from the State
707 Board of Education the resources, including board development
708 training and coaching, necessary to achieve approved goals and
709 action plans and sustain system and school improvement.

710 At least once each year during the period of intervention, the
711 Office of Education Performance Audits shall assess the
712 readiness of the county board to accept the return of control of
713 the system or school from the state board and sustain the
714 improvements, and shall make a report and recommendations to
715 the state board supported by documented evidence of the
716 progress made on the goals and action plans. The state board
717 may end the intervention or return any portion of control of the
718 operations of the school system or school that was previously
719 removed at its sole determination. If the state board determines
720 at the fifth annual assessment that the county board is still not
721 ready to accept return of control by the state board and sustain
722 the improvements, the state board shall hold a public hearing in
723 the affected county at which the attendance by all members of
724 the county board is requested so that the reasons for continued
725 intervention and the concerns of the citizens of the county may
726 be heard. The state board may continue the intervention only
727 after it holds the public hearing and may require revision of the
728 goals and action plans.

729 Following the termination of an intervention in the operation
730 of a school system and return of full control by the state board,
731 the support for governance education and development shall
732 continue as needed for up to three years. If at any time within
733 this three years, the state board determines that intervention in
734 the operation of the school system is again necessary, the state
735 board shall again hold a public hearing in the affected county so
736 that the reasons for the intervention and the concerns of the
737 citizens of the county may be heard.

ARTICLE 2I. PROFESSIONAL DEVELOPMENT.**§18-2I-5. Strategic Staff Development Fund.**

1 (a) There is created an account within the state board titled
2 the Strategic Staff Development Fund. The allocation of
3 balances which accrue in the General School Fund shall be
4 transferred to the Strategic Staff Development Fund each year
5 when the balances become available. Any remaining funds
6 transferred to the Strategic Staff Development Fund during the
7 fiscal year shall be carried over for use in the same manner the
8 next fiscal year and shall be separate and apart from, and in
9 addition to, the transfer of funds from the General School Fund
10 for the next fiscal year.

11 (b) The money in the Strategic Staff Development Fund shall
12 be used by the state board to provide staff development in
13 schools, counties or both that the state board determines need
14 additional resources.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.**§18-3-12. Special Community Development School Pilot Program.**

1 The state superintendent shall establish a Special
2 Community Development School Pilot Program to be
3 implemented in a neighborhood of at least five public schools,
4 which shall include at least one elementary and middle school,
5 for the duration of five years. The neighborhood of public
6 schools designated by the state superintendent for the pilot shall
7 have significant enrollments of disadvantaged, minority and
8 underachieving students. The designated neighborhood of public
9 schools under the direction of the county board and county
10 superintendent shall work in collaboration with higher education,
11 community organizations, Center for Professional Development,
12 local community leaders, affected classroom teachers, affected
13 parents and the state board to develop and implement strategies

14 that could be replicated in other public schools with significant
15 enrollments of disadvantaged, minority and underachieving
16 students to improve academic achievement. For purposes of this
17 section “neighborhood” means an area of no more than seven
18 square miles.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

*§18-5-44. Early childhood education programs.

1 (a) For the purposes of this section, “early childhood
2 education” means programs for children who have attained the
3 age of four prior to September 1 of the school year in which the
4 pupil enters the program created in this section.

5 (b) *Findings.* —

6 (1) Among other positive outcomes, early childhood
7 education programs have been determined to:

8 (A) Improve overall readiness when children enter school;

9 (B) Decrease behavioral problems;

10 (C) Improve student attendance;

11 (D) Increase scores on achievement tests;

12 (E) Decrease the percentage of students repeating a grade;

13 and

14 (F) Decrease the number of students placed in special
15 education programs;

16 (2) Quality early childhood education programs improve
17 school performance and low-quality early childhood education

* **NOTE:** This section was also amended by Com. Sub. for S. B. 146
(Chapter 90), which passed subsequent to this act.

18 programs may have negative effects, especially for at-risk
19 children;

20 (3) West Virginia has the lowest percentage of its adult
21 population twenty-five years of age or older with a bachelor's
22 degree and the education level of parents is a strong indicator of
23 how their children will perform in school;

24 (4) During the 2006-2007 school year, West Virginia ranked
25 thirty-ninth among the fifty states in the percentage of school
26 children eligible for free and reduced lunches and this percentage
27 is a strong indicator of how the children will perform in school;

28 (5) For the school year 2008-2009, thirteen thousand one
29 hundred thirty-five students were enrolled in prekindergarten, a
30 number equal to approximately sixty-three percent of the number
31 of students enrolled in kindergarten;

32 (6) Excluding projected increases due to increases in
33 enrollment in the early childhood education program, projections
34 indicate that total student enrollment in West Virginia will
35 decline by one percent, or by approximately two thousand seven
36 hundred four students, by the school year 2012-2013;

37 (7) In part, because of the dynamics of the state aid formula,
38 county boards will continue to enroll four-year old students to
39 offset the declining enrollments;

40 (8) West Virginia has a comprehensive kindergarten
41 program for five-year olds, but the program was established in
42 a manner that resulted in unequal implementation among the
43 counties which helped create deficit financial situations for
44 several county boards;

45 (9) Expansion of current efforts to implement a
46 comprehensive early childhood education program should avoid
47 the problems encountered in kindergarten implementation;

48 (10) Because of the dynamics of the state aid formula,
49 counties experiencing growth are at a disadvantage in
50 implementing comprehensive early childhood education
51 programs; and

52 (11) West Virginia citizens will benefit from the
53 establishment of quality comprehensive early childhood
54 education programs.

55 (c) Beginning no later than the school year 2012-2013, and
56 continuing thereafter, county boards shall provide early
57 childhood education programs for all children who have attained
58 the age of four prior to September 1 of the school year in which
59 the pupil enters the early childhood education program.
60 Beginning no later than the school year 2016-2017, and
61 continuing thereafter, early childhood education programs that
62 are full day and five days per week shall be available to all
63 children meeting the age requirement set forth in the subsection.

64 (d) The program shall meet the following criteria:

65 (1) It shall be voluntary, except, upon enrollment, the
66 provisions of section one, article eight of this chapter apply to an
67 enrolled student, subject to subdivision (3) of this subsection;

68 (2) All children meeting the age requirement set forth in this
69 section shall have the opportunity to enroll in a program that is
70 full day and five days per week. The program may be for fewer
71 than five days per week and may be less than full day based on
72 family need if a sufficient number of families request such
73 programs and the county board finds that such programs are in
74 the best interest of the requesting families and students:
75 *Provided*, That the ability of families to request programs that
76 are fewer than five days a week or less than a full day does not
77 relieve the county of the obligation to provide all resident
78 children with the opportunity to enroll in a full-day program; and

79 (3) A parent of a child enrolled in an early education
80 program may withdraw a child from that program for good cause
81 by notifying the district. Good cause includes, but is not limited
82 to, enrollment of the child in another program or the immaturity
83 of the child. A child withdrawn under this section is not subject
84 to the attendance provisions of this chapter until that child again
85 enrolls in a public school in this state.

86 (e) Enrollment of students in Head Start, in any other
87 program approved by the state superintendent as provided in
88 subsection (k) of this section may be counted toward satisfying
89 the requirement of subsection (c) of this section.

90 (f) For the purposes of implementation financing, all
91 counties are encouraged to make use of funds from existing
92 sources, including:

93 (1) Federal funds provided under the Elementary and
94 Secondary Education Act pursuant to 20 U. S. C. §6301, et seq.;

95 (2) Federal funds provided for Head Start pursuant to 42 U.
96 S. C. §9831, et seq.;

97 (3) Federal funds for temporary assistance to needy families
98 pursuant to 42 U. S. C. §601, et seq.;

99 (4) Funds provided by the School Building Authority
100 pursuant to article nine-d of this chapter;

101 (5) In the case of counties with declining enrollments, funds
102 from the state aid formula above the amount indicated for the
103 number of students actually enrolled in any school year; and

104 (6) Any other public or private funds.

105 (g) Each county board shall develop a plan for implementing
106 the program required by this section. The plan shall include the
107 following elements:

108 (1) An analysis of the demographics of the county related to
109 early childhood education program implementation;

110 (2) An analysis of facility and personnel needs;

111 (3) Financial requirements for implementation and potential
112 sources of funding to assist implementation;

113 (4) Details of how the county board will cooperate and
114 collaborate with other early childhood education programs
115 including, but not limited to, Head Start, to maximize federal and
116 other sources of revenue;

117 (5) Specific time lines for implementation; and

118 (6) Any other items the state board may require by policy.

119 (h) A county board shall submit its plan to the Secretary of
120 the Department of Health and Human Resources. The secretary
121 shall approve the plan if the following conditions are met:

122 (1) The county board has maximized the use of federal and
123 other available funds for early childhood programs;

124 (2) The county board has provided for the maximum
125 implementation of Head Start programs and other public and
126 private programs approved by the state superintendent pursuant
127 to the terms of subsection (k) of this section; and

128 (3) If the Secretary of the Department of Health and Human
129 Resources finds that the county board has not met one or more
130 of the requirements of this subsection, but that the county board
131 has acted in good faith and the failure to comply was not the
132 primary fault of the county board, then the secretary shall
133 approve the plan. Any denial by the secretary may be appealed
134 to the circuit court of the county in which the county board is
135 located.

136 (i) The county board shall submit its plan for approval to the
137 state board. The state board shall approve the plan if the county
138 board has complied substantially with the requirements of
139 subsection (g) of this section and has obtained the approval
140 required in subsection (h) of this section.

141 (j) Every county board shall submit its plan for reapproval
142 by the Secretary of the Department of Health and Human
143 Resources and by the state board at least every two years after
144 the initial approval of the plan and until full implementation of
145 the early childhood education program in the county. As part of
146 the submission, the county board shall provide a detailed
147 statement of the progress made in implementing its plan. The
148 standards and procedures provided for the original approval of
149 the plan apply to any reapproval.

150 (k) A county board may not increase the total number of
151 students enrolled in the county in an early childhood program
152 until its program is approved by the Secretary of the Department
153 of Health and Human Resources and the state board.

154 (l) The state board annually may grant a county board a
155 waiver for total or partial implementation if the state board finds
156 that all of the following conditions exist:

157 (1) The county board is unable to comply either because:

158 (A) It does not have sufficient facilities available; or

159 (B) It does not and has not had available funds sufficient to
160 implement the program;

161 (2) The county has not experienced a decline in enrollment
162 at least equal to the total number of students to be enrolled; and

163 (3) Other agencies of government have not made sufficient
164 funds or facilities available to assist in implementation.

165 Any county board seeking a waiver shall apply with the
166 supporting data to meet the criteria for which they are eligible on
167 or before March 25 for the following school year. The state
168 superintendent shall grant or deny the requested waiver on or
169 before April 15 of that same year.

170 (m) The provisions of subsections (b), (c) and (d), section
171 eighteen of this article relating to kindergarten apply to early
172 childhood education programs in the same manner in which they
173 apply to kindergarten programs.

174 (n) Except as required by federal law or regulation, no
175 county board may enroll students who will be less than four
176 years of age prior to September 1 for the year they enter school.

177 (o) Neither the state board nor the state department may
178 provide any funds to any county board for the purpose of
179 implementing this section unless the county board has a plan
180 approved pursuant to subsections (h), (i) and (j) of this section.

181 (p) The state board shall promulgate a rule in accordance
182 with the provisions of article three-b, chapter twenty-nine-a of
183 this code for the purposes of implementing the provisions of this
184 section. The state board shall consult with the Secretary of the
185 Department of Health and Human Resources in the preparation
186 of the rule. The rule shall contain the following:

187 (1) Standards for curriculum;

188 (2) Standards for preparing students;

189 (3) Attendance requirements;

190 (4) Standards for personnel; and

191 (5) Any other terms necessary to implement the provisions
192 of this section.

193 (q) The rule shall include the following elements relating to
194 curriculum standards:

195 (1) A requirement that the curriculum be designed to address
196 the developmental needs of four-year old children, consistent
197 with prevailing research on how children learn;

198 (2) A requirement that the curriculum be designed to achieve
199 long-range goals for the social, emotional, physical and
200 academic development of young children;

201 (3) A method for including a broad range of content that is
202 relevant, engaging and meaningful to young children;

203 (4) A requirement that the curriculum incorporate a wide
204 variety of learning experiences, materials and equipment, and
205 instructional strategies to respond to differences in prior
206 experience, maturation rates and learning styles that young
207 children bring to the classroom;

208 (5) A requirement that the curriculum be designed to build
209 on what children already know in order to consolidate their
210 learning and foster their acquisition of new concepts and skills;

211 (6) A requirement that the curriculum meet the recognized
212 standards of the relevant subject matter disciplines;

213 (7) A requirement that the curriculum engage children
214 actively in the learning process and provide them with
215 opportunities to make meaningful choices;

216 (8) A requirement that the curriculum emphasize the
217 development of thinking, reasoning, decisionmaking and
218 problem-solving skills;

219 (9) A set of clear guidelines for communicating with parents
220 and involving them in decisions about the instructional needs of
221 their children; and

222 (10) A systematic plan for evaluating program success in
223 meeting the needs of young children and for helping them to be
224 ready to succeed in school.

225 (r) After the school year 2012-2013, on or before July 1 of
226 each year, each county board shall report the following
227 information to the Secretary of the Department of Health and
228 Human Resources and the state superintendent:

229 (1) Documentation indicating the extent to which county
230 boards are maximizing resources by using the existing capacity
231 of community-based programs, including, but not limited to,
232 Head Start and child care; and

233 (2) For those county boards that are including eligible
234 children attending approved, contracted community-based
235 programs in their net enrollment for the purposes of calculating
236 state aid pursuant to article nine-a of this chapter, documentation
237 that the county board is equitably distributing funding for all
238 children regardless of setting.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

1 (a) The State Superintendent of Schools shall organize,
2 promote, administer and be responsible for:

3 (1) Stimulating and assisting county boards of education in
4 establishing, organizing and maintaining special schools, classes,
5 regular class programs, home-teaching and visiting-teacher
6 services.

7 (2) Cooperating with all other public and private agencies
8 engaged in relieving, caring for, curing, educating and
9 rehabilitating exceptional children, and in helping coordinate the
10 services of such agencies.

11 (3) (A) Preparing the necessary rules, policies, formula for
12 distribution of available appropriated funds, reporting forms and
13 procedures necessary to define minimum standards in providing
14 suitable facilities for education of exceptional children and
15 ensuring the employment, certification and approval of qualified
16 teachers and therapists subject to approval by the State Board of
17 Education: *Provided*, That no state rule, policy or standard under
18 this article or any county board rule, policy or standard
19 governing special education may exceed the requirements of
20 federal law or regulation.

21 (B) An appropriation shall be made to the Department of
22 Education to be distributed to county boards to support children
23 with high acuity needs that exceed the capacity of county to
24 provide with funds available. Each county board shall apply to
25 the state superintendent for receipt of this funding in a manner
26 set forth by the state superintendent that assesses and takes into
27 account varying acuity levels of the exceptional students. Any
28 remaining funds at the end of a fiscal year from the appropriation
29 shall be carried over to the next fiscal year. When possible,
30 federal funds shall be distributed to county boards for this
31 purpose before any of the state appropriation is distributed. The
32 state board shall promulgate a rule in accordance with the
33 provisions of article three-b, chapter twenty-nine-a of this code
34 that implements the provisions of this subdivision relating to
35 distributing the funds to the county boards. The rule at least shall
36 include a definition for “children with high acuity needs”.

37 (4) Receiving from county boards of education their
38 applications, annual reports and claims for reimbursement from
39 such moneys as are appropriated by the Legislature, auditing
40 such claims and preparing vouchers to reimburse said counties
41 the amounts reimbursable to them.

42 (5) Assuring that all exceptional children in the state,
43 including children in mental health facilities, residential

44 institutions, private schools and correctional facilities as
45 provided in section thirteen-f, article two of this chapter receive
46 an education in accordance with state and federal laws:
47 *Provided*, That the state superintendent shall also assure that
48 adults in correctional facilities and regional jails receive an
49 education to the extent funds are provided therefor.

50 (6) Performing other duties and assuming other
51 responsibilities in connection with this program as needed.

52 (7) Receive the county plan for integrated classroom
53 submitted by the county boards of education and submit a state
54 plan, approved by the State Board of Education, to the
55 Legislative Oversight Commission on Education Accountability
56 no later than December 1, 1995.

57 (b) Nothing contained in this section shall be construed to
58 prevent any county board of education from establishing and
59 maintaining special schools, classes, regular class programs,
60 home-teaching or visiting-teacher services out of funds available
61 from local revenue.

§18-20-8. Interagency plan for exceptional children; advisory council.

1 (a) The state departments of health, human services and
2 education shall enter into a collaborative agreement for the
3 purpose of developing a statewide plan of coordinating
4 comprehensive, multidisciplinary interagency programs
5 providing appropriate early intervention services to all
6 developmentally delayed and at-risk children, ages birth through
7 five years, and their families to be phased in by the school year
8 1990-99.

9 This comprehensive, coordinated statewide plan shall
10 include, at a minimum:

- 11 (1) Specification of the population to be served;
- 12 (2) The development of regulations and procedural
13 safeguards;
- 14 (3) The development of procedures for administration,
15 supervision and monitoring;
- 16 (4) The identification and coordination of all available
17 resources; and
- 18 (5) The development of formal interagency agreements that
19 define the financial responsibility of each agency and all
20 additional components necessary to ensure meaningful
21 cooperation and coordination.
- 22 (b) To assist in the development of such a plan, an advisory
23 council consisting of twelve members shall be created. The
24 departments of health, human services and education shall each
25 appoint four members, and each shall include in such
26 appointments one parent of an exceptional child under the age of
27 six; one public or private provider of early intervention services
28 for developmentally delayed and at-risk children; one individual
29 involved in the education training of personnel who work with
30 preschool handicapped; and one other person.
- 31 The functions of the council shall include the following:
- 32 (1) Meet at least quarterly;
- 33 (2) Solicit information and opinions from concerned
34 agencies, groups and individuals; and
- 35 (3) Advise and assist the departments of health, human
36 services and education in the development of the statewide plan
37 herein required.
- 38 Following the submission of the advisory council's first
39 annual report, the joint committee on education is authorized and

40 empowered to disband the council or alter its functions as it
41 deems advisable.

42 The members of the council may be reimbursed for actual
43 and necessary expenses incurred in the performance of their
44 official duties in accordance with state law from appropriations
45 to the departments of health, human services and education or
46 available federal funds.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers; employment of retired teachers as substitutes in areas of critical need and shortage; and employment of prospective employable professional personnel.

1 (a) The county superintendent, subject to approval of the
2 county board, may employ and assign substitute teachers to any
3 of the following duties:

4 (1) Fill the temporary absence of any teacher or an unexpired
5 school term made vacant by resignation, death, suspension or
6 dismissal;

7 (2) Fill a teaching position of a regular teacher on leave of
8 absence; and

9 (3) Perform the instructional services of any teacher who is
10 authorized by law to be absent from class without loss of pay,
11 providing the absence is approved by the board of education in
12 accordance with the law.

13 The substitute shall be a duly certified teacher.

14 (b) Notwithstanding any other provision of this code to the
15 contrary, a substitute teacher who has been assigned as a

16 classroom teacher in the same classroom continuously for more
17 than one half of a grading period and whose assignment remains
18 in effect two weeks prior to the end of the grading period, shall
19 remain in the assignment until the grading period has ended,
20 unless the principal of the school certifies that the regularly
21 employed teacher has communicated with and assisted the
22 substitute with the preparation of lesson plans and monitoring
23 student progress or has been approved to return to work by his
24 or her physician. For the purposes of this section, teacher and
25 substitute teacher, in the singular or plural, mean professional
26 educator as defined in section one, article one of this chapter.

27 (c) (1) The Legislature hereby finds and declares that due to
28 a shortage of qualified substitute teachers, a compelling state
29 interest exists in expanding the use of retired teachers to provide
30 service as substitute teachers in areas of critical need and
31 shortage. The Legislature further finds that diverse
32 circumstances exist among the counties for the expanded use of
33 retired teachers as substitutes. For the purposes of this
34 subsection, “area of critical need and shortage for substitute
35 teachers” means an area of certification and training in which the
36 number of available substitute teachers in the county who hold
37 certification and training in that area and who are not retired is
38 insufficient to meet the projected need for substitute teachers.

39 (2) A person receiving retirement benefits under article
40 seven-a, chapter eighteen of this code or who is entitled to
41 retirement benefits during the fiscal year in which that person
42 retired may accept employment as a critical needs substitute
43 teacher for an unlimited number of days each fiscal year without
44 affecting the monthly retirement benefit to which the retirant is
45 otherwise entitled if the following conditions are satisfied:

46 (A) The county board adopts a policy recommended by the
47 superintendent to address areas of critical need and shortage for
48 substitute teachers;

49 (B) The policy sets forth the areas of critical need and
50 shortage for substitute teachers in the county in accordance with
51 the definition of area of critical need and shortage for substitute
52 teachers set forth in subdivision (1) of this subsection;

53 (C) The policy provides for the employment of retired
54 teachers as critical needs substitute teachers during the school
55 year on an expanded basis in areas of critical need and shortage
56 for substitute teachers as provided in this subsection;

57 (D) The policy provides that a retired teacher may be
58 employed as a substitute teacher in an area of critical need and
59 shortage for substitute teachers on an expanded basis as provided
60 in this subsection only when no other teacher who holds
61 certification and training in the area and who is not retired is
62 available and accepts the substitute assignment;

63 (E) The policy is effective for one school year only and is
64 subject to annual renewal by the county board;

65 (F) The state board approves the policy and the use of retired
66 teachers as substitute teachers on an expanded basis in areas of
67 critical need and shortage for substitute teachers as provided in
68 this subsection; and

69 (G) Prior to employment of a retired teacher as a critical
70 needs substitute teacher beyond the post-retirement employment
71 limitations established by the Consolidated Public Retirement
72 Board, the superintendent of the affected county submits to the
73 state board in a form approved by the Consolidated Public
74 Retirement Board and the state board, an affidavit signed by the
75 superintendent stating the name of the county, the fact that the
76 county has adopted a policy to employ retired teachers as
77 substitutes to address areas of critical need and shortage, the
78 name or names of the person or persons to be employed as a
79 critical needs substitute pursuant to the policy, the critical need

80 and shortage area position filled by each person, the date that the
81 person gave notice to the county board of the person's intent to
82 retire, and the effective date of the person's retirement. Upon
83 verification of compliance with this section and the eligibility of
84 the critical needs substitute teacher for employment beyond the
85 post-retirement limit, the state board shall submit the affidavit to
86 the Consolidated Public Retirement Board.

87 (3) Any person who retires and begins work as a critical
88 needs substitute teacher within the same employment term shall
89 lose those retirement benefits attributed to the annuity reserve,
90 effective from the first day of employment as a retiree substitute
91 in that employment term and ending with the month following
92 the date the retiree ceases to perform service as a substitute.

93 (4) Retired teachers employed to perform expanded
94 substitute service pursuant to this subsection are considered
95 day-to-day, temporary, part-time employees. The substitutes are
96 not eligible for additional pension or other benefits paid to
97 regularly employed employees and may not accrue seniority.

98 (5) A retired teacher is eligible to be employed as a critical
99 needs substitute to fill a vacant position only if the retired
100 teacher's retirement became effective at least twenty days before
101 the beginning of the employment term during which he or she is
102 employed as a substitute.

103 (6) When a retired teacher is employed as a critical needs
104 substitute to fill a vacant position, the county board shall
105 continue to post the vacant position until it is filled with a
106 regularly employed teacher who is fully certified or permitted
107 for the position.

108 (7) When a retired teacher is employed as a critical needs
109 substitute to fill a vacant position, the position vacancy shall be
110 posted electronically and easily accessible to prospective
111 employees as determined by the state board.

112 (8) Until this subsection is expired pursuant to subdivision
113 (9) of this subsection, the state board, annually, shall report to
114 the Joint Committee on Government and Finance prior to
115 February 1 of each year. Additionally, a copy shall be provided
116 to the Legislative Oversight Commission on Education
117 Accountability. The report shall contain information indicating
118 the effectiveness of the provisions of this subsection on reducing
119 the critical need and shortage of substitute teachers including,
120 but not limited to, the number of retired teachers, by critical need
121 and shortage area position filled and by county, employed
122 beyond the post-retirement employment limit established by the
123 Consolidated Public Retirement Board, the date that each person
124 gave notice to the county board of the person's intent to retire,
125 and the effective date of the person's retirement.

126 (9) The provisions of this subsection shall expire on June 30,
127 2017.

128 (d) (1) Notwithstanding any other provision of this code to
129 the contrary, each year a county superintendent may employ
130 prospective employable professional personnel on a reserve list
131 at the county level subject to the following conditions:

132 (A) The county board adopts a policy to address areas of
133 critical need and shortage as identified by the state board. The
134 policy shall include authorization to employ prospective
135 employable professional personnel;

136 (B) The county board posts a notice of the areas of critical
137 need and shortage in the county in a conspicuous place in each
138 school for at least ten working days; and

139 (C) There are not any potentially qualified applicants
140 available and willing to fill the position.

141 (2) Prospective employable professional personnel may only
142 be employed from candidates at a job fair who have or will

143 graduate from college in the current school year or whose
144 employment contract with a county board has or will be
145 terminated due to a reduction in force in the current fiscal year.

146 (3) Prospective employable professional personnel employed
147 are limited to three full-time prospective employable
148 professional personnel per one hundred professional personnel
149 employed in a county or twenty-five full-time prospective
150 employable professional personnel in a county, whichever is
151 less.

152 (4) Prospective employable professional personnel shall be
153 granted benefits at a cost to the county board and as a condition
154 of the employment contract as approved by the county board.

155 (5) Regular employment status for prospective employable
156 professional personnel may be obtained only in accordance with
157 the provisions of section seven-a, article four of this chapter.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

***§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.**

1 (a) A county board of education shall make decisions
2 affecting the filling of vacancies in professional positions of
3 employment on the basis of the applicant with the highest
4 qualifications: *Provided*, That the county superintendent shall be
5 hired under separate criteria pursuant to section two, article four,
6 chapter eighteen of this code.

7 (b) In judging qualifications for the filling of vacancies of
8 professional positions of employment, consideration shall be
9 given to each of the following:

* **NOTE:** This section was also amended by Com. Sub. for H. B. 4566
(Chapter 89), which passed subsequent to this act.

- 10 (1) Appropriate certification, licensure or both;
- 11 (2) Amount of experience relevant to the position or, in the
12 case of a classroom teaching position, the amount of teaching
13 experience in the required certification area;
- 14 (3) The amount of course work, degree level or both in the
15 relevant field and degree level generally;
- 16 (4) Academic achievement;
- 17 (5) In the case of a classroom teaching position or the
18 position of principal, certification by the National Board for
19 Professional Teaching Standards;
- 20 (6) Specialized training relevant to the performance of the
21 duties of the job;
- 22 (7) Past performance evaluations conducted pursuant to
23 section twelve, article two of this chapter and section two, article
24 three-c of this chapter or, in the case of a classroom teacher, past
25 evaluations of the applicant's performance in the teaching
26 profession;
- 27 (8) Seniority;
- 28 (9) Other measures or indicators upon which the relative
29 qualifications of the applicant may fairly be judged;
- 30 (10) In the case of a classroom teaching position, the
31 recommendation of the principal of the school at which the
32 applicant will be performing a majority of his or her duties; and
- 33 (11) In the case of a classroom teaching position, the
34 recommendation, if any, resulting from the process established
35 pursuant to the provisions of section five, article five-a, chapter
36 eighteen of this code by the faculty senate of the school at which
37 the employee will be performing a majority of his or her duties.

38 (c) In considering the filling of a vacancy pursuant to this
39 section, a county board is entitled to determine the appropriate
40 weight to apply to each of the criterion when assessing an
41 applicant's qualifications: *Provided*, That if one or more
42 permanently employed instructional personnel apply for a
43 classroom teaching position and meet the standards set forth in
44 the job posting, each criterion under subsection (b) of this
45 section shall be given equal weight except that the criterion in
46 subdivisions (10) and (11) shall each be double weighted.

47 (d) For a classroom teaching position, if the
48 recommendations resulting from the operations of subdivisions
49 (10) and (11), subsection (b) of this section are for the same
50 applicant, and the superintendent concurs with that
51 recommendation, then the other provisions of subsections (b)
52 and (c) of this section do not apply and the county board shall
53 appoint that applicant notwithstanding any other provision of
54 this code to the contrary.

55 (e) The state board shall promulgate a rule, including an
56 emergency rule if necessary, in accordance with the provisions
57 of article three-b, chapter twenty-nine-a of this code to
58 implement and interpret the provisions of this section, including
59 provisions that may provide for the compensation based on the
60 appropriate daily rate of a classroom teacher who directly
61 participates in making recommendations pursuant to this section
62 for periods beyond his or her individual contract.

63 (f) Recommendations made pursuant to subdivisions (10)
64 and (11), subsection (b) of this section shall be made based on a
65 determination as to which of the applicants is the highest
66 qualified for the position: *Provided*, That nothing in this
67 subsection shall require principals or faculty senates to assign
68 any amount of weight to any factor in making a
69 recommendation.

70 (g) With the exception of guidance counselors, the seniority
71 of classroom teachers, as defined in section one, article one of
72 this chapter, shall be determined on the basis of the length of
73 time the employee has been employed as a regular full-time
74 certified and/or licensed professional educator by the county
75 board of education and shall be granted in all areas that the
76 employee is certified, licensed or both.

77 (h) Upon completion of one hundred thirty-three days of
78 employment in any one school year, substitute teachers, except
79 retired teachers and other retired professional educators
80 employed as substitutes, shall accrue seniority exclusively for
81 the purpose of applying for employment as a permanent,
82 full-time professional employee. One hundred thirty-three days
83 or more of said employment shall be prorated and shall vest as
84 a fraction of the school year worked by the permanent, full-time
85 teacher.

86 (i) Guidance counselors and all other professional
87 employees, as defined in section one, article one of this chapter,
88 except classroom teachers, shall gain seniority in their
89 nonteaching area of professional employment on the basis of the
90 length of time the employee has been employed by the county
91 board of education in that area: *Provided*, That if an employee is
92 certified as a classroom teacher, the employee accrues classroom
93 teaching seniority for the time that that employee is employed in
94 another professional area. For the purposes of accruing seniority
95 under this paragraph, employment as principal, supervisor or
96 central office administrator, as defined in section one, article one
97 of this chapter, shall be considered one area of employment.

98 (j) Employment for a full employment term shall equal one
99 year of seniority, but no employee may accrue more than one
100 year of seniority during any given fiscal year. Employment for
101 less than the full employment term shall be prorated. A random
102 selection system established by the employees and approved by

103 the board shall be used to determine the priority if two or more
104 employees accumulate identical seniority: *Provided*, That when
105 two or more principals have accumulated identical seniority,
106 decisions on reductions in force shall be based on qualifications.

107 (k) Whenever a county board is required to reduce the
108 number of professional personnel in its employment, the
109 employee with the least amount of seniority shall be properly
110 notified and released from employment pursuant to the
111 provisions of section two, article two of this chapter. The
112 provisions of this subsection are subject to the following:

113 (1) All persons employed in a certification area to be
114 reduced who are employed under a temporary permit shall be
115 properly notified and released before a fully certified employee
116 in such a position is subject to release;

117 (2) Notwithstanding any provision of this code to the
118 contrary, all employees subject to release shall be considered
119 applicants for any vacancy in an established, existing or newly
120 created position that, on or before February 15, is known to exist
121 for the ensuing school year, and for which they are qualified,
122 and, upon recommendation of the superintendent, the board shall
123 appoint the successful applicant from among them before
124 posting such vacancies for application by other persons;

125 (3) An employee subject to release shall be employed in any
126 other professional position where the employee is certified and
127 was previously employed or to any lateral area for which the
128 employee is certified, licensed or both, if the employee's
129 seniority is greater than the seniority of any other employee in
130 that area of certification, licensure or both;

131 (4) If an employee subject to release holds certification,
132 licensure or both in more than one lateral area and if the
133 employee's seniority is greater than the seniority of any other

134 employee in one or more of those areas of certification, licensure
135 or both, the employee subject to release shall be employed in the
136 professional position held by the employee with the least
137 seniority in any of those areas of certification, licensure or both;
138 and

139 (5) If, prior to August 1 of the year a reduction in force is
140 approved, the reason for any particular reduction in force no
141 longer exists as determined by the county board in its sole and
142 exclusive judgment, the board shall rescind the reduction in
143 force or transfer and shall notify the released employee in
144 writing of his or her right to be restored to his or her position of
145 employment. Within five days of being so notified, the released
146 employee shall notify the board, in writing, of his or her intent
147 to resume his or her position of employment or the right to be
148 restored shall terminate. Notwithstanding any other provision of
149 this subdivision, if there is another employee on the preferred
150 recall list with proper certification and higher seniority, that
151 person shall be placed in the position restored as a result of the
152 reduction in force being rescinded.

153 (l) For the purpose of this article, all positions which meet
154 the definition of “classroom teacher” as defined in section one,
155 article one of this chapter shall be lateral positions. For all other
156 professional positions, the county board of education shall adopt
157 a policy by October 31, 1993, and may modify the policy
158 thereafter as necessary, which defines which positions shall be
159 lateral positions. In adopting the policy, the board shall give
160 consideration to the rank of each position in terms of title; nature
161 of responsibilities; salary level; certification, licensure or both;
162 and days in the period of employment.

163 (m) After the twentieth day prior to the beginning of the
164 instructional term, no person employed and assigned to a
165 professional position may transfer to another professional
166 position in the county during that instructional term unless the

167 person holding that position does not have valid certification.
168 The provisions of this subsection are subject to the following:

169 (1) The person may apply for any posted, vacant positions
170 with the successful applicant assuming the position at the
171 beginning of the next instructional term;

172 (2) Professional personnel who have been on an approved
173 leave of absence may fill these vacancies upon their return from
174 the approved leave of absence;

175 (3) The county board, upon recommendation of the
176 superintendent may fill a position before the next instructional
177 term when it is determined to be in the best interest of the
178 students. The county superintendent shall notify the state board
179 of each transfer of a person employed in a professional position
180 to another professional position after the twentieth day prior to
181 the beginning of the instructional term;

182 (4) The provisions of this subsection do not apply to the
183 filling of a position vacated because of resignation or retirement
184 that became effective on or before the twentieth day prior to the
185 beginning of the instructional term, but not posted until after that
186 date; and

187 (5) The Legislature finds that it is not in the best interest of
188 the students, particularly in the elementary grades, to have
189 multiple teachers for any one grade level or course during the
190 instructional term. It is the intent of the Legislature that the
191 filling of positions through transfers of personnel from one
192 professional position to another after the twentieth day prior to
193 the beginning of the instructional term should be kept to a
194 minimum.

195 (n) All professional personnel whose seniority with the
196 county board is insufficient to allow their retention by the county

197 board during a reduction in work force shall be placed upon a
198 preferred recall list. As to any professional position opening
199 within the area where they had previously been employed or to
200 any lateral area for which they have certification, licensure or
201 both, the employee shall be recalled on the basis of seniority if
202 no regular, full-time professional personnel, or those returning
203 from leaves of absence with greater seniority, are qualified,
204 apply for and accept the position.

205 (o) Before position openings that are known or expected to
206 extend for twenty consecutive employment days or longer for
207 professional personnel may be filled by the board, the board
208 shall be required to notify all qualified professional personnel on
209 the preferred list and give them an opportunity to apply, but
210 failure to apply shall not cause the employee to forfeit any right
211 to recall. The notice shall be sent by certified mail to the last
212 known address of the employee, and it shall be the duty of each
213 professional personnel to notify the board of continued
214 availability annually, of any change in address or of any change
215 in certification, licensure or both.

216 (p) Openings in established, existing or newly created
217 positions shall be processed as follows:

218 (1) Boards shall be required to post and date notices of each
219 opening at least once. At their discretion, boards may post an
220 opening for a position other than classroom teacher more than
221 once in order to attract more qualified applicants. At their
222 discretion, boards may post an opening for a classroom teacher
223 one additional time after the first posting in order to attract more
224 qualified applicants only if fewer than three individuals apply
225 during the first posting subject to the following:

226 (A) Each notice shall be posted in conspicuous working
227 places for all professional personnel to observe for at least five
228 working days;

229 (B) At least one notice shall be posted within twenty
230 working days of the position openings and shall include the job
231 description;

232 (C) Any special criteria or skills that are required by the
233 position shall be specifically stated in the job description and
234 directly related to the performance of the job;

235 (D) Postings for vacancies made pursuant to this section
236 shall be written so as to ensure that the largest possible pool of
237 qualified applicants may apply; and

238 (E) Job postings may not require criteria which are not
239 necessary for the successful performance of the job and may not
240 be written with the intent to favor a specific applicant;

241 (2) No vacancy shall be filled until after the five-day
242 minimum posting period of the most recent posted notice of the
243 vacancy;

244 (3) If one or more applicants under all the postings for a
245 vacancy meets the qualifications listed in the job posting, the
246 successful applicant to fill the vacancy shall be selected by the
247 board within thirty working days of the end of the first posting
248 period;

249 (4) A position held by a teacher who is certified, licensed or
250 both, who has been issued a permit for full-time employment and
251 is working toward certification in the permit area shall not be
252 subject to posting if the certificate is awarded within five years;
253 and

254 (5) Nothing provided herein shall prevent the county board
255 of education from eliminating a position due to lack of need.

256 (q) Notwithstanding any other provision of the code to the
257 contrary, where the total number of classroom teaching positions

258 in an elementary school does not increase from one school year
259 to the next, but there exists in that school a need to realign the
260 number of teachers in one or more grade levels, kindergarten
261 through six, teachers at the school may be reassigned to grade
262 levels for which they are certified without that position being
263 posted: *Provided*, That the employee and the county board
264 mutually agree to the reassignment.

265 (r) Reductions in classroom teaching positions in elementary
266 schools shall be processed as follows:

267 (1) When the total number of classroom teaching positions
268 in an elementary school needs to be reduced, the reduction shall
269 be made on the basis of seniority with the least senior classroom
270 teacher being recommended for transfer; and

271 (2) When a specified grade level needs to be reduced and the
272 least senior employee in the school is not in that grade level, the
273 least senior classroom teacher in the grade level that needs to be
274 reduced shall be reassigned to the position made vacant by the
275 transfer of the least senior classroom teacher in the school
276 without that position being posted: *Provided*, That the employee
277 is certified, licensed or both and agrees to the reassignment.

278 (s) Any board failing to comply with the provisions of this
279 article may be compelled to do so by mandamus and shall be
280 liable to any party prevailing against the board for court costs
281 and reasonable attorney fees as determined and established by
282 the court. Further, employees denied promotion or employment
283 in violation of this section shall be awarded the job, pay and any
284 applicable benefits retroactive to the date of the violation and
285 payable entirely from local funds. Further, the board shall be
286 liable to any party prevailing against the board for any court
287 reporter costs including copies of transcripts.

288 (t) The county board shall compile, update annually on July
289 1 and make available by electronic or other means to all

290 employees a list of all professional personnel employed by the
291 county, their areas of certification and their seniority.

292 (u) Notwithstanding any other provision of this code to the
293 contrary, upon recommendation of the principal and approval by
294 the classroom teacher and county board, a classroom teacher
295 assigned to the school may at any time be assigned to a new or
296 existing classroom teacher position at the school without the
297 position being posted.

298 (v) The amendments to this section during the 2013 regular
299 session of the Legislature shall be effective for school years
300 beginning on or after July 1, 2013, and the provisions of this
301 section immediately prior to those amendments remain in effect
302 until July 1, 2013.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by students upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

1 (a) A principal shall suspend a student from school or from
2 transportation to or from the school on any school bus if the
3 student, in the determination of the principal after an informal
4 hearing pursuant to subsection (d) of this section, has: (i)
5 Violated the provisions of subsection (b), section fifteen, article
6 two, chapter sixty-one of this code; (ii) violated the provisions
7 of subsection (b), section eleven-a, article seven of said chapter;
8 or (iii) sold a narcotic drug, as defined in section one hundred
9 one, article one, chapter sixty-a of this code, on the premises of

10 an educational facility, at a school-sponsored function or on a
11 school bus. If a student has been suspended pursuant to this
12 subsection, the principal shall, within twenty-four hours, request
13 that the county superintendent recommend to the county board
14 that the student be expelled. Upon such a request by a principal,
15 the county superintendent shall recommend to the county board
16 that the student be expelled. Upon such recommendation, the
17 county board shall conduct a hearing in accordance with
18 subsections (e), (f) and (g) of this section to determine if the
19 student committed the alleged violation. If the county board
20 finds that the student did commit the alleged violation, the
21 county board shall expel the student.

22 (b) A principal shall suspend a student from school, or from
23 transportation to or from the school on any school bus, if the
24 student, in the determination of the principal after an informal
25 hearing pursuant to subsection (d) of this section, has: (i)
26 Committed an act or engaged in conduct that would constitute a
27 felony under the laws of this state if committed by an adult; or
28 (ii) unlawfully possessed on the premises of an educational
29 facility or at a school-sponsored function a controlled substance
30 governed by the Uniform Controlled Substances Act as
31 described in chapter sixty-a of this code. If a student has been
32 suspended pursuant to this subsection, the principal may request
33 that the superintendent recommend to the county board that the
34 student be expelled. Upon such recommendation by the county
35 superintendent, the county board may hold a hearing in
36 accordance with the provisions of subsections (e), (f) and (g) of
37 this section to determine if the student committed the alleged
38 violation. If the county board finds that the student did commit
39 the alleged violation, the county board may expel the student.

40 (c) A principal may suspend a student from school, or
41 transportation to or from the school on any school bus, if the
42 student, in the determination of the principal after an informal
43 hearing pursuant to subsection (d) of this section: (i) Threatened

44 to injure, or in any manner injured, a student, teacher,
45 administrator or other school personnel; (ii) willfully disobeyed
46 a teacher; (iii) possessed alcohol in an educational facility, on
47 school grounds, a school bus or at any school-sponsored
48 function; (iv) used profane language directed at a school
49 employee or student; (v) intentionally defaced any school
50 property; (vi) participated in any physical altercation with
51 another person while under the authority of school personnel; or
52 (vii) habitually violated school rules or policies. If a student has
53 been suspended pursuant to this subsection, the principal may
54 request that the superintendent recommend to the county board
55 that the student be expelled. Upon such recommendation by the
56 county superintendent, the county board may hold a hearing in
57 accordance with the provisions of subsections (e), (f) and (g) of
58 this section to determine if the student committed the alleged
59 violation. If the county board finds that the student did commit
60 the alleged violation, the county board may expel the student.

61 (d) The actions of any student which may be grounds for his
62 or her suspension or expulsion under the provisions of this
63 section shall be reported immediately to the principal of the
64 school in which the student is enrolled. If the principal
65 determines that the alleged actions of the student would be
66 grounds for suspension, he or she shall conduct an informal
67 hearing for the student immediately after the alleged actions
68 have occurred. The hearing shall be held before the student is
69 suspended unless the principal believes that the continued
70 presence of the student in the school poses a continuing danger
71 to persons or property or an ongoing threat of disrupting the
72 academic process, in which case the student shall be suspended
73 immediately and a hearing held as soon as practicable after the
74 suspension.

75 The student and his or her parent(s), guardian(s) or
76 custodian(s), as the case may be, shall be given telephonic

77 notice, if possible, of this informal hearing, which notice shall
78 briefly state the grounds for suspension.

79 At the commencement of the informal hearing, the principal
80 shall inquire of the student as to whether he or she admits or
81 denies the charges. If the student does not admit the charges, he
82 or she shall be given an explanation of the evidence possessed by
83 the principal and an opportunity to present his or her version of
84 the occurrence. At the conclusion of the hearing or upon the
85 failure of the noticed student to appear, the principal may
86 suspend the student for a maximum of ten school days, including
87 the time prior to the hearing, if any, for which the student has
88 been excluded from school.

89 The principal shall report any suspension the same day it has
90 been decided upon, in writing, to the parent(s), guardian(s) or
91 custodian(s) of the student by regular United States mail. The
92 suspension also shall be reported to the county superintendent
93 and to the faculty senate of the school at the next meeting after
94 the suspension.

95 (e) Prior to a hearing before the county board, the county
96 board shall cause a written notice which states the charges and
97 the recommended disposition to be served upon the student and
98 his or her parent(s), guardian(s) or custodian(s), as the case may
99 be. The notice shall state clearly whether the board will attempt
100 at hearing to establish the student as a dangerous student, as
101 defined by section one, article one of this chapter. The notice
102 also shall include any evidence upon which the board will rely
103 in asserting its claim that the student is a dangerous student. The
104 notice shall set forth a date and time at which the hearing shall
105 be held, which date shall be within the ten-day period of
106 suspension imposed by the principal.

107 (f) The county board shall hold the scheduled hearing to
108 determine if the student should be reinstated or should, under the

109 provisions of this section, must be expelled from school. If the
110 county board determines that the student should or must be
111 expelled from school, it also may determine whether the student
112 is a dangerous student pursuant to subsection (g) of this section.
113 At this, or any hearing before a county board conducted pursuant
114 to this section, the student may be represented by counsel, may
115 call his or her own witnesses to verify his or her version of the
116 incident and may confront and cross examine witnesses
117 supporting the charge against him or her. The hearing shall be
118 recorded by mechanical means unless recorded by a certified
119 court reporter. The hearing may be postponed for good cause
120 shown by the student but he or she shall remain under
121 suspension until after the hearing. The state board may adopt
122 other supplementary rules of procedure to be followed in these
123 hearings. At the conclusion of the hearing the county board shall
124 either: (1) Order the student reinstated immediately at the end of
125 his or her initial suspension; (2) suspend the student for a further
126 designated number of days; or (3) expel the student from the
127 public schools of the county.

128 (g) A county board that did not intend prior to a hearing to
129 assert a dangerous student claim, that did not notify the student
130 prior to the hearing that a dangerous student determination
131 would be considered and that determines through the course of
132 the hearing that the student may be a dangerous student shall
133 schedule a second hearing within ten days to decide the issue.
134 The hearing may be postponed for good cause shown by the
135 student, but he or she remains under suspension until after the
136 hearing.

137 A county board that expels a student, and finds that the
138 student is a dangerous student, may refuse to provide alternative
139 education. However, after a hearing conducted pursuant to this
140 section for determining whether a student is a dangerous student,
141 when the student is found to be a dangerous student, is expelled
142 and is denied alternative education, a hearing shall be conducted

143 within three months after the refusal by the board to provide
144 alternative education to reexamine whether or not the student
145 remains a dangerous student and whether the student shall be
146 provided alternative education. Thereafter, a hearing for the
147 purpose of reexamining whether or not the student remains a
148 dangerous student and whether the student shall be provided
149 alternative education shall be conducted every three months for
150 so long as the student remains a dangerous student and is denied
151 alternative education. During the initial hearing, or in any
152 subsequent hearing, the board may consider the history of the
153 student's conduct as well as any improvements made subsequent
154 to the expulsion. If it is determined during any of the hearings
155 that the student is no longer a dangerous student or should be
156 provided alternative education, the student shall be provided
157 alternative education during the remainder of the expulsion
158 period.

159 (h) The superintendent may apply to a circuit judge or
160 magistrate for authority to subpoena witnesses and documents,
161 upon his or her own initiative, in a proceeding related to a
162 recommended student expulsion or dangerous student
163 determination, before a county board conducted pursuant to the
164 provisions of this section. Upon the written request of any other
165 party, the superintendent shall apply to a circuit judge or
166 magistrate for the authority to subpoena witnesses, documents or
167 both on behalf of the other party in a proceeding related to a
168 recommended student expulsion or dangerous student
169 determination before a county board. If the authority to subpoena
170 is granted, the superintendent shall subpoena the witnesses,
171 documents or both requested by the other party. Furthermore, if
172 the authority to subpoena is granted, it shall be exercised in
173 accordance with the provisions of section one, article five,
174 chapter twenty-nine-a of this code.

175 Any hearing conducted pursuant to this subsection may be
176 postponed: (1) For good cause shown by the student; (2) when
177 proceedings to compel a subpoenaed witness to appear must be

178 instituted; or (3) when a delay in service of a subpoena hinders
179 either party's ability to provide sufficient notice to appear to a
180 witness. A student remains under suspension until after the
181 hearing in any case where a postponement occurs.

182 (i) Students may be expelled pursuant to this section for a
183 period not to exceed one school year, except that if a student is
184 determined to have violated the provisions of subsection (a) of
185 this section the student shall be expelled for a period of not less
186 than twelve consecutive months, subject to the following:

187 (1) The county superintendent may lessen the mandatory
188 period of twelve consecutive months for the expulsion of the
189 student if the circumstances of the student's case demonstrably
190 warrant;

191 (2) Upon the reduction of the period of expulsion, the county
192 superintendent shall prepare a written statement setting forth the
193 circumstances of the student's case which warrant the reduction
194 of the period of expulsion. The county superintendent shall
195 submit the statement to the county board, the principal, the
196 faculty senate and the local school improvement council for the
197 school from which the student was expelled. The county
198 superintendent may use the following factors as guidelines in
199 determining whether or not to reduce a mandatory twelve-month
200 expulsion:

201 (A) The extent of the student's malicious intent;

202 (B) The outcome of the student's misconduct;

203 (C) The student's past behavior history;

204 (D) The likelihood of the student's repeated misconduct; and

205 (E) If applicable, successful completion or making
206 satisfactory progress toward successful completion of Juvenile
207 Drug Court pursuant to section one-d of this section.

208 (j) In all hearings under this section, facts shall be found by
209 a preponderance of the evidence.

210 (k) For purposes of this section, nothing herein may be
211 construed to be in conflict with the federal provisions of the
212 Individuals with Disabilities Education Act, 20 U. S. C. §1400,
213 et seq.

214 (l) Each suspension or expulsion imposed upon a student
215 under the authority of this section shall be recorded in the
216 uniform integrated regional computer information system
217 (commonly known as the West Virginia Education Information
218 System) described in subsection (f), section twenty-six, article
219 two, chapter eighteen of this code.

220 (1) The principal of the school at which the student is
221 enrolled shall create an electronic record within twenty-four
222 hours of the imposition of the suspension or expulsion.

223 (2) Each record of a suspension or expulsion shall include
224 the student's name and identification number, the reason for the
225 suspension or expulsion and the beginning and ending dates of
226 the suspension or expulsion.

227 (3) The state board shall collect and disseminate data so that
228 any principal of a public school in West Virginia can review the
229 complete history of disciplinary actions taken by West Virginia
230 public schools against any student enrolled or seeking to enroll
231 at that principal's school. The purposes of this provision are to
232 allow every principal to fulfill his or her duty under subsection
233 (b), section fifteen-f, article five, chapter eighteen of this code to
234 determine whether a student requesting to enroll at a public
235 school in West Virginia is currently serving a suspension or
236 expulsion from another public school in West Virginia and to
237 allow principals to obtain general information about students'
238 disciplinary histories.

239 (m) Principals may exercise any other authority and perform
240 any other duties to discipline students consistent with state and
241 federal law, including policies of the state board.

242 (n) Each county board is solely responsible for the
243 administration of proper discipline in the public schools of the
244 county and shall adopt policies consistent with the provisions of
245 this section to govern disciplinary actions.

246 (o) For the purpose of this section, “principal” means the
247 principal, assistant principal, vice principal or the administrative
248 head of the school or a professional personnel designee of the
249 principal or the administrative head of the school.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

§18B-1-10. Potomac branch of West Virginia University.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, by July 1, 2005, Potomac State College shall merge
3 and consolidate with West Virginia University, and become a
4 fully integrated division of the university. All administrative and
5 academic units shall be consolidated with primary responsibility
6 for direction and support assigned to West Virginia University.
7 The advisory board previously appointed for Potomac State
8 College shall be known as the board of visitors and shall provide
9 guidance to the division in carrying out its mission.

10 (b) Operational costs for the Potomac campus may not
11 exceed by more than ten percent the average cost per full-time
12 equivalent student for freestanding community and technical
13 colleges or the southern regional education board average
14 expenditures for two-year institutions. West Virginia University
15 shall reduce these costs to the mandated level within four years.

16 (c) Auxiliary enterprises shall be incorporated into the West
17 Virginia University auxiliary enterprise system. The West
18 Virginia University Board of Governors shall determine if
19 operations at the Potomac campus can be operated on a
20 self-sufficient basis when establishing rates for auxiliary services
21 and products.

22 (d) Potomac State College has a strong reputation in
23 agriculture and forestry instruction, preprofessional programs in
24 business, computer science and education, and basic liberal arts
25 instruction. These programs shall be further cultivated and
26 emphasized as the sustaining mission of the Potomac campus
27 over the next decade, except that the Higher Education Policy
28 Commission may change the mission of the Potomac campus at
29 any time the commission determines appropriate. In order to
30 focus its resources on these programs, the campus shall contract
31 through Eastern West Virginia Community and Technical
32 College to provide work force development training, literacy
33 education and technical education programs which are most
34 efficiently offered within a flexible community and technical
35 college curriculum. This collaborative relationship shall serve to
36 strengthen both institutions and generate a model relationship
37 between traditional and community and technical college
38 education for institutions throughout the state.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of Higher Education Policy Commission.

1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve the
3 goals, objectives and priorities found in section one-a, article one
4 and article one-d of this chapter. The commission shall exercise
5 its authority and carry out its responsibilities in a manner that is
6 consistent and not in conflict with the powers and duties

7 assigned by law to the West Virginia Council for Community
8 and Technical College Education and the powers and duties
9 assigned to the governing boards. To that end, the commission
10 has the following powers and duties relating to the governing
11 boards under its jurisdiction:

12 (1) Develop, oversee and advance the public policy agenda
13 pursuant to article one-d of this chapter to address major
14 challenges facing the state, including, but not limited to, the
15 following:

16 (A) The goals, objectives and priorities established in this
17 chapter including specifically those goals, objectives and
18 priorities pertaining to the compacts created pursuant to section
19 seven, article one-d of this chapter; and

20 (B) Development and implementation of the master plan
21 described in section five, article one-d of this chapter for the
22 purpose of accomplishing the mandates of this section;

23 (2) Develop, oversee and advance the promulgation and
24 implementation of a financing rule for state institutions of higher
25 education under its jurisdiction. The rule shall meet the
26 following criteria:

27 (A) Provide for an adequate level of educational and general
28 funding for institutions pursuant to section five, article one-a of
29 this chapter;

30 (B) Serve to maintain institutional assets, including, but not
31 limited to, human and physical resources and eliminating
32 deferred maintenance; and

33 (C) Invest and provide incentives for achieving the priority
34 goals in the public policy agenda, including, but not limited to,
35 those found in section one-a, article one and article one-d of this
36 chapter;

37 (3) In collaboration with the council, create a policy
38 leadership structure capable of the following actions:

39 (A) Developing, building public consensus around and
40 sustaining attention to a long-range public policy agenda. In
41 developing the agenda, the commission and council shall seek
42 input from the Legislature and the Governor and specifically
43 from the state Board of Education and local school districts in
44 order to create the necessary linkages to assure smooth, effective
45 and seamless movement of students through the public education
46 and post-secondary education systems and to ensure that the
47 needs of public school courses and programs can be fulfilled by
48 the graduates produced and the programs offered;

49 (B) Ensuring that the governing boards carry out their duty
50 effectively to govern the individual institutions of higher
51 education; and

52 (C) Holding the governing boards and the higher education
53 systems as a whole accountable for accomplishing their missions
54 and implementing their compacts;

55 (4) Develop and adopt each compact for the governing
56 boards under its jurisdiction;

57 (5) Review and adopt the annual updates of the institutional
58 compacts;

59 (6) Serve as the accountability point to state policymakers:

60 (A) The Governor for implementation of the public policy
61 agenda; and

62 (B) The Legislature by maintaining a close working
63 relationship with the legislative leadership and the Legislative
64 Oversight Commission on Education Accountability;

65 (7) Jointly with the council, promulgate legislative rules
66 pursuant to article three-a, chapter twenty-nine-a of this code to
67 fulfill the purposes of section five, article one-a of this chapter;

68 (8) Establish and implement a peer group for each institution
69 as described in section three, article one-a of this chapter;

70 (9) Establish and implement the benchmarks and
71 performance indicators necessary to measure institutional
72 progress in achieving state policy priorities and institutional
73 missions pursuant to section seven, article one-d of this chapter;

74 (10) Establish a formal process for identifying capital
75 investment needs and for determining priorities for these
76 investments for consideration by the Governor and the
77 Legislature as part of the appropriation request process pursuant
78 to article nineteen of this chapter;

79 (11) Develop standards and evaluate governing board
80 requests for capital project financing in accordance with article
81 nineteen of this chapter;

82 (12) Ensure that governing boards manage capital projects
83 and facilities needs effectively, including review and approval or
84 disapproval of capital projects, in accordance with article
85 nineteen of this chapter;

86 (13) Acquire legal services as considered necessary,
87 including representation of the commission, its governing
88 boards, employees and officers before any court or
89 administrative body, notwithstanding any other provision of this
90 code to the contrary. The counsel may be employed either on a
91 salaried basis or on a reasonable fee basis. In addition, the
92 commission may, but is not required to, call upon the Attorney
93 General for legal assistance and representation as provided by
94 law;

95 (14) Employ a Chancellor for Higher Education pursuant to
96 section five of this article;

97 (15) Employ other staff as necessary and appropriate to carry
98 out the duties and responsibilities of the commission and the
99 council, in accordance with article four of this chapter;

100 (16) Provide suitable offices in Kanawha County for the
101 chancellor, vice chancellors and other staff;

102 (17) Advise and consent in the appointment of the presidents
103 of the institutions of higher education under its jurisdiction
104 pursuant to section six of this article. The role of the commission
105 in approving an institutional president is to assure through
106 personal interview that the person selected understands and is
107 committed to achieving the goals, objectives and priorities set
108 forth in the compact, in section one-a, article one and article
109 one-d of this chapter;

110 (18) Approve the total compensation package from all
111 sources for presidents of institutions under its jurisdiction, as
112 proposed by the governing boards. The governing boards must
113 obtain approval from the commission of the total compensation
114 package both when institutional presidents are employed initially
115 and afterward when any change is made in the amount of the
116 total compensation package;

117 (19) Establish and implement the policy of the state to assure
118 that parents and students have sufficient information at the
119 earliest possible age on which to base academic decisions about
120 what is required for students to be successful in college, other
121 post-secondary education and careers related, as far as possible,
122 to results from current assessment tools in use in West Virginia;

123 (20) Approve and implement a uniform standard jointly with
124 the council to determine which students shall be placed in

125 remedial or developmental courses. The standard shall be
126 aligned with college admission tests and assessment tools used
127 in West Virginia and shall be applied uniformly by the
128 governing boards throughout the public higher education system.
129 The chancellors shall develop a clear, concise explanation of the
130 standard which they shall communicate to the State Board of
131 Education and the State Superintendent of Schools;

132 (21) Jointly with the council, develop and implement an
133 oversight plan to manage systemwide technology including, but
134 not limited to, the following:

135 (A) Expanding distance learning and technology networks to
136 enhance teaching and learning, promote access to quality
137 educational offerings with minimum duplication of effort; and

138 (B) Increasing the delivery of instruction to nontraditional
139 students, to provide services to business and industry and
140 increase the management capabilities of the higher education
141 system.

142 (C) Notwithstanding any other provision of law or this code
143 to the contrary, the council, commission and governing boards
144 are not subject to the jurisdiction of the Chief Technology
145 Officer for any purpose;

146 (22) Establish and implement policies and procedures to
147 ensure that a student may transfer and apply toward the
148 requirements for a bachelor's degree the maximum number of
149 credits earned at any regionally accredited in-state or out-of-state
150 community and technical college with as few requirements to
151 repeat courses or to incur additional costs as are consistent with
152 sound academic policy;

153 (23) Establish and implement policies and procedures to
154 ensure that a student may transfer and apply toward the
155 requirements for a degree the maximum number of credits

156 earned at any regionally accredited in-state or out-of-state higher
157 education institution with as few requirements to repeat courses
158 or to incur additional costs as are consistent with sound
159 academic policy;

160 (24) Establish and implement policies and procedures to
161 ensure that a student may transfer and apply toward the
162 requirements for a master's degree the maximum number of
163 credits earned at any regionally accredited in-state or out-of-state
164 higher education institution with as few requirements to repeat
165 courses or to incur additional costs as are consistent with sound
166 academic policy;

167 (25) Establish and implement policies and programs, in
168 cooperation with the council and the governing boards, through
169 which a student who has gained knowledge and skills through
170 employment, participation in education and training at
171 vocational schools or other education institutions, or
172 Internet-based education programs, may demonstrate by
173 competency-based assessment that he or she has the necessary
174 knowledge and skills to be granted academic credit or advanced
175 placement standing toward the requirements of an associate's
176 degree or a bachelor's degree at a state institution of higher
177 education;

178 (26) Seek out and attend regional, national and international
179 meetings and forums on education and workforce
180 development-related topics as, in the commission's discretion,
181 are critical for the performance of their duties as members, for
182 the purpose of keeping abreast of education trends and policies
183 to aid it in developing the policies for this state to meet the
184 established education goals, objectives and priorities pursuant to
185 section one-a, article one and article one-d of this chapter;

186 (27) Promulgate and implement a rule for higher education
187 governing boards and institutions to follow when considering
188 capital projects pursuant to article nineteen of this chapter;

189 (28) Consider and submit to the appropriate agencies of the
190 executive and legislative branches of state government an
191 appropriation request that reflects recommended appropriations
192 for the commission and the governing boards under its
193 jurisdiction. The commission shall submit as part of its
194 appropriation request the separate recommended appropriation
195 request it received from the council, both for the council and for
196 the governing boards under the council's jurisdiction. The
197 commission annually shall submit the proposed allocations based
198 on each institution's progress toward meeting the goals of its
199 compact;

200 (29) The commission may assess institutions under its
201 jurisdiction, including Marshall University and West Virginia
202 University, for the payment of expenses of the commission or for
203 the funding of statewide higher education services, obligations
204 or initiatives related to the goals set forth for the provision of
205 public higher education in the state;

206 (30) Promulgate rules allocating reimbursement of
207 appropriations, if made available by the Legislature, to
208 governing boards for qualifying noncapital expenditures incurred
209 in providing services to students with physical, learning or
210 severe sensory disabilities;

211 (31) Make appointments to boards and commissions where
212 this code requires appointments from the State College System
213 Board of Directors or the University of West Virginia System
214 Board of Trustees which were abolished effective June 30, 2000,
215 except in those cases where the required appointment has a
216 specific and direct connection to the provision of community and
217 technical college education, the appointment shall be made by
218 the council. Notwithstanding any provisions of this code to the
219 contrary, the commission or the council may appoint one of its
220 own members or any other citizen of the state as its designee.
221 The commission and council shall appoint the total number of

222 persons in the aggregate required to be appointed by these
223 previous governing boards;

224 (32) Pursuant to article three-a, chapter twenty-nine-a of this
225 code and section six, article one of this chapter, promulgate rules
226 necessary or expedient to fulfill the purposes of this chapter. The
227 commission and the council shall promulgate a uniform joint
228 legislative rule for the purposes of standardizing, as much as
229 possible, the administration of personnel matters among the state
230 institutions of higher education and implementing the provisions
231 of articles seven, eight, nine and nine-a of this chapter;

232 (33) Determine when a joint rule among the governing
233 boards under its jurisdiction is necessary or required by law and,
234 in those instances, in consultation with the governing boards
235 under its jurisdiction, promulgate the joint rule;

236 (34) Promulgate and implement a rule jointly with the
237 council whereby course credit earned at a community and
238 technical college transfers for program credit at any other state
239 institution of higher education and is not limited to fulfilling a
240 general education requirement;

241 (35) By October 1, 2011, promulgate a rule pursuant to
242 section one, article ten of this chapter, establishing tuition and
243 fee policy for all governing boards under the jurisdiction of the
244 commission, including Marshall University and West Virginia
245 University. The rule shall include, but is not limited to, the
246 following:

247 (A) Comparisons with peer institutions;

248 (B) Differences among institutional missions;

249 (C) Strategies for promoting student access;

250 (D) Consideration of charges to out-of-state students; and

251 (E) Such other policies as the commission and council
252 consider appropriate;

253 (36) Implement general disease awareness initiatives to
254 educate parents and students, particularly dormitory residents,
255 about meningococcal meningitis; the potentially life-threatening
256 dangers of contracting the infection; behaviors and activities that
257 can increase risks; measures that can be taken to prevent contact
258 or infection; and potential benefits of vaccination. The
259 commission shall encourage governing boards that provide
260 medical care to students to provide access to the vaccine for
261 those who wish to receive it; and

262 (37) Notwithstanding any other provision of this code to the
263 contrary sell, lease, convey or otherwise dispose of all or part of
264 any real property that it owns, in accordance with article
265 nineteen of this chapter.

266 (b) In addition to the powers and duties listed in subsection
267 (a) of this section, the commission has the following general
268 powers and duties related to its role in developing, articulating
269 and overseeing the implementation of the public policy agenda:

270 (1) Planning and policy leadership, including a distinct and
271 visible role in setting the state's policy agenda and in serving as
272 an agent of change;

273 (2) Policy analysis and research focused on issues affecting
274 the system as a whole or a geographical region thereof;

275 (3) Development and implementation of institutional mission
276 definitions, including use of incentive funds to influence
277 institutional behavior in ways that are consistent with public
278 priorities;

279 (4) Academic program review and approval for governing
280 boards under its jurisdiction. The review and approval includes

281 use of institutional missions as a template to judge the
282 appropriateness of both new and existing programs and the
283 authority to implement needed changes.

284 (A) The commission's authority to review and approve
285 academic programs for either Marshall University or West
286 Virginia University is limited to programs that are proposed to
287 be offered at a new location not presently served by that
288 institution;

289 (B) The commission shall approve or disapprove proposed
290 academic degree programs in those instances where approval is
291 required as soon as practicable, but in any case not later than six
292 months from the date the governing board makes an official
293 request. The commission may not withhold approval
294 unreasonably;

295 (5) Distribution of funds appropriated to the commission,
296 including incentive and performance-based funds;

297 (6) Administration of state and federal student aid programs
298 under the supervision of the vice chancellor for administration,
299 including promulgation of rules necessary to administer those
300 programs;

301 (7) Serving as the agent to receive and disburse public funds
302 when a governmental entity requires designation of a statewide
303 higher education agency for this purpose;

304 (8) Developing, establishing and implementing information,
305 assessment, accountability and personnel systems, including
306 maintaining statewide data systems that facilitate long-term
307 planning and accurate measurement of strategic outcomes and
308 performance indicators;

309 (9) Jointly with the council, promulgating and implementing
310 rules for licensing and oversight for both public and private

311 degree-granting and nondegree-granting institutions that provide
312 post-secondary education courses or programs in the state. The
313 council has authority and responsibility for approval of all
314 post-secondary courses or programs providing community and
315 technical college education as defined in section two, article one
316 of this chapter;

317 (10) Developing, implementing and overseeing statewide
318 and regional projects and initiatives related to providing
319 post-secondary education at the baccalaureate level and above
320 such as those using funds from federal categorical programs or
321 those using incentive and performance-based funds from any
322 source;

323 (11) Quality assurance that intersects with all other duties of
324 the commission particularly in the areas of research, data
325 collection and analysis, personnel administration, planning,
326 policy analysis, program review and approval, budgeting and
327 information and accountability systems; and

328 (12) Developing budgets and allocating resources for
329 governing boards under its jurisdiction:

330 (A) For all governing boards under its jurisdiction, except
331 the governing boards of Marshall University and West Virginia
332 University, the commission shall review institutional operating
333 budgets, review and approve capital budgets, and distribute
334 incentive and performance-based funds;

335 (B) For the governing boards of Marshall University and
336 West Virginia University, the commission shall distribute
337 incentive and performance-based funds and may review and
338 comment upon the institutional operating budgets and capital
339 budgets. The commission's comments, if any, shall be made part
340 of the governing board's minute record.

341 (c) In addition to the powers and duties provided in
342 subsections (a) and (b) of this section and any other powers and

343 duties assigned to it by law, the commission has other powers
344 and duties necessary or expedient to accomplish the purposes of
345 this article.

346 (d) The commission may withdraw specific powers of a
347 governing board under its jurisdiction for a period not to exceed
348 two years, if the commission determines that any of the
349 following conditions exist:

350 (1) The governing board has failed for two consecutive years
351 to develop or implement an institutional compact as required in
352 article one-d of this chapter;

353 (2) The commission has received information, substantiated
354 by independent audit, of significant mismanagement or failure
355 to carry out the powers and duties of the governing board
356 according to state law; or

357 (3) Other circumstances which, in the view of the
358 commission, severely limit the capacity of the governing board
359 to exercise its powers or carry out its duties and responsibilities.

360 The commission may not withdraw specific powers for a
361 period exceeding two years. During the withdrawal period, the
362 commission shall take all steps necessary to reestablish sound,
363 stable and responsible institutional governance.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-8. Institutional and system report cards.

1 (a) The purpose of the institutional and statewide report
2 cards is to make information available to parents, students,
3 faculty, staff, state policymakers and the general public on the
4 quality and performance of public higher education. The focus
5 of the report cards is to determine annual progress of the
6 commission, the council and institutions under their respective

7 jurisdictions toward achieving state goals and objectives
8 identified in this article and section one-a, article one of this
9 chapter and system goals and objectives contained in the
10 statewide master plans of the commission and council created
11 pursuant to section five of this article.

12 (b) The information contained in the report cards shall be
13 consistent and comparable between and among state institutions
14 of higher education. If applicable, the information shall allow for
15 easy comparison with higher education-related data collected
16 and disseminated by the Southern Regional Education Board, the
17 United States Department of Education and other education
18 data-gathering and data-disseminating organizations upon which
19 state policymakers frequently rely in setting policy.

20 (c) The rules required by subsection (c), section one of this
21 article shall provide for the collection, analysis and
22 dissemination of information on the performance of the state
23 institutions of higher education, including health sciences
24 education, in relation to the findings, goals and objectives set
25 forth in this article and section one-a, article one of this chapter
26 and those contained in the statewide master plans of the
27 commission and council developed pursuant to section five of
28 this article.

29 (1) The objective of this portion of the rule is to ensure that
30 the Legislative Oversight Commission on Education
31 Accountability and others identified in subsection (a) of this
32 section are provided with full and accurate information while
33 minimizing the institutional burden of recordkeeping and
34 reporting.

35 (2) This portion of the rule shall identify various indicators
36 of student and institutional performance that, at a minimum,
37 must be reported annually, set forth general guidelines for the
38 collection and reporting of data and provide for the preparation,
39 printing and distribution of report cards under this section.

40 (d) The report cards shall be analysis-driven, rather than
41 simply data-driven, and shall present information in a format that
42 can inform education policymaking. They shall include an
43 executive summary which outlines significant trends, identifies
44 major areas of concern and discusses progress toward meeting
45 state and system goals and objectives. They shall be brief and
46 concise, reporting required information in nontechnical
47 language. Any technical or supporting material to be included
48 shall be contained in a separate appendix.

49 (e) The statewide report card shall include the data for each
50 separately listed, applicable indicator identified in the rule
51 promulgated pursuant to subsection (c) of this section and the
52 aggregate of the data for all public institutions of higher
53 education.

54 (f) The statewide report card shall be prepared using actual
55 institutional, state, regional and national data, as applicable and
56 available, indicating the present performance of the individual
57 institutions, the governing boards and the state systems of higher
58 education. Statewide report cards shall be based upon
59 information for the current school year or for the most recent
60 school year for which the information is available, in which case
61 the year shall be clearly noted.

62 (g) The president or chief executive officer of each state
63 institution of higher education shall prepare and submit annually
64 all requested data to the commission at the times established by
65 the commission.

66 (h) The higher education central office staff, under the
67 direction of the Vice Chancellor for Administration, shall
68 provide technical assistance to each institution and governing
69 board in data collection and reporting and is responsible for
70 assembling the statewide report card from information submitted
71 by each governing board.

72 (i) The statewide report card shall be completed and
73 disseminated with copies to the Legislative Oversight
74 Commission on Education Accountability prior to January 1 of
75 each year and the staff of the commission and the council shall
76 prepare a report highlighting specifically the trends, progress
77 toward meeting goals and objectives and major areas of concern
78 for public higher education, including medical education, for
79 presentation to the Legislative Oversight Commission on
80 Education Accountability at the interim meetings in January,
81 2009, and annually thereafter.

82 (j) For a reasonable fee, the Vice Chancellor for
83 Administration shall make copies of the report cards, including
84 any appendices of supporting material, available to any
85 individual requesting them.

**§18B-1D-8a. Modification to reporting requirements to the
Legislative Oversight Commission on Education
Accountability.**

1 (a) Notwithstanding any other provisions of this code to the
2 contrary, the following statutorily mandated reports are not
3 required to be prepared and submitted annually to the Legislature
4 but this information and data previously contained therein shall
5 be combined with other reports in a manner that reduces the cost
6 and increases the efficacy of those reports. This includes:

7 (1) All personnel, classification, compensation and human
8 resources reports set out in section four, article one-b of this
9 chapter, section six, article two-b of this chapter and article
10 nine-a of this chapter;

11 (2) All capital appropriation requests, priorities and campus
12 and state capital development plans set out in section four,
13 article one-b of this chapter, section six, article two-b of this
14 chapter and article nineteen of this chapter;

15 (3) All academic related matters and reports including those
16 detailing institutional reauthorization at section seven, article
17 four of this chapter; training of institutional Boards of Governors
18 set out in section nine, article one-d of this chapter and section
19 one, article ten of this chapter dealing with institutional
20 compliance with tuition and fee increases;

21 (4) All financial aid reports including PROMISE, HEAPS,
22 the Higher Education Grant Program, the Nursing Scholarship
23 Program, the Underwood-Smith Teacher Scholarship Program
24 and others set out in chapter eighteen-c of this code.

25 (b) In order to create more efficiency, reporting deadlines of
26 statutorily or rule mandated reports may be altered, as needed by
27 the Commission without a statutory or rule-making change:
28 *Provided*, That the reports are always provided within any given
29 calendar year.

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR
COMMUNITY AND TECHNICAL
COLLEGE EDUCATION.**

§18B-2B-6. Powers and duties of the council.

1 (a) The council is the sole agency responsible for
2 administration of vocational-technical-occupational education
3 and community and technical college education in the state. The
4 council has jurisdiction and authority over the community and
5 technical colleges and the statewide network of independently
6 accredited community and technical colleges as a whole,
7 including community and technical college education programs
8 as defined in section two, article one of this chapter.

9 (b) The council shall propose rules pursuant to section six,
10 article one of this chapter and article three-a, chapter

11 twenty-nine-a of this code to implement the provisions of this
12 section and applicable provisions of article one-d of this chapter:

13 (1) To implement the provisions of article one-d of this
14 chapter relevant to community and technical colleges, the
15 council may propose rules jointly with the commission, or
16 separately, and may choose to address all components of the
17 accountability system in a single rule or may propose additional
18 rules to cover specific components;

19 (2) The rules pertaining to financing policy and benchmarks
20 and indicators required by this section shall be filed with the
21 Legislative Oversight Commission on Education Accountability
22 by October 1, 2008. Nothing in this subsection requires other
23 rules of the council to be promulgated again under the procedure
24 set forth in article three-a, chapter twenty-nine-a of this code
25 unless such rules are rescinded, revised, altered or amended; and

26 (3) The Legislature finds that an emergency exists and,
27 therefore, the council shall propose an emergency rule or rules
28 to implement the provisions of this section relating to the
29 financing policy and benchmarks and indicators in accordance
30 with section six, article one of this chapter and article three-a,
31 chapter twenty-nine-a of this code by October 1, 2008. The
32 emergency rule or rules may not be implemented without prior
33 approval of the Legislative Oversight Commission on Education
34 Accountability.

35 (c) The council has the following powers and duties relating
36 to the authority established in subsection (a) of this section:

37 (1) Develop, oversee and advance the public policy agenda
38 for community and technical college education for the purpose
39 of accomplishing the mandates of this section, including, but not
40 limited to, the following:

41 (A) Achieving the goals and objectives established in articles
42 one and one-d of this chapter;

43 (B) Addressing the goals and objectives contained in the
44 institutional compacts created pursuant to section seven, article
45 one-d of this chapter; and

46 (C) Developing and implementing the master plan described
47 in section five, article one-d of this chapter;

48 (2) Propose a legislative rule pursuant to subsection (b) of
49 this section and article three-a, chapter twenty-nine-a of this
50 code to develop and implement a financing policy for
51 community and technical college education in West Virginia.
52 The rule shall meet the following criteria:

53 (A) Provide an adequate level of education and general
54 funding for institutions pursuant to section five, article one-a of
55 this chapter;

56 (B) Serve to maintain institutional assets, including, but not
57 limited to, human and physical resources and deferred
58 maintenance;

59 (C) Establish a plan for strategic funding to strengthen
60 capacity for support of community and technical college
61 education; and

62 (D) Establish a plan that measures progress and provides
63 performance-based funding to institutions which make
64 significant progress in the following specific areas:

65 (i) Achieving the objectives and priorities established in
66 article one-d of this chapter;

67 (ii) Serving targeted populations, especially working age
68 adults twenty-five years of age and over;

69 (iii) Providing access to high-cost, high-demand technical
70 programs in every region of the state;

71 (iv) Increasing the percentage of functionally literate adults
72 in every region of the state; and

73 (v) Providing high-quality community and technical college
74 education services to residents of every region of the state.

75 (3) Create a policy leadership structure relating to
76 community and technical college education capable of the
77 following actions:

78 (A) Developing, building public consensus around and
79 sustaining attention to a long-range public policy agenda. In
80 developing the agenda, the council shall seek input from the
81 Legislature and the Governor and specifically from the State
82 Board of Education and local school districts in order to create
83 the necessary linkages to assure smooth, effective and seamless
84 movement of students through the public education and
85 post-secondary education systems and to ensure that the needs
86 of public school courses and programs can be fulfilled by the
87 graduates produced and the programs offered;

88 (B) Ensuring that the governing boards of the institutions
89 under the council's jurisdiction carry out their duty effectively
90 to govern the individual institutions of higher education; and

91 (C) Holding each community and technical college and the
92 statewide network of independently accredited community and
93 technical colleges as a whole accountable for accomplishing
94 their missions and achieving the goals and objectives established
95 in articles one, one-d and three-c of this chapter;

96 (4) Develop for inclusion in the statewide public agenda, a
97 plan for raising education attainment, increasing adult literacy,
98 promoting workforce and economic development and ensuring
99 access to advanced education for the citizens of West Virginia;

100 (5) Provide statewide leadership, coordination, support, and
101 technical assistance to the community and technical colleges and
102 to provide a focal point for visible and effective advocacy for
103 their work and for the public policy agendas approved by the
104 commission and council;

105 (6) Review and adopt annually all institutional compacts for
106 the community and technical colleges pursuant to the provisions
107 of section seven, article one-d of this chapter;

108 (7) Fulfill the mandates of the accountability system
109 established in article one-d of this chapter and report on progress
110 in meeting established goals, objectives, and priorities to the
111 elected leadership of the state;

112 (8) Propose a legislative rule pursuant to subsection (b) of
113 this section and article three-a, chapter twenty-nine-a of this
114 code to establish benchmarks and indicators in accordance with
115 the provisions of this subsection;

116 (9) Establish and implement the benchmarks and
117 performance indicators necessary to measure institutional
118 progress:

119 (A) In meeting state goals, objectives, and priorities
120 established in articles one and one-d of this chapter;

121 (B) In carrying out institutional missions; and

122 (C) In meeting the essential conditions established in article
123 three-c of this chapter;

124 (10) Establish a formal process for identifying needs for
125 capital investments and for determining priorities for these
126 investments for consideration by the Governor and the
127 Legislature as part of the appropriation request process.
128 Notwithstanding the language in subdivision eleven, subsection

129 a, section four, article one-b of this chapter, the commission is
130 not a part of the process for identifying needs for capital
131 investments for the statewide network of independently
132 accredited community and technical colleges;

133 (11) Draw upon the expertise available within the
134 Governor's Workforce Investment Office and the West Virginia
135 Development Office as a resource in the area of workforce
136 development and training;

137 (12) Acquire legal services that are considered necessary,
138 including representation of the council, its institutions,
139 employees and officers before any court or administrative body,
140 notwithstanding any other provision of this code to the contrary.
141 The counsel may be employed either on a salaried basis or on a
142 reasonable fee basis. In addition, the council may, but is not
143 required to, call upon the Attorney General for legal assistance
144 and representation as provided by law;

145 (13) Employ a chancellor for community and technical
146 college education pursuant to section three of this article;

147 (14) Employ other staff as necessary and appropriate to carry
148 out the duties and responsibilities of the council consistent with
149 the provisions of section two, article four of this chapter;

150 (15) Employ other staff as necessary and appropriate to carry
151 out the duties and responsibilities of the council who are
152 employed solely by the council;

153 (16) Provide suitable offices in Charleston for the chancellor
154 and other staff: *Provided*, That the offices may be located
155 outside of Charleston at a technology and research center:
156 *Provided, however*, That the current employees of WVNET shall
157 not be moved from Monongalia County without legislative
158 approval;

159 (17) Approve the total compensation package from all
160 sources for presidents of community and technical colleges, as
161 proposed by the governing boards. The governing boards must
162 obtain approval from the council of the total compensation
163 package both when presidents are employed initially and
164 subsequently when any change is made in the amount of the total
165 compensation package;

166 (18) Establish and implement policies and procedures to
167 ensure that students may transfer and apply toward the
168 requirements for a degree the maximum number of credits
169 earned at any regionally accredited in-state or out-of-state higher
170 education institution with as few requirements to repeat courses
171 or to incur additional costs as is consistent with sound academic
172 policy;

173 (19) Establish and implement policies and programs, jointly
174 with the community and technical colleges, through which
175 students who have gained knowledge and skills through
176 employment, participation in education and training at
177 vocational schools or other education institutions, or
178 internet-based education programs, may demonstrate by
179 competency-based assessment that they have the necessary
180 knowledge and skills to be granted academic credit or advanced
181 placement standing toward the requirements of an associate
182 degree or a bachelor's degree at a state institution of higher
183 education;

184 (20) Seek out and attend regional and national meetings and
185 forums on education and workforce development-related topics,
186 as council members consider critical for the performance of their
187 duties. The council shall keep abreast of national and regional
188 community and technical college education trends and policies
189 to aid members in developing the policies for this state that meet
190 the education goals and objectives established in articles one and
191 one-d of this chapter;

192 (21) Assess community and technical colleges for the
193 payment of expenses of the council or for the funding of
194 statewide services, obligations or initiatives related specifically
195 to the provision of community and technical college education;

196 (22) Promulgate rules allocating reimbursement of
197 appropriations, if made available by the Legislature, to
198 community and technical colleges for qualifying noncapital
199 expenditures incurred in the provision of services to students
200 with physical, learning or severe sensory disabilities;

201 (23) Assume the prior authority of the commission in
202 examining and approving tuition and fee increase proposals
203 submitted by community and technical college governing boards
204 as provided in section one, article ten of this chapter;

205 (24) Develop and submit to the commission, a single budget
206 for community and technical college education that reflects
207 recommended appropriations for community and technical
208 colleges and that meets the following conditions:

209 (A) Incorporates the provisions of the financing rule
210 mandated by this section to measure and provide performance
211 funding to institutions which achieve or make significant
212 progress toward achieving established state objectives and
213 priorities;

214 (B) Considers the progress of each institution toward
215 meeting the essential conditions set forth in section three, article
216 three-c of this chapter, including independent accreditation; and

217 (C) Considers the progress of each institution toward
218 meeting the goals, objectives, and priorities established in article
219 one-d of this chapter and its approved institutional compact.

220 (25) Administer and distribute the independently accredited
221 community and technical college development account;

222 (26) Establish a plan of strategic funding to strengthen
223 capacity for support and assure delivery of high-quality
224 community and technical college education in all regions of the
225 state;

226 (27) Foster coordination among all state-level, regional and
227 local entities providing post-secondary vocational education or
228 workforce development and coordinate all public institutions and
229 entities that have a community and technical college mission;

230 (28) Assume the principal responsibility for oversight of
231 those community and technical colleges seeking independent
232 accreditation and for holding governing boards accountable for
233 meeting the essential conditions pursuant to article three-c of this
234 chapter;

235 (29) Advise and consent in the appointment of the presidents
236 of the community and technical colleges pursuant to section six,
237 article one-b of this chapter. The role of the council in approving
238 a president is to assure through personal interview that the
239 person selected understands and is committed to achieving the
240 goals and objectives established in the institutional compact and
241 in articles one, one-d and three-c of this chapter;

242 (30) Provide a single, statewide link for current and
243 prospective employers whose needs extend beyond one locality;

244 (31) Provide a mechanism capable of serving two or more
245 institutions to facilitate joint problem-solving in areas including,
246 but not limited to the following:

247 (A) Defining faculty roles and personnel policies;

248 (B) Delivering high-cost technical education programs
249 across the state;

250 (C) Providing one-stop service for workforce training to be
251 delivered by multiple institutions; and

252 (D) Providing opportunities for resource-sharing and
253 collaborative ventures;

254 (32) Provide support and technical assistance to develop,
255 coordinate, and deliver effective and efficient community and
256 technical college education programs and services in all regions
257 of the state;

258 (33) Assist the community and technical colleges in
259 establishing and promoting links with business, industry and
260 labor in the geographic areas for which each community and
261 technical college is responsible;

262 (34) Develop alliances among the community and technical
263 colleges for resource sharing, joint development of courses and
264 courseware, and sharing of expertise and staff development;

265 (35) Serve aggressively as an advocate for development of
266 a seamless curriculum;

267 (36) Cooperate with all providers of education services in the
268 state to remove barriers relating to a seamless system of public
269 and higher education and to transfer and articulate between and
270 among community and technical colleges, state colleges and
271 universities and public education, preschool through grade
272 twelve;

273 (37) Encourage the most efficient use of available resources;

274 (38) Coordinate with the commission in informing public
275 school students, their parents and teachers of the academic
276 preparation that students need in order to be prepared adequately
277 to succeed in their selected fields of study and career plans,
278 including presentation of academic career fairs;

279 (39) Jointly with the commission, approve and implement a
280 uniform standard, as developed by the chancellors, to determine

281 which students shall be placed in remedial or developmental
282 courses. The standard shall be aligned with college admission
283 tests and assessment tools used in West Virginia and shall be
284 applied uniformly by the governing boards throughout the public
285 higher education system. The chancellors shall develop a clear,
286 concise explanation of the standard which the governing boards
287 shall communicate to the State Board of Education and the State
288 Superintendent of Schools;

289 (40) Develop and implement strategies and curriculum for
290 providing developmental education which shall be applied by
291 any state institution of higher education providing developmental
292 education;

293 (41) Develop a statewide system of community and technical
294 college programs and services in every region of West Virginia
295 for competency-based certification of knowledge and skills,
296 including a statewide competency-based associate degree
297 program;

298 (42) Review and approve all institutional master plans for
299 the community and technical colleges pursuant to section four,
300 article two-a of this chapter;

301 (43) Propose rules for promulgation pursuant to subsection
302 (b) of this section and article three-a, chapter twenty-nine-a of
303 this code that are necessary or expedient for the effective and
304 efficient performance of community and technical colleges in the
305 state;

306 (44) In its sole discretion, transfer any rule under its
307 jurisdiction, other than a legislative rule, to the jurisdiction of the
308 governing boards who may rescind, revise, alter or amend any
309 rule transferred pursuant to rules adopted by the council and
310 provide technical assistance to the institutions under its
311 jurisdiction to aid them in promulgating rules;

312 (45) Develop for inclusion in the higher education report
313 card, as defined in section eight, article one-d of this chapter, a
314 separate section on community and technical colleges. This
315 section shall include, but is not limited to, evaluation of the
316 institutions based upon the benchmarks and indicators developed
317 in subdivision (9) of this subsection;

318 (46) Facilitate continuation of the Advantage Valley
319 Community College Network under the leadership and direction
320 of Marshall Community and Technical College;

321 (47) Initiate and facilitate creation of other regional networks
322 of affiliated community and technical colleges that the council
323 finds to be appropriate and in the best interests of the citizens to
324 be served;

325 (48) Develop with the State Board of Education plans for
326 secondary and post-secondary vocational-technical-occupational
327 and adult basic education, including, but not limited to the
328 following:

329 (A) Policies to strengthen vocational-technical-occupational
330 and adult basic education; and

331 (B) Programs and methods to assist in the improvement,
332 modernization and expanded delivery of vocational-technical-
333 occupational and adult basic education programs;

334 (49) Distribute federal vocational education funding
335 provided under the Carl D. Perkins Vocational and Technical
336 Education Act of 1998, PL 105-332, with an emphasis on
337 distributing financial assistance among secondary and
338 post-secondary vocational-technical-occupational and adult basic
339 education programs to help meet the public policy agenda.

340 In distributing funds the council shall use the following
341 guidelines:

342 (A) The State Board of Education shall continue to be the
343 fiscal agent for federal vocational education funding;

344 (B) The percentage split between the State Board of
345 Education and the council shall be determined by rule
346 promulgated by the council under the provisions of article
347 three-a, chapter twenty-nine-a of this code. The council shall
348 first obtain the approval of the State Board of Education before
349 proposing a rule;

350 (50) Collaborate, cooperate and interact with all secondary
351 and post-secondary vocational-technical-occupational and adult
352 basic education programs in the state, including the programs
353 assisted under the federal Carl D. Perkins Vocational and
354 Technical Education Act of 1998, PL 105-332, and the
355 Workforce Investment Act of 1998, to promote the development
356 of seamless curriculum and the elimination of duplicative
357 programs;

358 (51) Coordinate the delivery of vocational-technical-
359 occupational and adult basic education in a manner designed to
360 make the most effective use of available public funds to increase
361 accessibility for students;

362 (52) Analyze and report to the State Board of Education on
363 the distribution of spending for vocational-technical-
364 occupational and adult basic education in the state and on the
365 availability of vocational-technical-occupational and adult basic
366 education activities and services within the state;

367 (53) Promote the delivery of vocational-technical-
368 occupational education, adult basic education and community
369 and technical college education programs in the state which
370 emphasize the involvement of business, industry and labor
371 organizations;

372 (54) Promote public participation in the provision of
373 vocational-technical-occupational education, adult basic
374 education and community and technical education at the local
375 level, emphasizing programs which involve the participation of
376 local employers and labor organizations;

377 (55) Promote equal access to quality vocational-technical-
378 occupational education, adult basic education and community
379 and technical college education programs to handicapped and
380 disadvantaged individuals, adults in need of training and
381 retraining, single parents, homemakers, participants in programs
382 designed to eliminate sexual bias and stereotyping and criminal
383 offenders serving in correctional institutions;

384 (56) Meet annually between the months of October and
385 December with the Advisory Committee of Community and
386 Technical College Presidents created pursuant to section eight of
387 this article to discuss those matters relating to community and
388 technical college education in which advisory committee
389 members or the council may have an interest;

390 (57) Accept and expend any gift, grant, contribution,
391 bequest, endowment or other money for the purposes of this
392 article;

393 (58) Assume the powers set out in section nine of this article.
394 The rules previously promulgated by the State College System
395 Board of Directors pursuant to that section and transferred to the
396 commission are hereby transferred to the council and shall
397 continue in effect until rescinded, revised, altered or amended by
398 the council;

399 (59) Pursuant to the provisions of subsection (b) of this
400 section and article three-a, chapter twenty-nine-a of this code,
401 promulgate a uniform joint legislative rule with the commission
402 for the purpose of standardizing, as much as possible, the

403 administration of personnel matters among the institutions of
404 higher education;

405 (60) Determine when a joint rule among the governing
406 boards of the community and technical colleges is necessary or
407 required by law and, in those instances and in consultation with
408 the governing boards, promulgate the joint rule;

409 (61) Promulgate a joint rule with the commission
410 establishing tuition and fee policy for all institutions of higher
411 education. The rule shall include, but is not limited to, the
412 following:

413 (A) Comparisons with peer institutions;

414 (B) Differences among institutional missions;

415 (C) Strategies for promoting student access;

416 (D) Consideration of charges to out-of-state students; and

417 (E) Any other policies the commission and council consider
418 appropriate;

419 (62) In cooperation with the West Virginia Division of
420 Highways, study a method for increasing the signage signifying
421 community and technical college locations along the state
422 interstate highways, and report to the Legislative Oversight
423 Commission on Education Accountability regarding any
424 recommendations and required costs; and

425 (63) Implement a policy jointly with the commission
426 whereby any course credit earned at a community and technical
427 college transfers for program credit at any other state institution
428 of higher education and is not limited to fulfilling a general
429 education requirement.

430 (d) In addition to the powers and duties listed in subsections
431 (a), (b) and (c) of this section, the council has the following

432 general powers and duties related to its role in developing,
433 articulating and overseeing the implementation of the public
434 policy agenda for community and technical colleges:

435 (1) Planning and policy leadership including a distinct and
436 visible role in setting the state's policy agenda for the delivery
437 of community and technical college education and in serving as
438 an agent of change;

439 (2) Policy analysis and research focused on issues affecting
440 the community and technical college network as a whole or a
441 geographical region thereof;

442 (3) Development and implementation of each community
443 and technical college mission definition including use of
444 incentive and performance funds to influence institutional
445 behavior in ways that are consistent with achieving established
446 state goals, objectives, and priorities;

447 (4) Academic program review and approval for the
448 institutions under its jurisdiction, including the use of
449 institutional missions as a template to judge the appropriateness
450 of both new and existing programs and the authority to
451 implement needed changes;

452 (5) Development of budget and allocation of resources for
453 institutions delivering community and technical college
454 education, including reviewing and approving institutional
455 operating and capital budgets and distributing incentive and
456 performance-based funding;

457 (6) Acting as the agent to receive and disburse public funds
458 related to community and technical college education when a
459 governmental entity requires designation of a statewide higher
460 education agency for this purpose;

461 (7) Development, establishment and implementation of
462 information, assessment and internal accountability systems,

463 including maintenance of statewide data systems that facilitate
464 long-term planning and accurate measurement of strategic
465 outcomes and performance indicators for community and
466 technical colleges;

467 (8) Jointly with the commission, development, establishment
468 and implementation of policies for licensing and oversight of
469 both public and private degree-granting and nondegree-granting
470 institutions that provide post-secondary education courses or
471 programs;

472 (9) Development, implementation and oversight of statewide
473 and regionwide projects and initiatives related specifically to
474 providing community and technical college education such as
475 those using funds from federal categorical programs or those
476 using incentive and performance-based funding from any source;
477 and

478 (10) Quality assurance that intersects with all other duties of
479 the council particularly in the areas of planning, policy analysis,
480 program review and approval, budgeting and information and
481 accountability systems.

482 (e) The council may withdraw specific powers of a
483 governing board under its jurisdiction for a period not to exceed
484 two years if the council makes a determination that any of the
485 following conditions exist:

486 (1) The governing board has failed for two consecutive years
487 to develop an institutional compact as required in section seven,
488 article one-d of this chapter;

489 (2) The council has received information, substantiated by
490 independent audit, of significant mismanagement or failure to
491 carry out the powers and duties of the board of governors
492 according to state law; or

493 (3) Other circumstances which, in the view of the council,
494 severely limit the capacity of the board of governors to carry out
495 its duties and responsibilities.

496 The period of withdrawal of specific powers may not exceed
497 two years during which time the council is authorized to take
498 steps necessary to reestablish the conditions for restoration of
499 sound, stable and responsible institutional governance.

500 (f) In addition to the powers and duties provided for in
501 subsections (a), (b), (c) and (d) of this section and any others
502 assigned to it by law, the council has those powers and duties
503 necessary or expedient to accomplish the purposes of this article;
504 and

505 (g) When the council and commission, each, is required to
506 consent, cooperate, collaborate or provide input into the actions
507 of the other the following conditions apply:

508 (1) The body acting first shall convey its decision in the
509 matter to the other body with a request for concurrence in the
510 action;

511 (2) The commission or the council, as the receiving body,
512 shall place the proposal on its agenda and shall take final action
513 within sixty days of the date when the request for concurrence is
514 received; and

515 (3) If the receiving body fails to take final action within sixty
516 days, the original proposal stands and is binding on both the
517 commission and the council.

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions;

authority to create West Virginia Community and Technical College.

1 (a) The council annually shall review and analyze all the
2 state community and technical colleges, and any branches,
3 centers, regional centers or other delivery sites with a
4 community and technical college mission, to determine their
5 progress toward meeting the goals, objectives, priorities, and
6 essential conditions established in articles one, one-d and three-c
7 of this chapter.

8 (b) The analysis required in subsection (a) of this section
9 shall be based, in whole or in part, upon the findings made
10 pursuant to the rule establishing benchmarks and indicators
11 promulgated by the council pursuant to section six, article two-b
12 of this chapter.

13 (c) Based upon their analysis in subsections (a) and (b) of
14 this section, the council shall make a determination whether any
15 one or more of the following conditions exists:

16 (1) A community and technical college required to do so has
17 not achieved or is not making sufficient, satisfactory progress
18 toward achieving the essential conditions, including independent
19 accreditation;

20 (2) One or more of the public community and technical
21 colleges, branches, centers, regional centers and other delivery
22 sites with a community and technical college mission requires
23 financial assistance or other support to meet the goals and
24 essential conditions set forth in this chapter;

25 (3) It is in the best interests of the people of the state or a
26 region within the state to have a single, accredited institution
27 which can provide an umbrella of statewide accreditation;

28 (4) One or more of the state community and technical
29 colleges, branches, centers, regional centers or other delivery

30 sites with a community and technical college mission requests
31 from the council the type of assistance which can best be
32 delivered through implementation of the provisions of section
33 four of this article. Institutional requests that may be considered
34 by the council include, but are not limited to, assistance in
35 seeking and/or attaining independent accreditation, in meeting
36 the goals, priorities and essential conditions established in
37 articles one, one-d and three-c of this chapter, or in establishing
38 and implementing regional networks;

39 (5) One or more state community and technical colleges,
40 branches, centers, regional centers or other delivery sites with a
41 community and technical college mission has not achieved, or is
42 not making sufficient, satisfactory progress toward achieving,
43 the goals, objectives and essential conditions established in
44 articles one, one-d and three-c of this chapter; and

45 (6) The council determines that it is in the best interests of
46 the people of the state or a region of the state to create a
47 statewide, independently accredited community and technical
48 college.

49 (d) The council may not make a determination subject to the
50 provisions of this section that a condition does not exist based
51 upon a finding that the higher education entity lacks sufficient
52 funds to make sufficient, satisfactory progress.

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.

1 (a) The Workforce Development Initiative Program is
2 continued under the supervision of the council. The purpose of
3 the program is to administer and oversee grants to community

4 and technical colleges to implement the provisions of this article
5 in accordance with legislative intent.

6 (b) It is the responsibility of the council to administer the
7 state fund for community and technical college and workforce
8 development, including setting criteria for grant applications,
9 receiving applications for grants, making determinations on
10 distribution of funds and evaluating the performance of
11 workforce development initiatives.

12 (c) The chancellor, under the direction of the council, shall
13 review and approve the expenditure of all grant funds, including
14 development of application criteria, the review and selection of
15 applicants for funding and the annual review and justification of
16 applicants for grant renewal.

17 (1) To aid in decisionmaking, the chancellor appoints an
18 advisory committee consisting of the Executive Director of the
19 West Virginia Development Office or designee; the Secretary of
20 Education and the Arts or designee; the Assistant State
21 Superintendent for Technical and Adult Education; the Chair of
22 the West Virginia Council for Community and Technical
23 College Education; the Chair of the West Virginia Workforce
24 Investment Council; the Executive Director of Workforce West
25 Virginia; two members representing business and industry; and
26 one member representing labor. The advisory committee shall
27 review all applications for workforce development initiative
28 grants and make recommendations for distributing grant funds
29 to the council. The advisory committee also shall make
30 recommendations on methods to share among the community
31 and technical colleges any curricula developed as a result of a
32 workforce development initiative grant.

33 (2) When determining which grant proposals will be funded,
34 the council shall give special consideration to proposals by
35 community and technical colleges that involve businesses with
36 fewer than fifty employees.

37 (3) The council shall weigh each proposal to avoid awarding
38 grants which will have the ultimate effect of providing unfair
39 advantage to employers new to the state who will be in direct
40 competition with established local businesses.

41 (d) The council may allocate a reasonable amount, not to
42 exceed five percent up to a maximum of \$50,000 of the funds
43 available for grants on an annual basis, for general program
44 administration.

45 (e) Moneys appropriated or otherwise available for the
46 Workforce Development Initiative Program shall be allocated by
47 line item to an appropriate account. Any moneys remaining in
48 the fund at the close of a fiscal year are carried forward for use
49 in the next fiscal year.

50 (f) Nothing in this article requires a specific level of
51 appropriation by the Legislature.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT
STATE INSTITUTIONS OF HIGHER
EDUCATION.**

**§18B-10-1. Enrollment, tuition and other fees at education
institutions; refund of fees.**

1 (a) Each governing board shall fix tuition and other fees for
2 each academic term for the different classes or categories of
3 students enrolling at the state institution of higher education
4 under its jurisdiction and may include among the tuition and fees
5 any one or more of the following as defined in section one-b of
6 this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) A governing board may establish a single special revenue
11 account for each of the following classifications of fees:

12 (1) All tuition and required educational and general fees
13 collected;

14 (2) All auxiliary and auxiliary capital fees collected; and

15 (3) All required educational and general capital fees
16 collected to support existing systemwide and institutional debt
17 service and future systemwide and institutional debt service,
18 capital projects and campus renewal for educational and general
19 facilities.

20 (4) Subject to any covenants or restrictions imposed with
21 respect to revenue bonds payable from the accounts, a governing
22 board may expend funds from each special revenue account for
23 any purpose for which funds were collected within that account
24 regardless of the original purpose for which the funds were
25 collected.

26 (c) The purposes for which tuition and fees may be expended
27 include, but are not limited to, health services, student activities,
28 recreational, athletic and extracurricular activities. Additionally,
29 tuition and fees may be used to finance a student's attorney to
30 perform legal services for students in civil matters at the
31 institutions. The legal services are limited to those types of
32 cases, programs or services approved by the president of the
33 institution where the legal services are to be performed.

34 (d) By October 1, 2011, the commission and council each
35 shall propose a rule for legislative approval in accordance with
36 article three-a, chapter twenty-nine-a of this code to govern the
37 fixing, collection and expenditure of tuition and other fees by the
38 governing boards under their respective jurisdictions.

39 (e) The schedule of all tuition and fees, and any changes in
40 the schedule, shall be entered in the minutes of the meeting of

41 the appropriate governing board and the board shall file with the
42 commission or council, or both, as appropriate, and the
43 Legislative Auditor a certified copy of the schedule and changes.

44 (f) The governing boards shall establish the rates to be
45 charged full-time students, as defined in section one-b of this
46 article, who are enrolled during a regular academic term.

47 (1) Undergraduate students taking fewer than twelve credit
48 hours in a regular term shall have their fees reduced pro rata
49 based upon one twelfth of the full-time rate per credit hour and
50 graduate students taking fewer than nine credit hours in a regular
51 term shall have their fees reduced pro rata based upon one ninth
52 of the full-time rate per credit hour.

53 (2) Fees for students enrolled in summer terms or other
54 nontraditional time periods shall be prorated based upon the
55 number of credit hours for which the student enrolls in
56 accordance with this subsection.

57 (g) All fees are due and payable by the student upon
58 enrollment and registration for classes except as provided in this
59 subsection:

60 (1) The governing boards shall permit fee payments to be
61 made in installments over the course of the academic term. All
62 fees shall be paid prior to awarding course credit at the end of
63 the academic term.

64 (2) The governing boards also shall authorize the acceptance
65 of credit cards or other payment methods which may be
66 generally available to students for the payment of fees. The
67 governing boards may charge the students for the reasonable and
68 customary charges incurred in accepting credit cards and other
69 methods of payment.

70 (3) If a governing board determines that a student's finances
71 are affected adversely by a legal work stoppage, it may allow the

72 student an additional six months to pay the fees for any academic
73 term. The governing board shall determine on a case-by-case
74 basis whether the finances of a student are affected adversely.

75 (4) The commission and council jointly shall propose a rule
76 in accordance with article three-a, chapter twenty-nine-a of this
77 code defining conditions under which a governing board may
78 offer tuition and fee deferred payment plans itself or through
79 third parties.

80 (5) A governing board may charge interest or fees for any
81 deferred or installment payment plans.

82 (h) In addition to the other fees provided in this section, each
83 governing board may impose, collect and distribute a fee to be
84 used to finance a nonprofit, student-controlled public interest
85 research group if the students at the institution demonstrate
86 support for the increased fee in a manner and method established
87 by that institution's elected student government. The fee may not
88 be used to finance litigation against the institution.

89 (i) Governing boards shall retain tuition and fee revenues not
90 pledged for bonded indebtedness or other purposes in accordance
91 with the tuition rules proposed by the commission and council
92 pursuant to this section. The tuition rules shall address the
93 following areas:

94 (1) Providing a basis for establishing nonresident tuition and
95 fees;

96 (2) Allowing governing boards to charge different tuition
97 and fees for different programs;

98 (3) Authorizing a governing board to propose to the
99 commission, council or both, as appropriate, a mandatory
100 auxiliary fee under the following conditions:

101 (A) The fee shall be approved by the commission, council or
102 both, as appropriate, and either the students below the senior
103 level at the institution or the Legislature before becoming
104 effective;

105 (B) Increases may not exceed previous state subsidies by
106 more than ten percent;

107 (C) The fee may be used only to replace existing state funds
108 subsidizing auxiliary services such as athletics or bookstores;

109 (D) If the fee is approved, the amount of the state subsidy
110 shall be reduced annually by the amount of money generated for
111 the institution by the fees. All state subsidies for the auxiliary
112 services shall cease five years from the date the mandatory
113 auxiliary fee is implemented;

114 (4) Establishing methodology, where applicable, to ensure
115 that, within the appropriate time period under the compact,
116 community and technical college tuition rates for students in all
117 community and technical colleges will be commensurate with
118 the tuition and fees charged by their peer institutions.

119 (j) A penalty may not be imposed by the commission or
120 council upon any governing board based upon the number of
121 nonresidents who attend the institution unless the commission or
122 council determines that admission of nonresidents to any
123 institution or program of study within the institution is impeding
124 unreasonably the ability of resident students to attend the
125 institution or participate in the programs of the institution. The
126 governing boards shall report annually to the commission or
127 council on the numbers of nonresidents and any other enrollment
128 information the commission or council may request.

129 (k) Tuition and fee increases of the governing boards,
130 including the governing boards of Marshall University and West

131 Virginia University, are subject to rules adopted by the
132 commission and council pursuant to this section and in
133 accordance with article three-a, chapter twenty-nine-a of this
134 code. The commission or council, as appropriate, shall examine
135 individually each request from a governing board for an increase
136 and make its determinations as follows:

137 (1) A tuition and fee increase greater than five percent for
138 resident students proposed by a governing board requires the
139 approval of the commission or council, as appropriate.

140 (2) A fee used solely for the purpose of complying with the
141 athletic provisions of 20 U. S. C. §1681, et seq., known as Title
142 IX of the Education Amendment of 1972, is exempt from the
143 limitations on fee increases set forth in this subsection for three
144 years from the effective date of the section.

145 (3) In determining whether to approve or deny a governing
146 board's request for a tuition and/or fee increase for resident
147 students greater than the increases granted pursuant to
148 subdivision (1) of this subsection, the commission or council
149 shall determine the progress the governing board has made
150 toward meeting the conditions outlined in this subsection and
151 shall make this determination the predominate factor in its
152 decision. The commission or council shall consider the degree to
153 which each governing board has met the following conditions:

154 (A) Maximizes resources available through nonresident
155 tuition and fee charges to the satisfaction of the commission or
156 council;

157 (B) Consistently achieves the benchmarks established in the
158 compact pursuant to article one-d of this chapter;

159 (C) Continuously pursues the statewide goals for
160 post-secondary education and the statewide compact established
161 in this chapter;

162 (D) Demonstrates to the satisfaction of the commission or
163 council that an increase will be used to maintain high-quality
164 programs at the institution;

165 (E) Demonstrates to the satisfaction of the commission or
166 council that the governing board is making adequate progress
167 toward achieving the goals for education established by the
168 Southern Regional Education Board;

169 (F) Demonstrates to the satisfaction of the commission or
170 council that the governing board has considered the average per
171 capita income of West Virginia families and their ability to pay
172 for any increases; and

173 (G) Demonstrates to the satisfaction of the commission or
174 council that base appropriation increases have not kept pace with
175 recognized nation-wide inflationary benchmarks;

176 (4) This section does not require equal increases among
177 governing boards nor does it require any level of increase by a
178 governing board.

179 (5) The commission and council shall report to the
180 Legislative Oversight Commission on Education Accountability
181 regarding the basis for approving or denying each request as
182 determined using the criteria established in this subsection.

ARTICLE 13. HIGHER EDUCATION – INDUSTRY PARTNERSHIPS.

§18B-13-5. Use of state property and equipment; faculty.

1 (a) The governing boards are authorized to provide for the
2 low cost and economical use and sharing of state property and
3 equipment, including computers, research labs and other
4 scientific and necessary equipment to assist any qualified
5 business within an approved research park or zone or technology

6 center. The commission shall approve a schedule of nominal or
7 reduced-cost reimbursements to the state for such use.

8 (b) The governing boards shall develop and provide for a
9 program of release time, sabbaticals or other forms of faculty
10 involvement or participation with any qualifying business.

11 (c) The Legislature finds that cooperation, communication
12 and coordination are integral components of higher education's
13 involvement in economic development. In order to proceed in a
14 manner that is cost effective and time efficient, it is the duty of
15 the commission to review and coordinate such aspects of the
16 programs administered by the governing boards. The review and
17 coordination may not operate to affect adversely sources of
18 funding or any statutory characterization of any program as an
19 independent entity.

ARTICLE 18. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.

§18B-18-6. Duties of Higher Education Policy Commission.

1 The Higher Education Policy Commission shall:

2 (a) Establish documentation standards and review
3 procedures to determine the eligibility of donor gifts to
4 participate in the eminent scholars program when the gift is
5 initially received or whenever the terms are significantly
6 changed;

7 (b) Require that each participating institution report on total
8 gifts received, investment earnings realized and anticipated
9 expenditures in its annual operating budget request;

10 (c) Annually develop and submit a consolidated budget
11 request for the eminent scholars program to the Governor for the
12 fiscal year beginning on July 1, 2003. The budget request shall

13 include a request for an appropriation by the Legislature to each
14 institutional account each fiscal year in an amount equal to the
15 investment earnings in the previous fiscal year which are
16 intended for use in the fiscal year to supplement the salaries of
17 eminent scholars;

18 (d) Allocate any funds appropriated by the Legislature
19 among the participating institutions in equal installments at the
20 beginning of each quarter.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAM.

§18C-3-4. Nursing Scholarship Program; Center for Nursing Fund; administration; scholarship awards; service requirements.

1 (a) There is continued in the State Treasury a special revenue
2 account known as the "Center for Nursing Fund" to be
3 administered by the commission to implement the provisions of
4 this section and article seven-b, chapter thirty of this code. Any
5 moneys in the account on the effective date of this section are
6 transferred to the commission's administrative authority.
7 Balances remaining in the fund at the end of the fiscal year do
8 not expire or revert to the general revenue. All costs associated
9 with the administration of this section and article seven-b,
10 chapter thirty of this code shall be paid from the Center for
11 Nursing Fund under the direction of the Vice Chancellor for
12 Administration. Administrative costs are to be minimized and
13 the maximum amount feasible is to be used to fund awards for
14 students in nursing programs.

15 (b) The account is funded from the following sources:

16 (1) A supplemental licensure fee, not to exceed \$10 per year,
17 to be paid by all nurses licensed by the Board of Examiners for
18 Registered Professional Nurses, pursuant to section eight-a,
19 article seven, chapter thirty of this code, and the Board of
20 Examiners for Licensed Practical Nurses, pursuant to section
21 seven-a, article seven-a, chapter thirty of this code;

22 (2) Repayments, including interest as set by the Vice
23 Chancellor for Administration, collected from recipients who fail
24 to practice or teach in West Virginia under the terms of the
25 scholarship agreement; and

26 (3) Any other funds from any source as may be added to the
27 account.

28 (c) In consultation with the Board of Directors of the West
29 Virginia Center for Nursing, established pursuant to article
30 seven-b, chapter thirty of this code, the commission shall
31 administer a scholarship, designated the Nursing Scholarship
32 Program, designed to benefit nurses who practice in hospitals
33 and other health care institutions or teach in state nursing
34 programs.

35 (1) Awards are available for students enrolled in accredited
36 nursing programs in West Virginia. A recipient shall execute an
37 agreement to fulfill a service requirement or repay the amount of
38 any award received.

39 (2) Awards are made as follows, subject to the rule required
40 by this section:

41 (A) An award for any student may not exceed the full cost of
42 education for program completion.

43 (B) An award of up to \$3,000 is available for a student in a
44 licensed practical nurse education program. A recipient is

45 required to practice nursing in West Virginia for one year
46 following program completion.

47 (C) An award of up to \$7,500 is available for a student who
48 has completed one-half of a registered nurse education program.
49 A recipient is required to teach or practice nursing in West
50 Virginia for two years following program completion.

51 (D) An award of up to \$15,000 is available to a student in a
52 nursing master's degree program or a doctoral nursing or
53 education program. A recipient is required to teach in West
54 Virginia for two years following program completion.

55 (E) An award of up to \$1,000 per year is available for a
56 student obtaining a licensed practical nurse teaching certificate.
57 A recipient is required to teach in West Virginia for one year per
58 award received.

59 (d) An award recipient shall satisfy one of the following
60 conditions:

61 (1) Fulfill the service requirement pursuant to this section
62 and the legislative rule; or

63 (2) Repay the commission for the amount awarded, together
64 with accrued interest as stipulated in the service agreement.

65 (e) The commission shall promulgate a rule for legislative
66 approval pursuant to article three-a, chapter twenty-nine-a of this
67 code to implement and administer this section. The rule shall
68 provide for the following:

69 (1) Eligibility and selection criteria for program
70 participation;

71 (2) Terms of a service agreement which a recipient shall
72 execute as a condition of receiving an award;

73 (3) Repayment provisions for a recipient who fails to fulfill
74 the service requirement;

75 (4) Forgiveness options for death or disability of a recipient;

76 (5) An appeal process for students denied participation or
77 ordered to repay awards; and

78 (6) Additional provisions as necessary to implement this
79 section.

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-7. Higher education adult part-time student grant program.

1 (a) There is established the Higher Education Adult
2 Part-time Student Grant Program, referred to in this section as
3 the HEAPS grant program. The grant program established and
4 authorized by this section is administered by the vice chancellor
5 for administration. Moneys appropriated or otherwise available
6 for the grant program shall be allocated by line item to an
7 appropriate account. Any moneys remaining in the fund at the
8 close of a fiscal year shall be carried forward for use in the next
9 fiscal year.

10 (b) As used in this section, the following terms have the
11 meanings ascribed to them:

12 (1) “Approved distance education” means a course of study
13 offered via electronic access that has been approved for inclusion
14 in the applicant’s program of study by the eligible institution of
15 higher education at which the applicant is enrolled or has been
16 accepted for enrollment;

17 (2) “Part-time” means enrollment for not less than three nor
18 more than eleven semester or term hours: *Provided*, That in the

19 case of enrollment in postsecondary certificate, industry
20 recognized credential and other skill development programs in
21 demand occupations in this state, “part-time” means enrollment
22 on such basis as is established for the program in which enrolled;

23 (3) “Satisfactory academic progress” means maintaining a
24 cumulative grade point average of at least 2.0 on a 4.0 grading
25 scale with a goal of obtaining a certificate, associate degree or
26 bachelor’s degree. In the case of postsecondary certificate,
27 industry recognized credential and other skill development
28 programs, satisfactory academic progress means continuous
29 advancement toward completion of the program on the normal
30 schedule established for the program in which enrolled;

31 (4) “Eligible institution” means:

32 (A) Any community college; community and technical
33 college; adult technical preparatory education program or
34 training;

35 (B) Any state college or university, as those terms are
36 defined in section two, article one, chapter eighteen-b of this
37 code;

38 (C) Any approved institution of higher education as that term
39 is defined in section two of this article; and

40 (D) Any approved distance education, including world wide
41 web based courses;

42 (5) “Eligible program or programs” or “eligible course or
43 courses” means, in addition to programs and courses offered by
44 eligible institutions as defined in subdivision (4) of this
45 subsection:

46 (A) Programs and courses offered by any nationally
47 accredited degree granting institution of higher learning

48 permitted pursuant to section five, article three, chapter
49 eighteen-b of this code and approved by the joint commission for
50 vocational-technical-occupational education; and

51 (B) Any postsecondary certificate, industry recognized
52 credential and other skill development programs of study as
53 defined in this section in a demand occupation in this state;

54 (6) “State resident” means a student who has lived in West
55 Virginia continuously for a minimum of twelve months
56 immediately preceding the date of application for a HEAPS
57 grant or renewal of a grant;

58 (7) “Postsecondary certificate program” means an organized
59 program of study, approved by the joint commission for
60 vocational-technical-occupational education, with defined
61 competencies or skill sets that may be offered for credit or
62 noncredit and which culminates in the awarding of a certificate:
63 *Provided*, That postsecondary certificate programs offered by
64 eligible institutions as defined in subdivision (4) of this
65 subsection do not require the approval of the joint commission
66 for vocational-technical-occupational education;

67 (8) “Demand occupation” means any occupation having
68 documented verification from employers that job opportunities
69 in that occupation are currently available or are projected to be
70 available within a year within the state or regions of the state.
71 The Joint Commission for Vocational-Technical-Occupational
72 Education shall prepare and update annually a list of occupations
73 that they determine meet the requirements of this definition;

74 (9) “Industry-recognized credential program” means an
75 organized program that meets nationally recognized standards in
76 a particular industry, is approved by the joint commission for
77 vocational-technical-occupational education and which
78 culminates in the awarding of a certification or other credential

79 commonly recognized in that industry: *Provided*, That industry
80 recognized credential programs offered by eligible institutions
81 as defined in subdivision (4) of this subsection do not require the
82 approval of the Joint Commission for Vocational-Technical-
83 Occupational Education; and

84 (10) “Skill development program” means a structured
85 sequence or set of courses, approved by the joint commission for
86 vocational-technical-occupational education, with defined
87 competencies that are designed to meet the specific skill
88 requirements of an occupation and which culminates in the
89 awarding of a certificate of completion that specifically lists the
90 competencies or skills mastered: *Provided*, That skill
91 development programs offered by eligible institutions as defined
92 in subdivision (4) of this subsection do not require the approval
93 of the joint commission.

94 (c) A person is eligible for consideration for a HEAPS grant
95 if the person:

96 (1) Demonstrates that he or she has applied for, accepted, or
97 both, other student financial assistance in compliance with
98 federal financial aid rules, including the federal Pell grant;

99 (2) Demonstrates financial need for funds, as defined by
100 legislative rule;

101 (3) Is a state resident and may not be considered a resident
102 of any other state;

103 (4) Is a United States citizen or permanent resident thereof;

104 (5) Is not incarcerated in a correctional facility;

105 (6) Is not in default on a higher education loan; and

106 (7) Is enrolled in a program of study at less than the graduate
107 level on a part-time basis in an eligible institution or program of

108 study and is making satisfactory academic progress at the time
109 of application: *Provided*, That the requirement that the student
110 be making satisfactory academic progress may not preclude a
111 HEAPS grant award to a student who has been accepted for
112 enrollment in an eligible institution or program of study but has
113 not yet been enrolled.

114 (d) Each HEAPS grant award is eligible for renewal until the
115 course of study is completed, but not to exceed an additional
116 nine years beyond the first year of the award.

117 (e) The Higher Education Policy Commission shall propose
118 a legislative rule pursuant to article three-a, chapter
119 twenty-nine-a of this code to implement the provisions of this
120 section which shall be filed with the Legislative Oversight
121 Commission on Education Accountability by September 1, 2003.
122 The Legislature hereby declares that an emergency situation
123 exists and, therefore, the policy commission may establish, by
124 emergency rule, under the procedures of article three-a, chapter
125 twenty-nine-a of this code, a rule to implement the provisions of
126 this section, after approval by the Legislative Oversight
127 Commission on Education Accountability.

128 (f) The legislative rule shall provide at least the following:

129 (1) That consideration of financial need, as required by
130 subdivision (3), subsection (c) of this section, include the
131 following factors:

132 (A) Whether the applicant has dependents as defined by
133 federal law;

134 (B) Whether the applicant has any personal hardship as
135 determined at the discretion of the vice chancellor for
136 administration; and

137 (C) Whether the applicant will receive any other source of
138 student financial aid during the award period.

139 (2) That an appropriate allocation process be provided for
140 distribution of funds directly to the eligible institutions or
141 programs based on the part-time enrollment figures of the prior
142 year;

143 (3) That not less than twenty-five percent of the funds
144 appropriated in any one fiscal year be used to make grants to
145 students enrolled in postsecondary certificate, industry
146 recognized credential and other skill development programs of
147 study: *Provided*, That after giving written notice to the
148 Legislative Oversight Commission on Education Accountability,
149 the vice chancellor for administration may allocate less than
150 twenty-five percent of the funds for such grants;

151 (4) That ten percent of the funds appropriated in any one
152 fiscal year shall be granted to state community and technical
153 colleges by the council for community and technical college
154 education in accordance with a process specified in the rule for
155 noncredit and customized training programs which further the
156 economic development goals of the state, help meet the training
157 and skill upgrade needs of employers in the state, and for which
158 funds are not available from other sources;

159 (5) That any funds not expended by an eligible institution or
160 program at the end of each fiscal year shall be returned to the
161 vice chancellor for administration for distribution under the
162 provisions of this section;

163 (6) That grants under this section shall be available for
164 approved distance education throughout the calendar year,
165 subject only to the availability of funds; and

166 (7) That the amount of each HEAPS grant award be
167 determined using the following guidelines:

168 (A) The amount of any HEAPS grant awarded to a student
169 per semester, term hour or program for those students who are

170 enrolled in eligible institutions or programs operated under the
171 jurisdiction of an agency of the state or a political subdivision
172 thereof shall be based upon the following:

173 (i) Actual cost of tuition and fees;

174 (ii) The portion of the costs determined to be appropriate by
175 the commission; and

176 (iii) In addition to factors (i) and (ii) above, in determining
177 the amount of the award, the vice chancellor may consider the
178 demand for the program pursuant to subdivision (8), subsection
179 (b) of this section; and

180 (B) The amount of any HEAPS grant awarded to a student
181 who is enrolled in any other eligible institution, program or
182 course shall be no greater than the average amount for
183 comparable programs or courses as determined pursuant to the
184 provisions of paragraph (A) above.

185 (g) The HEAPS grant program is subject to any provision of
186 this article not inconsistent with the provisions of this section.

**ARTICLE 7. WEST VIRGINIA PROVIDING REAL
OPPORTUNITIES FOR MAXIMIZING
IN-STATE STUDENT EXCELLENCE
SCHOLARSHIP PROGRAM.**

**§18C-7-5. Powers and duties of the West Virginia Higher
Education Policy Commission regarding the
PROMISE Scholarship.**

1 (a) *Powers of commission.* — In addition to the powers
2 granted by any other provision of this code, the commission has
3 the powers necessary or convenient to carry out the purposes and
4 provisions of this article including, but not limited to, the
5 following express powers:

6 (1) To promulgate legislative rules in accordance with the
7 provisions of article three-a, chapter twenty-nine-a of this code
8 to effectuate the purposes of this article;

9 (2) To invest any of the funds of the West Virginia
10 PROMISE Scholarship Fund established in section seven of this
11 article with the West Virginia Investment Management Board in
12 accordance with the provisions of article six, chapter twelve of
13 this code. Any investments made pursuant to this article shall be
14 made with the care, skill, prudence and diligence under the
15 circumstances then prevailing that a prudent person acting in a
16 like capacity and familiar with such matters would use in
17 conducting an enterprise of a like character and with like aims.
18 Fiduciaries shall diversify plan investments to the extent
19 permitted by law to minimize the risk of large losses, unless
20 under the circumstances it is clearly prudent not to do so;

21 (3) To execute contracts and other necessary instruments;

22 (4) To impose reasonable requirements for residency for
23 students applying for the PROMISE scholarship. Except as
24 provided in section four, article one of this chapter, a student
25 shall have met the following requirements to be eligible:

26 (A) Completed at least one half of the credits required for
27 high school graduation in a public or private high school in this
28 state; or

29 (B) Received instruction in the home or other approved place
30 pursuant to subsection (c), section one, article eight, chapter
31 eighteen of this code for the two years immediately preceding
32 application;

33 (C) This subsection does not establish residency
34 requirements for matriculation or fee payment purposes at state
35 institutions of higher education;

36 (5) To contract for necessary goods and services, to employ
37 necessary personnel and to engage the services of private
38 persons for administrative and technical assistance in carrying
39 out the responsibilities of the scholarship program. Any services
40 provided or secured to implement or administer the provisions
41 of this section remain under the direction and authority of the
42 Vice Chancellor for Administration;

43 (6) To solicit and accept gifts, including bequests or other
44 testamentary gifts made by will, trust or other disposition, grants,
45 loans and other aid from any source and to participate in any
46 federal, state or local governmental programs in carrying out the
47 purposes of this article;

48 (7) To define the terms and conditions under which
49 scholarships are awarded with the minimum requirements being
50 set forth in section six of this article; and

51 (8) To establish other policies, procedures and criteria
52 necessary to implement and administer the provisions of this
53 article.

54 (b) Duties of commission. — In addition to any duty
55 required by any other provision of this code, the commission has
56 the following responsibilities:

57 (1) To operate the program in a fiscally responsible manner
58 and within the limits of available funds;

59 (2) To operate the program as a merit-based program;

60 (3) To adjust academic eligibility requirements should
61 projections indicate that available funds will not be sufficient to
62 cover future costs; and

63 (4) To maintain contact with graduates who have received
64 PROMISE scholarships and to provide a written statement of

65 intent to recipients who are selected to receive a PROMISE
66 scholarship notifying them that acceptance of the scholarship
67 entails a responsibility to supply the following:

68 (A) Information requested by the commission to determine
69 the number and percentage of recipients who shall:

70 (i) Continue to live in West Virginia after graduation;

71 (ii) Obtain employment in West Virginia after graduation;
72 and

73 (iii) Enroll in post-graduate education programs;

74 (B) For PROMISE scholars who enroll in post-graduate
75 education programs, the name of the state in which each
76 post-graduate institution is located; and

77 (C) Any other relevant information the commission
78 reasonably requests to implement the provisions of this
79 subdivision.

CHAPTER 89

**(Com. Sub. for H. B. 4566 - By Delegates Espinosa,
Duke, Statler and D. Evans)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §18-4-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-2, §18A-2-5a, §18A-2-6, §18A-2-7 and §18A-2-8a of said code; to amend said code by adding thereto a new section, designated §18A-2-7b; to

amend and reenact, §18A-4-7a, §18A-4-8b and §18A-4-8e of said code; and to amend and reenact §18A-5-8 of said code, all relating to school personnel; including assistant and associate superintendents under provisions for permanent administrative certification for superintendents; changing deadline for county board vote on termination of continuing contracts of teachers; requiring the department to report on database system certain disqualifications to teach; changing deadlines for teachers and service personnel to give notice of retirement to qualify for early notification payment; changing deadline for county board vote on termination of continuing contracts of service persons; changing deadline for notice of consideration for transfer; changing deadline for hearing on proposed transfer; changing deadline to provide list of employees considered for transfer to county board; changing method of notification and documentation of receipt of notice to employees recommended for transfer; making technical alignment of dates on personnel action and foreseen need for personnel; consolidating limitations on employee transfers after twentieth day prior to instructional term; removing reports to state superintendent; removing exemption for position vacated but not posted; changing transfer limit to twentieth day for prior for service person employed and assigned as autism mentor or certain aid, paraprofessional, interpreter or early childhood assistant teacher; limiting transfers service persons after the twentieth day prior with certain exceptions; changing deadline providing county board list of probationary teachers recommended for rehire; providing for filling position known on or before March 1 to exist for the next school year and requiring employees subject to release to be considered prior to posting for application for nonemployees; removing requirement to submit lateral transfer policies to state board to be complied for reports to LOCEA; facilitating postings for longer than the five-day minimum; removing requirement to any applicant of status of his or her application after hiring decision made; changing requirements for notice and receipt notification to persons on preferred recall of all position openings;

requiring periodic review and update of service personnel competency tests; removing requiring requirement for minimum one day in-service training to assist preparation for competency tests; removing obsolete language and making technical improvements.

Be it enacted by the Legislature of West Virginia:

That §18-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-2, §18A-2-5a, §18A-2-6, §18A-2-7 and §18A-2-8a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-2-7b; that §18A-4-7a, §18A-4-8b and §18A-4-8e of said code be amended and reenacted; and that §18A-5-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 (a) Each county superintendent shall hold a professional
2 administrative certificate endorsed for superintendent, or a first
3 class permit endorsed for superintendent, subject to the
4 following:

5 (1) A superintendent who holds a first class permit may be
6 appointed for one year only, and may be reappointed two times
7 for an additional year each upon an annual evaluation by the
8 county board and a determination of satisfactory performance
9 and reasonable progress toward completion of the requirements
10 for a professional administrative certificate endorsed for
11 superintendent;

12 (2) Any candidate for superintendent, assistant
13 superintendent or associate superintendent, who possesses an

14 earned doctorate from an accredited institution of higher
15 education and either has completed three successful years of
16 teaching in public education or has the equivalent of three years
17 of experience in management or supervision as defined by state
18 board rule, after employment by the county board shall be
19 granted a permanent administrative certificate and shall be a
20 licensed county superintendent;

21 (3) The state board shall promulgate a legislative rule in
22 accordance with article three-b, chapter twenty-nine-a of this
23 code, to address those cases where a county board finds that
24 course work needed by the county superintendent who holds a
25 first class permit is not available or is not scheduled at state
26 institutions of higher education in a manner which will enable
27 the county superintendent to complete normal requirements for
28 a professional administrative certificate within the three-year
29 period allowed under the permit; and

30 (4) Any person employed as assistant superintendent or
31 educational administrator prior to June 27, 1988, and who was
32 previously employed as superintendent is not required to hold
33 the professional administrative certificate endorsed for
34 superintendent.

35 (b) In addition to other requirements set forth in this section,
36 a county superintendent shall meet the following health-related
37 conditions of employment:

38 (1) Before entering upon the discharge of his or her duties,
39 file with the president of the county board a certificate from a
40 licensed physician certifying the following:

41 (A) A tuberculin skin test, of the type Mantoux test (PPD
42 skin test), approved by the Director of the Division of Health,
43 has been made within four months prior to the beginning of the
44 term of the county superintendent; and

45 (B) The county superintendent does not have tuberculosis in
46 a communicable state based upon the test results and any further
47 study;

48 (2) After completion of the initial test, the county
49 superintendent shall have an approved tuberculin skin test once
50 every two years or more frequently if medically indicated.
51 Positive reactors to the skin test are to be referred immediately
52 to a physician for evaluation and indicated treatment or further
53 studies;

54 (3) A county superintendent who is certified by a licensed
55 physician to have tuberculosis in a communicable stage shall
56 have his or her employment discontinued or suspended until the
57 disease has been arrested and is no longer communicable; and

58 (4) A county superintendent who fails to complete required
59 follow-up examinations as set forth in this subsection shall be
60 suspended from employment until a report of examination is
61 confirmed.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

1 (a) Before entering upon their duties, all teachers shall
2 execute a contract with their county boards, which shall state the
3 salary to be paid and shall be in the form prescribed by the state
4 superintendent. Each contract shall be signed by the teacher and
5 by the president and secretary of the county board and shall be
6 filed, together with the certificate of the teacher, by the secretary

7 of the office of the county board. When necessary to facilitate
8 the employment of employable professional personnel and
9 prospective and recent graduates of teacher education programs
10 who have not yet attained certification, the contract may be
11 signed upon the condition that the certificate is issued to the
12 employee prior to the beginning of the employment term in
13 which the employee enters upon his or her duties.

14 (b) Each teacher's contract, under this section, shall be
15 designated as a probationary or continuing contract. A
16 probationary teachers contract shall be for a term of not less than
17 one nor more than three years, one of which shall be for
18 completion of a beginning teacher internship pursuant to the
19 provisions of section two-b, article three of this chapter, if
20 applicable. If, after three years of such employment, the teacher
21 who holds a professional certificate, based on at least a
22 bachelor's degree, has met the qualifications for a bachelors
23 degree and the county board enter into a new contract of
24 employment, it shall be a continuing contract, subject to the
25 following:

26 (1) Any teacher with less than a bachelor's degree who holds
27 a valid certificate and is employed in a county beyond the
28 three-year probationary period shall be granted continuing
29 contract status upon qualifying for the professional certificate
30 based upon a bachelor's degree, if the teacher becomes
31 reemployed; and

32 (2) A teacher holding continuing contract status with one
33 county shall be granted continuing contract status with any other
34 county upon completion of one year of acceptable employment
35 if the employment is during the next succeeding school year or
36 immediately following an approved leave of absence extending
37 no more than one year.

38 (c) The continuing contract of any teacher shall remain in
39 full force and effect except as modified by mutual consent of the

40 school board and the teacher, unless and until terminated, subject
41 to the following:

42 (1) A continuing contract may not be terminated except:

43 (A) By a majority vote of the full membership of the county
44 board on or before May 1 of the then current year, after written
45 notice, served upon the teacher, return receipt requested, stating
46 cause or causes and an opportunity to be heard at a meeting of
47 the board prior to the board's action on the termination issue; or

48 (B) By written resignation of the teacher on or before May
49 1 to initiate termination of a continuing contract;

50 (2) The termination shall take effect at the close of the
51 school year in which the contract is terminated;

52 (3) The contract may be terminated at any time by mutual
53 consent of the school board and the teacher;

54 (4) This section does not affect the powers of the school
55 board to suspend or dismiss a principal or teacher pursuant to
56 section eight of this article;

57 (5) A continuing contract for any teacher holding a
58 certificate valid for more than one year and in full force and
59 effect during the school year 1984-1985 shall remain in full
60 force and effect;

61 (6) A continuing contract does not operate to prevent a
62 teacher's dismissal based upon the lack of need for the teacher's
63 services pursuant to the provisions of law relating to the
64 allocation to teachers and pupil-teacher ratios. The written
65 notification of teachers being considered for dismissal for lack
66 of need shall be limited to only those teachers whose
67 consideration for dismissal is based upon known or expected
68 circumstances which will require dismissal for lack of need. An
69 employee who was not provided notice and an opportunity for a

70 hearing pursuant to this subsection may not be included on the
71 list. In case of dismissal for lack of need, a dismissed teacher
72 shall be placed upon a preferred list in the order of their length
73 of service with that board. A teacher may not be employed by
74 the board until each qualified teacher on the preferred list, in
75 order, has been offered the opportunity for reemployment in a
76 position for which he or she is qualified, not including a teacher
77 who has accepted a teaching position elsewhere. The
78 reemployment shall be upon a teacher's preexisting continuing
79 contract and has the same effect as though the contract had been
80 suspended during the time the teacher was not employed.

81 (d) In the assignment of position or duties of a teacher under
82 a continuing contract, the board may provide for released time
83 of a teacher for any special professional or governmental
84 assignment without jeopardizing the contractual rights of the
85 teacher or any other rights, privileges or benefits under the
86 provisions of this chapter. Released time shall be provided for
87 any professional educator while serving as a member of the
88 Legislature during any duly constituted session of that body and
89 its interim and statutory committees and commissions without
90 jeopardizing his or her contractual rights or any other rights,
91 privileges, benefits or accrual of experience for placement on the
92 state minimum salary schedule in the following school year
93 under the provisions of this chapter, board policy and law.

94 (e) A teacher is disqualified to teach in any public school in
95 the state for the duration of the next ensuing school year, if that
96 teacher:

97 (1) Fails to fulfill his or her contract with the board, unless
98 prevented from doing so by personal illness or other just cause
99 or unless released from his or her contract by the board, or

100 (2) Violates any lawful provision of his or her contract:
101 *Provided*, That the marriage of a teacher is not considered a
102 failure to fulfill, or violation of, the contract.

103 The State Department of Education or board may hold all
104 papers and credentials of the teacher on file for a period of one
105 year for the violation and shall report such disqualification status
106 in the National Association of State Directors of Teacher
107 Education and Certification (NASDTEC) database system.

108 (f) Any classroom teacher, as defined in section one, article
109 one of this chapter, who desires to resign employment with a
110 county board or request a leave of absence, the resignation or
111 leave of absence to become effective on or before July 15 of the
112 same year and after completion of the employment term, may do
113 so at any time during the school year by written notification of
114 the resignation or leave of absence and any notification received
115 by a county board shall automatically extend the teacher's public
116 employee insurance coverage until August 31 of the same year.

117 (g) (1) A classroom teacher who gives written notice to the
118 county board on or before March 1 of the school year of his or
119 her retirement from employment with the board at the conclusion
120 of the school year shall be paid \$500 from the early notification
121 of retirement line item established for the Department of
122 Education for this purpose, subject to appropriation by the
123 Legislature. If the appropriations to the Department of Education
124 for this purpose are insufficient to compensate all applicable
125 teachers, the Department of Education shall request a
126 supplemental appropriation in an amount sufficient to
127 compensate all such teachers. Additionally, if funds are still
128 insufficient to compensate all applicable teachers, the priority of
129 payment is for teachers who give written notice the earliest. This
130 payment may not be counted as part of the final average salary
131 for the purpose of calculating retirement.

132 (2) The position of a classroom teacher providing written
133 notice of retirement pursuant to this subsection may be
134 considered vacant and the county board may immediately post
135 the position as an opening to be filled at the conclusion of the

136 school year. If a teacher has been hired to fill the position of a
137 retiring classroom teacher prior to the start of the next school
138 year, the retiring classroom teacher is disqualified from
139 continuing his or her employment in that position. However, the
140 retiring classroom teacher may be permitted to continue his or
141 her employment in that position and forfeit the early retirement
142 notification payment if, after giving notice of retirement in
143 accordance with this subsection, he or she becomes subject to a
144 significant unforeseen financial hardship, including a hardship
145 caused by the death or illness of an immediate family member or
146 loss of employment of a spouse. Other significant unforeseen
147 financial hardships shall be determined by the county
148 superintendent on a case-by-case basis. This subsection does not
149 prohibit a county school board from eliminating the position of
150 a retiring classroom teacher.

§18A-2-5a. Authorizing payment for notification of retirement.

1 Each county board is authorized to pay, entirely from local
2 funds, \$500 or less to any service employee, or to any
3 professional employee who is not a classroom teacher, who gives
4 written notice to the county board on or before March 1 of the
5 school year of his or her retirement from employment with the
6 board at the conclusion of the school year.

**§18A-2-6. Continuing contract status for service personnel;
termination.**

1 After three years of acceptable employment, each service
2 person who enters into a new contract of employment with the
3 board shall be granted continuing contract status. A service
4 person holding continuing contract status with one county shall
5 be granted continuing contract status with any other county upon
6 completion of one year of acceptable employment if such
7 employment is during the next succeeding school year or
8 immediately following an approved leave of absence which

9 extends no more than one year. The continuing contract of any
10 such employee shall remain in full force and effect except as
11 modified by mutual consent of the school board and the
12 employee, unless and until terminated with written notice,
13 stating cause or causes, to the employee, by a majority vote of
14 the full membership of the board on or before May 1 of the then
15 current year, or by written resignation of the employee on or
16 before that date. The affected employee has the right of a hearing
17 before the board, if requested, before final action is taken by the
18 board upon the termination of such employment.

19 Those employees who have completed three years of
20 acceptable employment as of the effective date of this legislation
21 shall be granted continuing contract status.

**§18A-2-7. Assignment, transfer, promotion, demotion, suspension
and recommendation of dismissal of school personnel
by superintendent; preliminary notice of transfer;
hearing on the transfer; proof required.**

1 (a) The superintendent, subject only to approval of the board,
2 may assign, transfer, promote, demote or suspend school
3 personnel and recommend their dismissal pursuant to provisions
4 of this chapter. However, an employee shall be notified in
5 writing by the superintendent on or before April 1 if he or she is
6 being considered for transfer or to be transferred. Only those
7 employees whose consideration for transfer or intended transfer
8 is based upon known or expected circumstances which will
9 require the transfer of employees shall be considered for transfer
10 or intended for transfer and the notification shall be limited to
11 only those employees. Any teacher or employee who desires to
12 protest the proposed transfer may request in writing a statement
13 of the reasons for the proposed transfer. The statement of reasons
14 shall be delivered to the teacher or employee within ten days of
15 the receipt of the request. Within ten days of the receipt of the
16 statement of the reasons, the teacher or employee may make

17 written demand upon the superintendent for a hearing on the
18 proposed transfer before the county board. The hearing on the
19 proposed transfer shall be held on or before May 1. At the
20 hearing, the reasons for the proposed transfer must be shown.

21 (b) The superintendent at a meeting of the board on or before
22 May 1 shall furnish in writing to the board a list of teachers and
23 other employees to be considered for transfer and subsequent
24 assignment for the next ensuing school year. An employee who
25 was not provided notice and an opportunity for a hearing
26 pursuant to subsection (a) of this section may not be included on
27 the list. All other teachers and employees not so listed shall be
28 considered as reassigned to the positions or jobs held at the time
29 of this meeting. The list of those recommended for transfer shall
30 be included in the minute record of the meeting and all those so
31 listed shall be notified in writing and shall be delivered within
32 ten days following the board meeting, with written receipt
33 notification documented by the superintendent, and shall state
34 that the person is being recommended for transfer and
35 subsequent assignment and the reasons therefor.

36 (c) The superintendent's authority to suspend school
37 personnel shall be temporary only pending a hearing upon
38 charges filed by the superintendent with the county board and the
39 period of suspension may not exceed thirty days unless extended
40 by order of the board.

41 (d) The provisions of this section respecting hearing upon
42 notice of transfer are not applicable in emergency situations
43 where a school building becomes damaged or destroyed through
44 an unforeseeable act and which act necessitates a transfer of the
45 school personnel because of the aforementioned condition of the
46 building.

47 (e) Notwithstanding this section or any provision of this
48 code, when actual student enrollment in a grade level or

49 program, unforeseen on or before May 1 of the preceding school
50 year, permits the assignment of fewer teachers or service
51 personnel to or within a school under any pupil-teacher ratio,
52 class size or caseload standard established in section eighteen-a,
53 article five, chapter eighteen of this code or any policy of the
54 state board, the superintendent, with board approval, may
55 reassign the surplus personnel to another school or to another
56 grade level or program within the school if needed there to
57 comply with any such pupil-teacher ratio, class size or caseload
58 standard.

59 (1) Before any reassignment may occur pursuant to this
60 subsection, notice shall be provided to the employee and the
61 employee shall be provided an opportunity to appear before the
62 county board to state the reasons for his or her objections, if any,
63 prior to the board voting on the reassignment.

64 (2) Except as otherwise provided in subdivision (1) of this
65 subsection, the reassignment may be made without following the
66 notice and hearing provisions of this section, and at any time
67 during the school year when the conditions of this subsection are
68 met: *Provided*, That the reassignment may not occur after the
69 last day of the second school month.

70 (3) A professional employee reassigned under this
71 subsection shall be the least senior of the surplus professional
72 personnel who holds certification or licensure to perform the
73 duties at the other school or at the grade level or program within
74 the school.

75 (4) A service employee reassigned under this subsection
76 shall be the least senior of the surplus personnel who holds the
77 same classification or multiclassification needed to perform the
78 duties at the other school or at the grade level or program within
79 the same school.

80 (5) No school employee's annual contract term,
81 compensation or benefits shall be changed as a result of a
82 reassignment under this subsection.

**§18A-2-7b. Limitations on voluntary transfer of school employees
to posted vacant position after twentieth day prior
to beginning of instructional term.**

1 (a) The Legislature finds that it is not in the best interest of
2 the students particularly in the elementary grades to have
3 multiple teachers for any one grade level or course during the
4 instructional term. Therefore, it is the intent of the Legislature
5 that the filling of positions through transfers of personnel from
6 one professional position to another after the twentieth day prior
7 to the beginning of the instructional term should be kept to a
8 minimum in accordance with the following:

9 (1) After the twentieth day prior to the beginning of the
10 instructional term, no person employed and assigned to a
11 professional position may transfer to another professional
12 position in the county during that instructional term unless the
13 person holding that position does not have valid certification;

14 (2) The person may apply for any posted, vacant positions
15 with the successful applicant assuming the position at the
16 beginning of the next instructional term;

17 (3) Professional personnel who have been on an approved
18 leave of absence may fill these vacancies upon their return from
19 the approved leave of absence; and

20 (4) The county board, upon recommendation of the
21 superintendent may fill a position before the next instructional
22 term when it is determined to be in the best interest of the
23 students.

24 (b) The Legislature finds that it is not in the best interest of
25 students with autism or with an exceptionality whose IEP

26 requires one-on-one services, or students in the early childhood
27 years, to have multiple teachers, mentors, aides,
28 paraprofessionals, interpreters or any combination thereof during
29 the instructional term. Therefore, it is the intent of the
30 Legislature that after the twentieth day prior to the beginning of
31 the instructional term, filling positions through transfers of
32 personnel from one position to another be kept to a minimum for
33 autism mentors and aides who work with students with autism
34 and for paraprofessionals, interpreters, early childhood
35 classroom assistant teachers and aides who work with students
36 with exceptionalities whose IEPs require one-on-one services, in
37 accordance with the following:

38 (1) After the twentieth day prior to the beginning of the
39 instructional term, a service person may not transfer to another
40 position in the county during that instructional term, unless he or
41 she does not have valid certification, if the service person is
42 employed and assigned as an autism mentor or aide who works
43 with students with autism, or as a paraprofessional, interpreter,
44 early childhood classroom assistant teacher, or aide who works
45 with a student with an exceptionality whose IEP requires
46 one-on-one services;

47 (2) The aide, autism mentor, paraprofessional, interpreter or
48 early childhood classroom assistant teacher may apply for any
49 posted, vacant position with the successful applicant assuming
50 the position at the beginning of the next instructional term; and

51 (3) The county board, upon recommendation of the
52 superintendent, may fill a position before the beginning of the
53 next instructional term when it is determined to be in the best
54 interest of the students.

55 (c) Except as provided in subsection (b) of this section, after
56 the twentieth day prior to the beginning of the instructional term,
57 a service person may transfer to another position of employment

58 one time only during any one half of the instructional term,
59 unless otherwise mutually agreed upon by the service person and
60 the county superintendent, or the superintendent's designee,
61 subject to county board approval. During the first year of
62 employment as a service person, a service person may not
63 transfer to another position of employment during the first one
64 half of the instructional term unless mutually agreed upon by the
65 service person and county superintendent, subject to county
66 board approval, except as follows:

67 (1) Upon return from an approved leave of absence, a service
68 person may fill a vacant position for which he or she is qualified
69 or holds valid certification;

70 (2) A service person may apply for a posted, vacant position
71 at any time. The successful applicant for the position may not
72 assume the position until the beginning of the next one half of
73 the instructional term; and

74 (3) Extracurricular assignments for school bus operators
75 pursuant to section sixteen, article four of this chapter are
76 exempt from the requirements of this subsection.

**§18A-2-8a. Notice to probationary personnel of rehiring or
nonrehiring; hearing.**

1 The superintendent at a meeting of the board on or before
2 May 1 of each year shall provide in writing to the board a list of
3 all probationary teachers that he or she recommends to be
4 rehired for the next ensuing school year. The board shall act
5 upon the superintendent's recommendations at that meeting in
6 accordance with section one of this article. The board at this
7 same meeting shall also act upon the retention of other
8 probationary employees as provided in sections two and five of
9 this article. Any such probationary teacher or other probationary
10 employee who is not rehired by the board at that meeting shall

11 be notified in writing, by certified mail, return receipt requested,
12 to such persons' last known addresses within ten days following
13 said board meeting, of their not having been rehired or not
14 having been recommended for rehiring.

15 Any probationary teacher who receives notice that he or she
16 has not been recommended for rehiring or other probationary
17 employee who has not been reemployed may within ten days
18 after receiving the written notice request a statement of the
19 reasons for not having been rehired and may request a hearing
20 before the board. The hearing shall be held at the next regularly
21 scheduled board of education meeting or a special meeting of the
22 board called within thirty days of the request for hearing. At the
23 hearing, the reasons for the nonrehiring must be shown.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

***§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.**

1 (a) A county board of education shall make decisions
2 affecting the filling of vacancies in professional positions of
3 employment on the basis of the applicant with the highest
4 qualifications: *Provided*, That the county superintendent shall be
5 hired under separate criteria pursuant to section two, article four,
6 chapter eighteen of this code.

7 (b) In judging qualifications for the filling of vacancies of
8 professional positions of employment, consideration shall be
9 given to each of the following:

10 (1) Appropriate certification, licensure or both;

* **NOTE:** This section was also amended by Com. Sub. for S. B. 369
(Chapter 88), which passed prior to this act.

11 (2) Amount of experience relevant to the position or, in the
12 case of a classroom teaching position, the amount of teaching
13 experience in the required certification area;

14 (3) The amount of course work, degree level or both in the
15 relevant field and degree level generally;

16 (4) Academic achievement;

17 (5) In the case of a principal or classroom teaching position,
18 certification by the National Board for Professional Teaching
19 Standards;

20 (6) Specialized training relevant to performing the duties of
21 the job;

22 (7) Past performance evaluations conducted pursuant to
23 section twelve, article two of this chapter and section two, article
24 three-c of this chapter or, in the case of a classroom teacher, past
25 evaluations of the applicants performance in the teaching
26 profession;

27 (8) Seniority;

28 (9) Other measures or indicators upon which the relative
29 qualifications of the applicant may fairly be judged;

30 (10) In the case of a classroom teaching position, the
31 recommendation of the principal of the school at which the
32 applicant will be performing a majority of his or her duties; and

33 (11) In the case of a classroom teaching position, the
34 recommendation, if any, resulting from the process established
35 pursuant to the provisions of section five, article five-a, chapter
36 eighteen of this code by the faculty senate of the school at which
37 the employee will be performing a majority of his or her duties.

38 (c) When filling of a vacancy pursuant to this section, a
39 county board is entitled to determine the appropriate weight to
40 apply to each of the criterion when assessing an applicants
41 qualifications: *Provided*, That if one or more permanently
42 employed instructional personnel apply for a classroom teaching
43 position and meet the standards set forth in the job posting, each
44 criterion under subsection (b) of this section shall be given equal
45 weight except that the criterion in subdivisions (10) and (11)
46 shall each be double weighted.

47 (d) For a classroom teaching position, if the principal and
48 faculty senate recommend the same applicant pursuant to
49 subdivisions (10) and (11), subsection (b) of this section, and the
50 superintendent concurs with those recommendations, then the
51 other provisions of subsections (b) and (c) of this section do not
52 apply and the county board shall appoint that applicant
53 notwithstanding any other provision of this code to the contrary.

54 (e) The state board shall promulgate a rule, including an
55 emergency rule if necessary, in accordance with the provisions
56 of article three-b, chapter twenty-nine-a of this code to
57 implement and interpret the provisions of this section. The rule
58 may provide for a classroom teacher who directly participates in
59 making recommendations pursuant to this section to be
60 compensated at the appropriate daily rate during periods of
61 participation beyond his or her individual contract.

62 (f) The recommendations of the principal and faculty senate
63 made pursuant to subdivisions (10) and (11), subsection (b) of
64 this section shall be based on a determination as to which
65 applicant is the most highly qualified for the position: *Provided*,
66 That nothing in this subsection may require principals or faculty
67 senates to assign any amount of weight to any factor in making
68 a recommendation.

69 (g) With the exception of guidance counselors, the seniority
70 of classroom teachers, as defined in section one, article one of

71 this chapter, shall be determined on the basis of the length of
72 time the employee has been employed as a regular full-time
73 certified and/or licensed professional educator by the county
74 board of education and shall be granted in all areas that the
75 employee is certified, licensed or both.

76 (h) Upon completion of one hundred thirty-three days of
77 employment in any one school year, substitute teachers, except
78 retired teachers and other retired professional educators
79 employed as substitutes, shall accrue seniority exclusively for
80 the purpose of applying for employment as a permanent,
81 full-time professional employee. One hundred thirty-three days
82 or more of said employment shall be prorated and shall vest as
83 a fraction of the school year worked by the permanent, full-time
84 teacher.

85 (i) Guidance counselors and all other professional
86 employees, as defined in section one, article one of this chapter,
87 except classroom teachers, shall gain seniority in their
88 nonteaching area of professional employment on the basis of the
89 length of time the employee has been employed by the county
90 board of education in that area: *Provided*, That if an employee is
91 certified as a classroom teacher, the employee accrues classroom
92 teaching seniority for the time that employee is employed in
93 another professional area. For the purposes of accruing seniority
94 under this paragraph, employment as principal, supervisor or
95 central office administrator, as defined in section one, article one
96 of this chapter, shall be considered one area of employment.

97 (j) Employment for a full employment term equals one year
98 of seniority, but an employee may not accrue more than one year
99 of seniority during any given fiscal year. Employment for less
100 than the full employment term shall be prorated. A random
101 selection system established by the employees and approved by
102 the county board shall be used to determine the priority if two or
103 more employees accumulate identical seniority: *Provided*, That

104 when two or more principals have accumulated identical
105 seniority, decisions on reductions in force shall be based on
106 qualifications.

107 (k) Whenever a county board is required to reduce the
108 number of professional personnel in its employment, the
109 employee with the least amount of seniority shall be properly
110 notified and released from employment pursuant to the
111 provisions of section two, article two of this chapter. The
112 provisions of this subsection are subject to the following:

113 (1) All persons employed in a certification area to be
114 reduced who are employed under a temporary permit shall be
115 properly notified and released before a fully certified employee
116 in such a position is subject to release;

117 (2) Notwithstanding any provision of this code to the
118 contrary, for any vacancy in an established, existing or newly
119 created position that, on or before March 1, is known to exist for
120 the ensuing school year, upon recommendation of the
121 superintendent, the board shall appoint the successful applicant
122 from among all qualified applicants. All employees subject to
123 release shall be considered applicants for the positions for which
124 they are qualified and shall be considered before posting such
125 vacancies for application by nonemployees;

126 (3) An employee subject to release shall be employed in any
127 other professional position where the employee is certified and
128 was previously employed or to any lateral area for which the
129 employee is certified, licensed or both, if the employees
130 seniority is greater than the seniority of any other employee in
131 that area of certification, licensure or both;

132 (4) If an employee subject to release holds certification,
133 licensure or both in more than one lateral area and if the
134 employees seniority is greater than the seniority of any other
135 employee in one or more of those areas of certification, licensure

136 or both, the employee subject to release shall be employed in the
137 professional position held by the employee with the least
138 seniority in any of those areas of certification, licensure or both;
139 and

140 (5) If, prior to August 1 of the year, a reduction in force is
141 approved, the reason for any particular reduction in force no
142 longer exists as determined by the county board in its sole and
143 exclusive judgment, the board shall rescind the reduction in
144 force or transfer and shall notify the released employee in
145 writing of his or her right to be restored to his or her position of
146 employment. Within five days of being so notified, the released
147 employee shall notify the board, in writing, of his or her intent
148 to resume his or her position of employment or the right to be
149 restored shall terminate. Notwithstanding any other provision of
150 this subdivision, if there is another employee on the preferred
151 recall list with proper certification and higher seniority, that
152 person shall be placed in the position restored as a result of the
153 reduction in force being rescinded.

154 (l) For the purpose of this article, all positions which meet
155 the definition of "classroom teacher" as defined in section one,
156 article one of this chapter shall be lateral positions. For all other
157 professional positions, the county board of education shall adopt
158 a policy by October 31, 1993, and may modify the policy
159 thereafter as necessary, which defines which positions shall be
160 lateral positions. In adopting the policy, the board shall give
161 consideration to the rank of each position in terms of title; nature
162 of responsibilities; salary level; certification, licensure or both;
163 and days in the period of employment.

164 (m) All professional personnel whose seniority with the
165 county board is insufficient to allow their retention by the county
166 board during a reduction in work force shall be placed upon a
167 preferred recall list. As to any professional position opening
168 within the area where they had previously been employed or to

169 any lateral area for which they have certification, licensure or
170 both, the employee shall be recalled on the basis of seniority if
171 no regular, full-time professional personnel, or those returning
172 from leaves of absence with greater seniority, are qualified,
173 apply for and accept the position.

174 (n) Before position openings that are known or expected to
175 extend for twenty consecutive employment days or longer for
176 professional personnel may be filled by the board, the board
177 shall be required to notify all qualified professional personnel on
178 the preferred list and give them an opportunity to apply, but
179 failure to apply shall not cause the employee to forfeit any right
180 to recall. The notice shall be sent by certified mail to the last
181 known address of the employee, and it shall be the duty of each
182 professional personnel to notify the board of continued
183 availability annually, of any change in address or of any change
184 in certification, licensure or both.

185 (o) Openings in established, existing or newly created
186 positions shall be processed as follows:

187 (1) Boards shall be required to post and date notices of each
188 opening at least once. At their discretion, boards may post an
189 opening for a position other than classroom teacher more than
190 once in order to attract more qualified applicants. At their
191 discretion, boards may post an opening for a classroom teacher
192 one additional time after the first posting in order to attract more
193 qualified applicants only if fewer than three individuals apply
194 during the first posting subject to the following:

195 (A) Each notice shall be posted in conspicuous working
196 places for all professional personnel to observe for at least five
197 working days;

198 (B) At least one notice shall be posted within twenty
199 working days of the position openings and shall include the job
200 description;

201 (C) Any special criteria or skills that are required by the
202 position shall be specifically stated in the job description and
203 directly related to the performance of the job;

204 (D) Postings for vacancies made pursuant to this section
205 shall be written so as to ensure that the largest possible pool of
206 qualified applicants may apply; and

207 (E) Job postings may not require criteria which are not
208 necessary for the successful performance of the job and may not
209 be written with the intent to favor a specific applicant;

210 (2) No vacancy may be filled until after the five-day
211 minimum posting period of the most recent posted notice of the
212 vacancy;

213 (3) If one or more applicants under all the postings for a
214 vacancy meets the qualifications listed in the job posting, the
215 successful applicant to fill the vacancy shall be selected by the
216 board within thirty working days of the end of the first posting
217 period;

218 (4) A position held by a teacher who is certified, licensed or
219 both, who has been issued a permit for full-time employment and
220 is working toward certification in the permit area shall not be
221 subject to posting if the certificate is awarded within five years;
222 and

223 (5) Nothing provided herein may prevent the county board
224 of education from eliminating a position due to lack of need.

225 (p) Notwithstanding any other provision of the code to the
226 contrary, where the total number of classroom teaching positions
227 in an elementary school does not increase from one school year
228 to the next, but there exists in that school a need to realign the
229 number of teachers in one or more grade levels, kindergarten
230 through six, teachers at the school may be reassigned to grade

231 levels for which they are certified without that position being
232 posted: *Provided*, That the employee and the county board
233 mutually agree to the reassignment.

234 (q) Reductions in classroom teaching positions in elementary
235 schools shall be processed as follows:

236 (1) When the total number of classroom teaching positions
237 in an elementary school needs to be reduced, the reduction shall
238 be made on the basis of seniority with the least senior classroom
239 teacher being recommended for transfer; and

240 (2) When a specified grade level needs to be reduced and the
241 least senior employee in the school is not in that grade level, the
242 least senior classroom teacher in the grade level that needs to be
243 reduced shall be reassigned to the position made vacant by the
244 transfer of the least senior classroom teacher in the school
245 without that position being posted: *Provided*, That the employee
246 is certified, licensed or both and agrees to the reassignment.

247 (r) Any board failing to comply with the provisions of this
248 article may be compelled to do so by mandamus and shall be
249 liable to any party prevailing against the board for court costs
250 and reasonable attorney fees as determined and established by
251 the court. Further, employees denied promotion or employment
252 in violation of this section shall be awarded the job, pay and any
253 applicable benefits retroactive to the date of the violation and
254 payable entirely from local funds. Further, the board shall be
255 liable to any party prevailing against the board for any court
256 reporter costs including copies of transcripts.

257 (s) The county board shall compile, update annually on July
258 1 and make available by electronic or other means to all
259 employees a list of all professional personnel employed by the
260 county, their areas of certification and their seniority.

261 (t) Notwithstanding any other provision of this code to the
262 contrary, upon recommendation of the principal and approval by
263 the classroom teacher and county board, a classroom teacher
264 assigned to the school may at any time be assigned to a new or
265 existing classroom teacher position at the school without the
266 position being posted.

§18A-4-8b. Seniority rights for school service personnel.

1 (a) A county board shall make decisions affecting
2 promotions and the filling of any service personnel positions of
3 employment or jobs occurring throughout the school year that
4 are to be performed by service personnel as provided in section
5 eight of this article, on the basis of seniority, qualifications and
6 evaluation of past service.

7 (b) Qualifications means the applicant holds a classification
8 title in his or her category of employment as provided in this
9 section and is given first opportunity for promotion and filling
10 vacancies. Other employees then shall be considered and shall
11 qualify by meeting the definition of the job title that relates to
12 the promotion or vacancy, as defined in section eight of this
13 article. If requested by the employee, the county board shall
14 show valid cause why a service person with the most seniority is
15 not promoted or employed in the position for which he or she
16 applies. Qualified applicants shall be considered in the following
17 order:

18 (1) Regularly employed service personnel who hold a
19 classification title within the classification category of the
20 vacancy;

21 (2) Service personnel who have held a classification title
22 within the classification category of the vacancy whose
23 employment has been discontinued in accordance with this
24 section;

25 (3) Regularly employed service personnel who do not hold
26 a classification title within the classification category of
27 vacancy;

28 (4) Service personnel who have not held a classification title
29 within the classification category of the vacancy and whose
30 employment has been discontinued in accordance with this
31 section;

32 (5) Substitute service personnel who hold a classification
33 title within the classification category of the vacancy;

34 (6) Substitute service personnel who do not hold a
35 classification title within the classification category of the
36 vacancy; and

37 (7) New service personnel.

38 (c) The county board may not prohibit a service person from
39 retaining or continuing his or her employment in any positions
40 or jobs held prior to the effective date of this section and
41 thereafter.

42 (d) A promotion means any change in employment that the
43 service person considers to improve his or her working
44 circumstance within the classification category of employment.

45 (1) A promotion includes a transfer to another classification
46 category or place of employment if the position is not filled by
47 an employee who holds a title within that classification category
48 of employment.

49 (2) Each class title listed in section eight of this article is
50 considered a separate classification category of employment for
51 service personnel, except for those class titles having Roman
52 numeral designations, which are considered a single
53 classification of employment:

54 (A) The cafeteria manager class title is included in the same
55 classification category as cooks;

56 (B) The executive secretary class title is included in the same
57 classification category as secretaries;

58 (C) Paraprofessional, autism mentor, early classroom
59 assistant teacher and braille or sign support specialist class titles
60 are included in the same classification category as aides; and

61 (D) The mechanic assistant and chief mechanic class titles
62 are included in the same classification category as mechanics.

63 (3) The assignment of an aide to a particular position within
64 a school is based on seniority within the aide classification
65 category if the aide is qualified for the position.

66 (4) Assignment of a custodian to work shifts in a school or
67 work site is based on seniority within the custodian classification
68 category.

69 (e) For purposes of determining seniority under this section
70 a service persons seniority begins on the date that he or she
71 enters into the assigned duties.

72 (f) *Extra-duty assignments.* —

73 (1) For the purpose of this section, “extra-duty assignment”
74 means an irregular job that occurs periodically or occasionally
75 such as, but not limited to, field trips, athletic events, proms,
76 banquets and band festival trips.

77 (2) Notwithstanding any other provisions of this chapter to
78 the contrary, decisions affecting service personnel with respect
79 to extra-duty assignments are made in the following manner:

80 (A) A service person with the greatest length of service time
81 in a particular category of employment is given priority in

82 accepting extra duty assignments, followed by other fellow
83 employees on a rotating basis according to the length of their
84 service time until all employees have had an opportunity to
85 perform similar assignments. The cycle then is repeated.

86 (B) An alternative procedure for making extra-duty
87 assignments within a particular classification category of
88 employment may be used if the alternative procedure is
89 approved both by the county board and by an affirmative vote of
90 two-thirds of the employees within that classification category
91 of employment.

92 (g) County boards shall post and date notices of all job
93 vacancies of existing or newly created positions in conspicuous
94 places for all school service personnel to observe for at least five
95 working days.

96 (1) Posting locations include any website maintained by or
97 available for the use of the county board.

98 (2) Notice of a job vacancy shall include the job description,
99 the period of employment, the work site, the starting and ending
100 time of the daily shift, the amount of pay and any benefits and
101 other information that is helpful to prospective applicants to
102 understand the particulars of the job. The notice of a job vacancy
103 in the aide classification categories shall include the program or
104 primary assignment of the position. Job postings for vacancies
105 made pursuant to this section shall be written to ensure that the
106 largest possible pool of qualified applicants may apply. Job
107 postings may not require criteria which are not necessary for the
108 successful performance of the job and may not be written with
109 the intent to favor a specific applicant.

110 (3) All vacancies in existing or newly created positions shall
111 be filled within twenty working days from the closing date of the
112 job posting for the position.

113 (4) The county board shall notify the successful applicant as
114 soon as possible after the county board makes a hiring decision
115 regarding the posted position.

116 (h) All decisions by county boards concerning reduction in
117 work force of service personnel shall be made on the basis of
118 seniority, as provided in this section.

119 (i) The seniority of a service person is determined on the
120 basis of the length of time the employee has been employed by
121 the county board within a particular job classification. For the
122 purpose of establishing seniority for a preferred recall list as
123 provided in this section, a service person who has been
124 employed in one or more classifications retains the seniority
125 accrued in each previous classification.

126 (j) If a county board is required to reduce the number of
127 service personnel within a particular job classification, the
128 following conditions apply:

129 (1) The employee with the least amount of seniority within
130 that classification or grades of classification is properly released
131 and employed in a different grade of that classification if there
132 is a job vacancy;

133 (2) If there is no job vacancy for employment within that
134 classification or grades of classification, the service person is
135 employed in any other job classification which he or she
136 previously held with the county board if there is a vacancy and
137 retains any seniority accrued in the job classification or grade of
138 classification.

139 (k) After a reduction in force or transfer is approved, but
140 prior to August 1, a county board in its sole and exclusive
141 judgment may determine that the reason for any particular
142 reduction in force or transfer no longer exists.

143 (1) If the board makes this determination, it shall rescind the
144 reduction in force or transfer and notify the affected employee in
145 writing of the right to be restored to his or her former position of
146 employment.

147 (2) The affected employee shall notify the county board of
148 his or her intent to return to the former position of employment
149 within five days of being notified or lose the right to be restored
150 to the former position.

151 (3) The county board may not rescind the reduction in force
152 of an employee until all service personnel with more seniority in
153 the classification category on the preferred recall list have been
154 offered the opportunity for recall to regular employment as
155 provided in this section.

156 (4) If there are insufficient vacant positions to permit
157 reemployment of all more senior employees on the preferred
158 recall list within the classification category of the service person
159 who was subject to reduction in force, the position of the
160 released service person shall be posted and filled in accordance
161 with this section.

162 (l) If two or more service persons accumulate identical
163 seniority, the priority is determined by a random selection
164 system established by the employees and approved by the county
165 board.

166 (m) All service personnel whose seniority with the county
167 board is insufficient to allow their retention by the county board
168 during a reduction in work force are placed upon a preferred
169 recall list and shall be recalled to employment by the county
170 board on the basis of seniority.

171 (n) A service person placed upon the preferred recall list
172 shall be recalled to any position openings by the county board

173 within the classification(s) where he or she had previously been
174 employed, to any lateral position for which the service person is
175 qualified or to a lateral area for which a service person has
176 certification and/or licensure.

177 (o) A service person on the preferred recall list does not
178 forfeit the right to recall by the county board if compelling
179 reasons require him or her to refuse an offer of reemployment by
180 the county board.

181 (p) The county board shall notify all service personnel on the
182 preferred recall list of all position openings that exist from time
183 to time. The notification shall be sent annually, with written
184 receipt notification documented by the superintendent, and shall
185 list instructions to access job postings on any website maintained
186 by or available for the use of the county board.

187 (q) A position opening may be filled by the county board,
188 whether temporary or permanent, until all service personnel on
189 the preferred recall list have been properly notified of existing
190 vacancies and have been given an opportunity to accept
191 reemployment.

192 (r) A service person released from employment for lack of
193 need as provided in sections six and eight-a, article two of this
194 chapter is accorded preferred recall status on July 1 of the
195 succeeding school year if he or she has not been reemployed as
196 a regular employee.

197 (s) A county board failing to comply with the provisions of
198 this article may be compelled to do so by mandamus and is liable
199 to any party prevailing against the board for court costs and the
200 prevailing party's reasonable attorney fee, as determined and
201 established by the court.

202 (1) A service person denied promotion or employment in
203 violation of this section shall be awarded the job, pay and any

204 applicable benefits retroactively to the date of the violation and
205 shall be paid entirely from local funds.

206 (2) The county board is liable to any party prevailing against
207 the board for any court reporter costs including copies of
208 transcripts.

**§18A-4-8e. Competency testing for service personnel; and
recertification testing for bus operators.**

1 (a) The state board shall develop and make available
2 competency tests for all of the classification titles defined in
3 section eight of this article and listed in section eight-a of this
4 article for service personnel. The board shall review and, if
5 needed, update the competency tests at least every five years.
6 Each classification title defined and listed is considered a
7 separate classification category of employment for service
8 personnel and has a separate competency test, except for those
9 class titles having Roman numeral designations, which are
10 considered a single classification of employment and have a
11 single competency test.

12 (1) The cafeteria manager class title is included in the same
13 classification category as cooks and has the same competency
14 test.

15 (2) The executive secretary class title is included in the same
16 classification category as secretaries and has the same
17 competency test.

18 (3) The classification titles of chief mechanic, mechanic and
19 assistant mechanic are included in one classification title and
20 have the same competency test.

21 (b) The purpose of these tests is to provide county boards a
22 uniform means of determining whether school service personnel
23 who do not hold a classification title in a particular category of

24 employment meet the definition of the classification title in
25 another category of employment as defined in section eight of
26 this article. Competency tests may not be used to evaluate
27 employees who hold the classification title in the category of
28 their employment.

29 (c) The competency test consists of an objective written or
30 performance test, or both. Applicants may take the written test
31 orally if requested. Oral tests are recorded mechanically and kept
32 on file. The oral test is administered by persons who do not
33 know the applicant personally.

34 (1) The performance test for all classifications and categories
35 other than bus operator is administered by an employee of the
36 county board or an employee of a multicounty vocational school
37 that serves the county at a location designated by the
38 superintendent and approved by the board. The location may be
39 a vocational school that serves the county.

40 (2) A standard passing score is established by the state
41 Department of Education for each test and is used by county
42 boards.

43 (3) The subject matter of each competency test is
44 commensurate with the requirements of the definitions of the
45 classification titles as provided in section eight of this article.
46 The subject matter of each competency test is designed in such
47 a manner that achieving a passing grade does not require
48 knowledge and skill in excess of the requirements of the
49 definitions of the classification titles. Achieving a passing score
50 conclusively demonstrates the qualification of an applicant for
51 a classification title.

52 (4) Once an employee passes the competency test of a
53 classification title, the applicant is fully qualified to fill
54 vacancies in that classification category of employment as

55 provided in section eight-b of this article and may not be
56 required to take the competency test again.

57 (d) An applicant who fails to achieve a passing score is given
58 other opportunities to pass the competency test when applying
59 for another vacancy within the classification category.

60 (e) Competency tests are administered to applicants in a
61 uniform manner under uniform testing conditions. County
62 boards are responsible for scheduling competency tests,
63 notifying applicants of the date and time of the test. County
64 boards may not use a competency test other than the test
65 authorized by this section.

66 (f) When scheduling of the competency test conflicts with
67 the work schedule of a school employee who has applied for a
68 vacancy, the employee is excused from work to take the
69 competency test without loss of pay.

70 (g) Competency tests are used to determine the qualification
71 of new applicants seeking initial employment in a particular
72 classification title as either a regular or substitute employee.

73 (h) Notwithstanding any provisions in this code to the
74 contrary, once an employee holds or has held a classification title
75 in a category of employment, that employee is considered
76 qualified for the classification title even though that employee no
77 longer holds that classification.

78 (i) The requirements of this section do not alter the
79 definitions of class titles as provided in section eight of this
80 article or the procedure and requirements of section eight-b of
81 this article.

82 (j) Notwithstanding any other provision of this code to the
83 contrary and notwithstanding any rules of the school board
84 concerning school bus operator certification, the certification test

85 for school bus operators shall be required as follows, and school
86 bus operators may not be required to take the certification test
87 more frequently:

88 (1) For substitute school bus operators and for school bus
89 operators with regular employee status but on a probationary
90 contract, the certification test shall be administered annually;

91 (2) For school bus operators with regular employee status
92 and continuing contract status, the certification test shall be
93 administered triennially; and

94 (3) For substitute school bus operators who are retired from
95 a county board and who at the time of retirement had ten years
96 of experience as a regular full-time bus operator, the certification
97 test shall be administered triennially.

98 (4) School bus operator certificate.

99 (A) A school bus operator certificate may be issued to a
100 person who has attained the age of twenty-one, completed the
101 required training set forth in state board rule, and met the
102 physical requirements and other criteria to operate a school bus
103 set forth in state board rule.

104 (B) The state superintendent may, after ten days' notice and
105 upon proper evidence, revoke the certificate of any bus operator
106 for any of the following causes:

107 (i) Intemperance, untruthfulness, cruelty or immorality;

108 (ii) Conviction of or guilty plea or plea of no contest to a
109 felony charge;

110 (iii) Conviction of or guilty plea or plea of no contest to any
111 charge involving sexual misconduct with a minor or a student;

112 (iv) Just and sufficient cause for revocation as specified by
113 state board rule; and

114 (v) Using fraudulent, unapproved or insufficient credit to
115 obtain the certificates.

116 (vi) Of the causes for certificate revocation listed in this
117 paragraph (B), the following causes constitute grounds for
118 revocation only if there is a rational nexus between the conduct
119 of the bus operator and the performance of the job:

120 (I) Intemperance, untruthfulness, cruelty or immorality;

121 (II) Just and sufficient cause for revocation as specified by
122 state board rule; and

123 (III) Using fraudulent, unapproved or insufficient credit to
124 obtain the certificate.

125 (C) The certificate of a bus operator may not be revoked for
126 either of the following unless it can be proven by clear and
127 convincing evidence that the bus operator has committed one of
128 the offenses listed in this subsection and his or her actions render
129 him or her unfit to operate a school bus:

130 (i) Any matter for which the bus operator was disciplined,
131 less than dismissal, by the employing county board; or

132 (ii) Any matter for which the bus operator is meeting or has
133 met an improvement plan determined by the county board.

134 (D) The state superintendent shall designate a review panel
135 to conduct hearings on certificate revocations or denials and
136 make recommendations for action by the state superintendent.
137 The state board, after consultation with employee organizations
138 representing school service personnel, shall promulgate a rule to
139 establish the review panel membership and composition, method
140 of appointment, governing principles and meeting schedule.

141 (E) It is the duty of any county superintendent who knows of
142 any acts on the part of a bus operator for which a certificate may
143 be revoked in accordance with this section to report the same,
144 together with all the facts and evidence, to the state
145 superintendent for such action as in the state superintendent's
146 judgment may be proper.

147 (F) If a certificate has been granted through an error,
148 oversight or misinformation, the state superintendent may recall
149 the certificate and make such corrections as will conform to the
150 requirements of law and state board rules.

151 (5) The state board shall promulgate, in accordance with
152 article three-b, chapter twenty-nine-a of this code, revised rules
153 in compliance with this subsection.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.

1 (a) Within the limitations provided in this section, any aide
2 who agrees to do so shall stand in the place of the parent or
3 guardian and shall exercise such authority and control over
4 students as is required of a teacher as provided in section one of
5 this article. The principal shall designate aides in the school who
6 agree to exercise that authority on the basis of seniority as an
7 aide and shall enumerate the instances in which the authority
8 shall be exercised by an aide when requested by the principal,
9 assistant principal or professional employee to whom the aide is
10 assigned.

11 (b) The authority provided for in subsection (a) of this
12 section does not extend to suspending or expelling any student,
13 participating in the administration of corporal punishment or
14 performing instructional duties as a teacher or substitute teacher.

15 However, the authority extends to supervising students
16 undergoing in-school suspension if the instructional duties
17 required by the supervision are limited solely to handing out
18 class work and collecting class work. The authority to supervise
19 students undergoing in-school suspension does not include actual
20 instruction.

21 (c) An aide designated by the principal under subsection (a)
22 of this section shall receive a salary not less than one pay grade
23 above the highest pay grade held by the service person under
24 section eight-a, article four of this chapter and any county salary
25 schedule in excess of the minimum requirements of this article.

26 (d) An aide may not be required by the operation of this
27 section to perform noninstructional duties for an amount of time
28 which exceeds that required under the aide's contract of
29 employment or that required of other aides in the same school
30 unless the assignment of the duties is mutually agreed upon by
31 the aide and the county superintendent, or the superintendent's
32 designated representative, subject to county board approval.

33 (1) The terms and conditions of the agreement shall be in
34 writing, signed by both parties, and may include additional
35 benefits.

36 (2) The agreement shall be uniform as to aides assigned
37 similar duties for similar amounts of time within the same
38 school.

39 (3) Aides have the option of agreeing to supervise students
40 and of renewing related assignments annually. If an aide elects
41 not to renew the previous agreement to supervise students, the
42 minimum salary of the aide shall revert to the pay grade
43 specified in section eight-a, article four of this chapter for the
44 classification title held by the aide and any county salary
45 schedule in excess of the minimum requirements of this article.

46 (e) For the purposes of this section, aide means any aide
47 class title as defined in section eight, article four of this chapter
48 regardless of numeric classification.

49 (f) Regular service personnel employed in a category of
50 employment other than aide who seek employment as an aide
51 shall hold a high school diploma or shall have received a general
52 educational development certificate and shall have the
53 opportunity to receive appropriate training pursuant to
54 subsection (j), section thirteen, article five, chapter eighteen of
55 this code and section two, article twenty of said chapter.

CHAPTER 90

(Com. Sub. for S. B. 146 - By Senators Plymale and Unger)

[Passed February 23, 2016; in effect July 1, 2016.]
[Approved by the Governor on March 2, 2016.]

AN ACT to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended, relating to early childhood education programs; replacing days per week requirement for early childhood education programs with instructional minutes per week and instructional minutes per year requirements; modifying authority of parent to withdraw child from early childhood education program; and removing certain early childhood education program-related reporting requirements.

Be it enacted by the Legislature of West Virginia:

That §18-5-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.***§18-5-44. Early childhood education programs.**

1 (a) For the purposes of this section, an “early childhood
2 education program” means a program created under this section
3 for children who have attained the age of four prior to September
4 1 of the school year in which the children enter the program.

5 (b) *Findings.* –

6 (1) Among other positive outcomes, early childhood
7 education programs have been determined to:

8 (A) Improve overall readiness when children enter school;

9 (B) Decrease behavioral problems;

10 (C) Improve student attendance;

11 (D) Increase scores on achievement tests;

12 (E) Decrease the percentage of students repeating a grade;
13 and

14 (F) Decrease the number of students placed in special
15 education programs;

16 (2) Quality early childhood education programs improve
17 school performance and low-quality early childhood education
18 programs may have negative effects, especially for at-risk
19 children;

20 (3) West Virginia has the lowest percentage of its adult
21 population twenty-five years of age or older with a bachelor’s

* **NOTE:** This section was also amended by Com. Sub. for S. B. 369
(Chapter 88), which passed prior to this act.

22 degree and the education level of parents is a strong indicator of
23 how their children will perform in school;

24 (4) During the 2006-2007 school year, West Virginia ranked
25 thirty-ninth among the fifty states in the percentage of school
26 children eligible for free and reduced lunches and this percentage
27 is a strong indicator of how the children will perform in school;

28 (5) For the school year 2008-2009, 13,135 students were
29 enrolled in prekindergarten, a number equal to approximately
30 sixty-three percent of the number of students enrolled in
31 kindergarten;

32 (6) Excluding projected increases due to increases in
33 enrollment in the early childhood education program, projections
34 indicate that total student enrollment in West Virginia will
35 decline by one percent, or by approximately 2,704 students, by
36 the school year 2012-2013;

37 (7) In part, because of the dynamics of the state aid formula,
38 county boards will continue to enroll four-year-old students to
39 offset the declining enrollments;

40 (8) West Virginia has a comprehensive kindergarten
41 program for five-year-olds, but the program was established in
42 a manner that resulted in unequal implementation among the
43 counties, which helped create deficit financial situations for
44 several county boards;

45 (9) Expansion of current efforts to implement a
46 comprehensive early childhood education program should avoid
47 the problems encountered in kindergarten implementation;

48 (10) Because of the dynamics of the state aid formula,
49 counties experiencing growth are at a disadvantage in
50 implementing comprehensive early childhood education
51 programs; and

52 (11) West Virginia citizens will benefit from the
53 establishment of quality comprehensive early childhood
54 education programs.

55 (c) Beginning no later than the school year 2012-2013 and
56 continuing thereafter, county boards shall provide early
57 childhood education programs for all children who have attained
58 the age of four prior to September 1 of the school year in which
59 the children enter the early childhood education program.
60 Beginning no later than the school year 2016-2017 and
61 continuing thereafter, these early childhood education programs
62 shall provide at least forty-eight thousand minutes annually and
63 no less than fifteen hundred minutes of instruction per week.

64 (d) The program shall meet the following criteria:

65 (1) It shall be voluntary, except that, upon enrollment, the
66 provisions of section one-a, article eight of this chapter apply to
67 an enrolled student, subject to subdivision (4) of this subsection;

68 (2) It shall be open to all children meeting the age
69 requirement set forth in this section;

70 (3) It shall provide no less than fifteen hundred minutes of
71 instruction per week, in a full day program with at least
72 forty-eight thousand minutes of instruction annually; and

73 (4) It shall permit a parent of an enrolled child to withdraw
74 the child from that program by notifying the district in writing.
75 A child withdrawn under this section is not subject to the
76 attendance provisions of this chapter until that child again
77 enrolls in a public school in this state.

78 (e) Enrollment of students in Head Start, or in any other
79 program approved by the state superintendent as provided in this
80 section, may be counted toward satisfying the requirement of
81 subsection (c) of this section.

82 (f) For the purposes of implementation financing, all
83 counties are encouraged to make use of funds from existing
84 sources, including:

85 (1) Federal funds provided under the Elementary and
86 Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;

87 (2) Federal funds provided for Head Start pursuant to 42 U.
88 S. C. §9831, *et seq.*;

89 (3) Federal funds for temporary assistance to needy families
90 pursuant to 42 U. S. C. §601, *et seq.*;

91 (4) Funds provided by the School Building Authority
92 pursuant to article nine-d of this chapter;

93 (5) In the case of counties with declining enrollments, funds
94 from the state aid formula above the amount indicated for the
95 number of students actually enrolled in any school year; and

96 (6) Any other public or private funds.

97 (g) Each county board shall develop a plan for implementing
98 the program required by this section. The plan shall include the
99 following elements:

100 (1) An analysis of the demographics of the county related to
101 early childhood education program implementation;

102 (2) An analysis of facility and personnel needs;

103 (3) Financial requirements for implementation and potential
104 sources of funding to assist implementation;

105 (4) Details of how the county board will cooperate and
106 collaborate with other early childhood education programs
107 including, but not limited to, Head Start, to maximize federal and
108 other sources of revenue;

109 (5) Specific time lines for implementation; and

110 (6) Any other items the state board may require by policy.

111 (h) A county board shall submit its plan to the Secretary of
112 the Department of Health and Human Resources. The secretary
113 shall approve the plan if the following conditions are met:

114 (1) The county board has maximized the use of federal and
115 other available funds for early childhood programs; and

116 (2) The county board has provided for the maximum
117 implementation of Head Start programs and other public and
118 private programs approved by the state superintendent pursuant
119 to the terms of this section; or

120 (3) The secretary finds that, if the county board has not met
121 one or more of the requirements of this subsection, the county
122 board has acted in good faith and the failure to comply was not
123 the primary fault of the county board. Any denial by the
124 secretary may be appealed to the circuit court of the county in
125 which the county board is located.

126 (i) The county board shall submit its plan for approval to the
127 state board. The state board shall approve the plan if the county
128 board has complied substantially with the requirements of
129 subsection (g) of this section and has obtained the approval
130 required in subsection (h) of this section.

131 (j) Every county board shall submit its plan for reapproval
132 by the Secretary of the Department of Health and Human
133 Resources and by the state board at least every two years after
134 the initial approval of the plan and until full implementation of
135 the early childhood education program in the county. As part of
136 the submission, the county board shall provide a detailed
137 statement of the progress made in implementing its plan. The

138 standards and procedures provided for the original approval of
139 the plan apply to any reapproval.

140 (k) A county board may not increase the total number of
141 students enrolled in the county in an early childhood program
142 until its program is approved by the Secretary of the Department
143 of Health and Human Resources and the state board.

144 (l) The state board annually may grant a county board a
145 waiver for total or partial implementation if the state board finds
146 that all of the following conditions exist:

147 (1) The county board is unable to comply either because:

148 (A) It does not have sufficient facilities available; or

149 (B) It does not and has not had available funds sufficient to
150 implement the program;

151 (2) The county has not experienced a decline in enrollment
152 at least equal to the total number of students to be enrolled; and

153 (3) Other agencies of government have not made sufficient
154 funds or facilities available to assist in implementation.

155 Any county board seeking a waiver shall apply with the
156 supporting data to meet the criteria for which they are eligible on
157 or before March 25 for the following school year. The state
158 superintendent shall grant or deny the requested waiver on or
159 before April 15 of that same year.

160 (m) The provisions of subsections (b), (c) and (d), section
161 eighteen of this article relating to kindergarten apply to early
162 childhood education programs in the same manner in which they
163 apply to kindergarten programs.

164 (n) Except as required by federal law or regulation, no
165 county board may enroll students who will be less than four
166 years of age prior to September 1 for the year they enter school.

167 (o) Neither the state board nor the state department may
168 provide any funds to any county board for the purpose of
169 implementing this section unless the county board has a plan
170 approved pursuant to subsections (h), (i) and (j) of this section.

171 (p) The state board shall promulgate a rule in accordance
172 with the provisions of article three-b, chapter twenty-nine-a of
173 this code for the purposes of implementing the provisions of this
174 section. The state board shall consult with the Secretary of the
175 Department of Health and Human Resources in the preparation
176 of the rule. The rule shall contain the following:

177 (1) Standards for curriculum;

178 (2) Standards for preparing students;

179 (3) Attendance requirements;

180 (4) Standards for personnel; and

181 (5) Any other terms necessary to implement the provisions
182 of this section.

183 (q) The rule shall include the following elements relating to
184 curriculum standards:

185 (1) A requirement that the curriculum be designed to address
186 the developmental needs of four-year-old children consistent
187 with prevailing research on how children learn;

188 (2) A requirement that the curriculum be designed to achieve
189 long-range goals for the social, emotional, physical and
190 academic development of young children;

191 (3) A method for including a broad range of content that is
192 relevant, engaging and meaningful to young children;

193 (4) A requirement that the curriculum incorporate a wide
194 variety of learning experiences, materials and equipment, and

195 instructional strategies to respond to differences in prior
196 experience, maturation rates and learning styles that young
197 children bring to the classroom;

198 (5) A requirement that the curriculum be designed to build
199 on what children already know in order to consolidate their
200 learning and foster their acquisition of new concepts and skills;

201 (6) A requirement that the curriculum meet the recognized
202 standards of the relevant subject matter disciplines;

203 (7) A requirement that the curriculum engage children
204 actively in the learning process and provide them with
205 opportunities to make meaningful choices;

206 (8) A requirement that the curriculum emphasize the
207 development of thinking, reasoning, decision-making and
208 problem-solving skills;

209 (9) A set of clear guidelines for communicating with parents
210 and involving them in decisions about the instructional needs of
211 their children; and

212 (10) A systematic plan for evaluating program success in
213 meeting the needs of young children and for helping them to be
214 ready to succeed in school.

215 (r) After the school year 2012-2013, on or before July 1 of
216 each year, each county board shall report the following
217 information to the Secretary of the Department of Health and
218 Human Resources and the state superintendent:

219 (1) Documentation indicating the extent to which county
220 boards are maximizing resources by using the existing capacity
221 of community-based programs, including, but not limited to,
222 Head Start and child care; and

223 (2) For those county boards that are including eligible
224 children attending approved, contracted community-based
225 programs in their net enrollment for the purposes of calculating
226 state aid pursuant to article nine-a of this chapter, documentation
227 that the county board is equitably distributing funding for all
228 children regardless of setting.

CHAPTER 91

(S. B. 483 - By Senators Sypolt, Boley, Plymale and Ferns)

[Passed March 7, 2016; in effect July 1, 2016.]

[Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §18-5A-3a of the Code of West Virginia, 1931, as amended, relating to granting a local school improvement council waivers for the purpose of increasing compulsory school attendance age in Marshall County and Wyoming County.

Be it enacted by the Legislature of West Virginia:

That §18-5A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-3a. Waivers of statutes granted to public schools pursuant to recommendations submitted by local school improvement councils; limitations.

- 1 (a) The Legislature hereby grants a waiver from the statute
- 2 or statutes indicated for the following school or schools pursuant
- 3 to and for the purposes enumerated in the written statement
- 4 recommending the waiver, with supporting reasons, approved by

5 the local school improvement council of the respective schools
6 and recommended by the Legislative Oversight Commission on
7 Education Accountability in accordance with the provisions of
8 section three of this article. The grant of a waiver to a statute
9 means that the school or schools granted the waiver may
10 implement the actions as specifically described in their written
11 statement notwithstanding the provisions of this code from
12 which they are specifically waived. These waivers are limited to
13 the purposes as specifically described in the statement upon
14 which the Legislative Oversight Commission on Education
15 Accountability made its recommendation for a waiver to the
16 Legislature and are expressly repealed for any modification or
17 implementation of the described actions which changes those
18 purposes. However, nothing in this section prohibits a local
19 school improvement council school that has been granted a
20 waiver from submitting a request to the Legislative Oversight
21 Commission on Education Accountability for modifications,
22 subject to approval in accordance with section three of this
23 article.

24 (b) The following waivers are granted:

25 (1) Section two-b, article three, chapter eighteen-a of this
26 code is waived for the schools of Cabell County for the purpose
27 of implementing a comprehensive new teacher induction
28 program, which purposes are as more specifically described in
29 the schools written statement approved by the county board and
30 submitted to the Legislative Oversight Commission on
31 Education Accountability on February 24, 2011.

32 (2) Section one-a, article eight, chapter eighteen of this code
33 is waived for the schools of Marshall County for the purpose of
34 increasing the compulsory school attendance age in Marshall
35 County from seventeen to eighteen years of age as a part of its
36 countywide dropout prevention initiative as requested by letter
37 dated January 4, 2016, and recommended by the Legislative

38 Oversight Commission on Education Accountability on January
39 18, 2016.

40 (3) Section one-a, article eight, chapter eighteen of this code
41 is waived for the schools of Wyoming County for the purpose of
42 increasing the compulsory school attendance age in Wyoming
43 County from seventeen to eighteen years of age as a part of its
44 countywide dropout prevention initiative as requested by letter
45 dated February 25, 2016 and recommended by the Legislative
46 Oversight Commission on Education Accountability on February
47 25, 2016.

CHAPTER 92

**(Com. Sub. for H. B. 4295 - By Mr. Speaker (Mr. Armstead),
and Delegate Miley)
[By Request of the Executive]**

[Passed March 12, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-14; and to amend said code by adding thereto a new article, designated §18-5E-1, §18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5, §18-5E-6 and §18-5E-7, all relating to education innovation; terminating funding for Innovation Zones and Local Solution Dropout Prevention and Recovery Innovation Zones; setting forth purpose of Innovation in Education Act; defining Innovation in Education school; allowing incorporation of more than one of certain attributes into an Innovation in Education school's program design; setting forth certain requirements for Innovation in Education school; authorizing soliciting, accepting and expending gifts, donations and grants with certain limits; authorizing State Board of

Education designation of Innovation in Education school; requiring state board rule for implementation and authorizing emergency rule if necessary; requiring rule to include certain provisions pertaining to the application process, minimum contents of the application, and the process by which the state board will review performance and student success, reaffirm or reconsider designation, and identify exemplary schools; allowing state board to provide for West Virginia Department of Education to independently assess applicants; setting forth requirements applicable to the state board when making a designation determination; setting forth items that Innovation in Education Plan must include; requiring operational agreement between school principal and county board of education; specifying minimum contents of operational agreement; requiring performance report on and evaluations of Innovation in Education school; allowing county superintendent to make certain recommendations to the county board and state board in the evaluation; allowing the state board to take certain actions based on the county superintendent's evaluation and a data analysis conducted by the Department one of which is the termination of the Innovation in Education designation in certain instances; and creating Innovation in Education Fund.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5B-14; and that said code be amended by adding thereto a new article, designated §18-5E-1, §18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5, §18-5E-6 and §18-5E-7, all to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-14. Termination of funding for School Innovation Zones and Local Solution Dropout Prevention and Recovery Innovation Zones.

1 No school, group of schools, district, subdivision or
2 department of a group of schools, or a subdivision or department
3 of a school designated or to be designated as an Innovation Zone
4 or Local Solution Dropout Prevention and Recovery Innovation
5 Zone shall receive any funding pursuant to this article after June
6 30, 2016.

ARTICLE 5E. INNOVATION IN EDUCATION ACT.

§18-5E-1. Purpose.

1 The purpose of this act is to encourage and incentivize
2 public schools to improve overall student outcomes through the
3 implementation of key innovational priorities for improving
4 education in the following areas:

- 5 (1) Science, technology, engineering and math (STEM);
- 6 (2) Community school partnership;
- 7 (3) Entrepreneurship;
- 8 (4) Career pathways; and
- 9 (5) The arts.

10 This act provides a mechanism for public schools designated
11 by the state board as Innovation in Education schools to redesign
12 their curriculum, instructional delivery and instructional
13 strategies, to enhance student engagement, to develop
14 meaningful community partnerships and to operate under greater
15 flexibility to increase student achievement.

§18-5E-2. Innovation in Education school defined.

- 1 (a) An Innovation in Education school is a public school in
2 this state that applies to and is designated by the state board in

3 accordance with this article as an Innovation in Education
4 School with a principal focus in one of the following areas:

5 (1) Science, technology, engineering and math (STEM);

6 (2) Community school partnership;

7 (3) Entrepreneurship;

8 (4) Career pathways; and

9 (5) The arts.

10 (b) Nothing in this article prohibits an Innovation in
11 Education school from incorporating more than one of the
12 attributes of STEM education, community school partnerships,
13 entrepreneurship, career pathways or the arts into its program
14 design, notwithstanding the primary designation under which it
15 applies or is subsequently designated.

16 (c) An Innovation in Education school:

17 (1) Shall provide a program of public education that includes
18 one or more of the grade levels prekindergarten to grade twelve,
19 including any associated post-secondary dual credit, advanced
20 placement and industry or workforce credential programs;

21 (2) Shall design its educational program to meet or exceed
22 the student performance standards required under section five,
23 article two-e of this chapter and is subject to all student
24 assessment, accreditation and federal accountability
25 requirements applicable to other public schools in this state.
26 However, nothing shall prohibit an Innovation in Education
27 school from establishing additional student assessment measures
28 or implementing competency-based course completion strategies
29 that go beyond state requirements;

30 (3) Shall operate according to an Innovation in Education
31 plan developed by the school's principal and faculty with input
32 from its local school improvement council, the county board, the
33 county superintendent and, if the school is a high school, the
34 students of the school;

35 (4) Shall, if designated by the state board as an Innovation in
36 Education Demonstration School, host visits and tours of its
37 facility and programs to provide information and an opportunity
38 to observe any successful innovations which may be replicated
39 in other schools. The school may require the payment of a fee
40 to off-set the cost of hosting such visits and tours; and

41 (5) May solicit and accept gifts, donations or grants for
42 school purposes from public or private sources in any manner
43 that is available to a local school district and expend or use such
44 gifts, donations or grants in accordance with the conditions
45 prescribed by the donor except that a gift, donation or grant may
46 not be accepted if subject to a condition that is contrary to any
47 provision of law or term of the school's Innovation in Education
48 plan. Any monies received by an Innovation in Education
49 school from any source remaining in the school's accounts at the
50 end of a fiscal year shall remain in its accounts for use during
51 subsequent fiscal years.

**§18-5E-3. Application for Innovation in Education school
designations; application review and approval; state
board rule.**

1 (a) The state board may designate a school as a STEM,
2 community school partnership, entrepreneurship, career
3 pathways or the arts Innovation in Education school in
4 accordance with this article and shall promulgate a rule,
5 including an emergency rule if necessary, in accordance with
6 article three-b, chapter twenty-nine-a of this code to implement

7 the provisions of this article. The rule shall include at least the
8 following:

9 (1) A process for a school to apply for designation as an
10 Innovation in Education school in STEM, community school
11 partnership, entrepreneurship, career pathways or the arts;

12 (2) Clear and concise application evaluation factors in rubric
13 form, including standards for the state board to review and make
14 a determination of whether to designate an applicant as an
15 Innovation in Education school;

16 (3) The manner, time and process for application
17 submission;

18 (4) The form and necessary contents of the application,
19 including but not limited to, the following:

20 (A) The proposed mission and vision of the school as it
21 pertains to becoming an Innovation in Education school,
22 including identification of the designation it seeks to obtain as a
23 primary focus on which may include: (i) Science, technology,
24 engineering and math (STEM); (ii) community school
25 partnership; (iii) entrepreneurship; (iv) career pathways; or (v)
26 the arts;

27 (B) An executive summary;

28 (C) The school's proposed academic program, including a
29 description of the school's instructional design, learning
30 environment, class structure, curriculum overview, teaching
31 methods, research basis and other elements required in the
32 school's Innovation in Education plan pursuant to section four
33 of this article;

34 (D) A clear articulation of the areas of autonomy and
35 flexibility in curriculum, budget, school schedule and calendar,

36 professional development, and staffing policies and procedures
37 which would require a waiver of policy or code; and

38 (E) The school's Innovation in Education plan; and

39 (7) Following the initial evaluation of Innovation in
40 Education schools as provided in section six of this article, the
41 process by which the state board will periodically review the
42 performance and student success of Innovation in Education
43 schools, reaffirm or reconsider the designation of a school, and
44 identify exemplary schools to serve as demonstration sites.

45 (b) The state board may provide for the West Virginia
46 Department of Education to independently assess applicants
47 based on the evaluation factors rubric and provide the state board
48 with this assessment. The state board shall consider the
49 evaluation factors in rubric form in making any Innovation in
50 Education school designation determination. In making a
51 designation determination, the state board shall:

52 (1) Grant a designation only to applicants who have
53 demonstrated competence in each element of the evaluation
54 factors and who have demonstrated their capacity to operate an
55 Innovation in Education school that will increase student
56 achievement;

57 (2) Base determinations on documented evidence collected
58 through the application review process;

59 (3) If appropriate, include in a designation determination
60 reasonable conditions that the applicant must meet before
61 commencing operation under the designation, including
62 resubmission of the application;

63 (4) Decline weak or inadequate applications and clearly state
64 its reasons for denial;

65 (5) Make and announce all designations of Innovation in
66 Education schools in a meeting open to the public and clearly
67 state in a resolution the reasons for the decisions. A copy of the
68 resolution shall be submitted to Legislative Oversight
69 Commission on Education Accountability; and

70 (6) Convey its determination on an application in writing to
71 the applicant.

72 (c) An Innovation in Education school may not commence
73 or continue operations without a signed operational agreement
74 as provided in section five of this article between the county
75 board and the school principal.

**§18-5E-4. Innovation in Education Plan; required contents;
measurable annual performance goals; uses.**

1 The Innovation in Education Plan for a STEM, community
2 school partnership, entrepreneurship, career pathways or the arts
3 Innovation in Education school shall include each of the
4 following:

5 (1) A description of how the school will address the overall
6 climate and culture of the school as a high performing learning
7 environment in which every child may succeed to the best of his
8 or her ability, including but not limited to measurable annual
9 goals to:

10 (A) Increase overall student achievement;

11 (B) Address dropout prevention; and

12 (C) Transform school culture;

13 (2) A curriculum plan that includes a detailed description of
14 the curriculum and related programs for the proposed school and

15 how the curriculum is expected to improve school performance
16 and student achievement;

17 (3) Measurable annual performance goals to assess the
18 school's performance and student success across multiple
19 measures and that will serve as the basis evaluating the
20 Innovation in Education school, including but not limited to,
21 goals relating to the following:

22 (A) Student attendance;

23 (B) Student safety and discipline;

24 (C) Student promotion and graduation and dropout rates;

25 (D) Student performance on the state-wide summative
26 assessment and other assessment required by the state board;

27 (E) Progress in areas of academic underperformance;

28 (F) Progress among subgroups of students, including, but not
29 limited to, low-income students and students receiving special
30 education;

31 (G) With respect to high school, postsecondary readiness,
32 including the percentage of graduates submitting applications to
33 postsecondary institutions, and postsecondary enrollment or
34 employment; and

35 (H) Parent and community engagement; and

36 (4) A budget plan that includes a detailed description of how
37 funds will be used in the proposed school to support school
38 performance and student achievement that is or may be different
39 than how funds are used in other public schools in the district;

40 (5) A school schedule plan that includes a detailed
41 description of the ways the program or calendar of the proposed
42 school may be enhanced or expanded;

43 (6) A staffing plan and professional development plan that
44 includes a detailed description of how the school may provide
45 professional development to its administrators, teachers and
46 other staff;

47 (7) A policies and procedures plan that includes:

48 (A) A detailed description of the unique operational policies
49 and procedures to be used by the school seeking designation and
50 how the procedures will support school performance and student
51 achievement; and

52 (B) Any exemptions to rule, policy or statute the school is
53 seeking: *Provided*, That a school may not request an exemption
54 nor may an exemption be granted from any assessment program
55 required by the state board or any provision of law or policy
56 required by the Every Student Succeeds Act of 2015 or other
57 federal law;

58 (8) The school's plan, if any, for using additional internal
59 and external metrics of the performance agreed to by the school
60 and the county board to measure the school's performance and
61 student success;

62 (9) Opportunities and expectations for parent involvement;
63 and

64 (8) Any other information the state board requires.

**§18-5E-5. Operational agreement between Innovation in
Education school and county board.**

1 An Innovation in Education school designated by the state
2 board may not commence or continue operations without a
3 signed operational agreement between the county board and the
4 school principal which sets forth at least the following:

5 (1) Any conditions which must be met before the Innovation
6 in Education school may begin full operations. If necessary, the
7 full implementation of an Innovation in Education school may
8 be postponed for up to one school year following its initial
9 designation to enable all conditions necessary for full operation
10 to be met;

11 (2) Any material term of the school's Innovation in
12 Education Plan concerning curriculum, budget, school schedule,
13 calendar, staffing, professional development and policies and
14 procedures to be adhered to by both the county board and the
15 school;

16 (3) An agreed-upon process for amending or refining the
17 school's Innovation in Education Plan to improve the school's
18 performance and student success, including but not limited to,
19 the request for additional waivers of rules, policies,
20 interpretations and statutes through the local school
21 improvement council process;

22 (4) The annual performance targets set by the county board
23 and the school to assess and evaluate the school's progress in
24 achieving its annual measurable goals as set forth in its
25 Innovation in Education Plan, including any additional internal
26 and external metrics of performance agreed to by the school and
27 the county board to measure the school's performance and
28 student success. The annual performance targets may be refined
29 or amended by mutual agreement of the county board and the
30 school after the school has been fully operational for one year
31 and has collected baseline performance data;

32 (5) The process and criteria that the county board will use to
33 annually monitor and evaluate the overall performance and
34 student success of the school, including a process to conduct
35 annual site visits;

36 (6) Any information needed by the county board from the
37 school for the purposes of accountability and reporting by the
38 school on the implementation of its mission as an Innovation in
39 Education school;

40 (7) The process the county board will use to notify the
41 school of any deficiencies and the process by which the school
42 may submit an improvement plan; and

43 (8) In the event that an Innovation in Education school's
44 performance appears unsatisfactory, specific provisions
45 addressing the parameters under which the county board may
46 promptly notify the school in writing of perceived problems and
47 provide reasonable opportunity for the school to remedy the
48 problems, or if not remedied, may intervene or recommend to
49 the state board that it place the school's designation on
50 probationary status, require a remedial action plan and
51 potentially revoke the designation. At a minimum, these
52 parameters shall include the circumstances of poor fiscal
53 management and a lack of academic progress.

§18-5E-6. Evaluation of Innovation in Education designated schools.

1 (a) During its third full year of operation the county
2 superintendent shall issue a performance report on the
3 Innovation in Education school. The performance report shall
4 summarize the school's performance record to date based on the
5 data collected under school's Innovation in Education Plan and
6 operational agreement and shall provide notice of any
7 weaknesses or concerns perceived by the superintendent
8 concerning the school that may jeopardize its designation if not
9 timely rectified. The school and the superintendent shall
10 mutually agree to a reasonable time period for the school to
11 respond to the performance report and submit any corrections to
12 the report.

13 (b) After its fourth full year of operation, and periodically
14 thereafter as may be provided by the state board, the Innovation
15 in Education school shall be evaluated by the county
16 superintendent. The county superintendent shall submit the
17 evaluation to the county board and the state board. The
18 evaluation shall determine whether the school has met the annual
19 goals outlined in its Innovation in Education Plan and
20 operational agreement and assess the implementation of the
21 Innovation in Education plan at the school.

22 (c) The county superintendent may recommend to the county
23 board and state board in the evaluation:

24 (1) To amend or suspend one or more components of the
25 Innovation in Education Plan and operational agreement if the
26 county superintendent determines an amendment or suspension
27 is necessary to improve the performance and student success of
28 the school;

29 (2) To amend or suspend one or more components of the
30 Innovation in Education Plan and operational agreement if the
31 county superintendent determines an amendment or suspension
32 is necessary because of subsequent changes in the district that
33 affect one or more components of such Innovation in Education
34 Plan;

35 (3) To support continued operation of the Innovation in
36 Education school in accordance with its Innovation in Education
37 Plan and operational agreement; or

38 (4) To recommend to the state board that the school be
39 designated as an Innovation in Education demonstration school
40 based on its exemplary performance and student success.

41 (d) Based on the county superintendent's evaluation and a
42 data analysis conducted by the West Virginia Department of
43 Education the state board may:

- 44 (1) Amend or recommend an amendment to one or more
45 components of the school's Innovation in Education Plan and
46 operational agreement;
- 47 (2) Suspend one or more components of the school's
48 Innovation in Education Plan and operational agreement;
- 49 (3) Affirm continuation of the Innovation in Education
50 school under its current Innovation in Education Plan and
51 operational agreement; or
- 52 (4) If it is determined that the school has substantially failed
53 to meet the goals outlined in its Innovation in Education Plan
54 and operational agreement, terminate the Innovation in
55 Education designation of the school.
- 56 (e) An amendment, suspension or termination may not take
57 place before the completion of the school year.

§18-5E-7. Innovation in education fund.

1 There is hereby created in the State Treasury a special
2 revenue fund to be known as the "Innovation in Education
3 Fund." The fund shall consist of all moneys received from
4 whatever source to further the purpose of this article. The fund
5 shall be administered by the state board solely for the purposes
6 of this article, including providing grants and other financial
7 assistance to innovation in education designated schools to
8 implement and carry out such schools innovation in education
9 plans. Any moneys remaining in the fund at the close of a fiscal
10 year shall be carried forward for use in the next fiscal year. Fund
11 balances shall be invested with the state's consolidated
12 investment fund and any and all interest earnings on these
13 investments shall be used solely for the purposes that moneys
14 deposited in the fund may be used pursuant to this article.

CHAPTER 93

**(Com. Sub. for H. B. 4175 - By Delegates Kurcaba,
Faircloth, Statler, Espinosa, McGeehan, Azinger,
Upson, Kelly and Trecost)**

[Passed February 23, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 3, 2016.]

AN ACT to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating generally to home schooling; clarifying that a child who is exempt from compulsory school attendance is not subject to prosecution for failure to attend school and is not a status offender; requiring superintendent to show probable cause when seeking order to deny home instruction; modifying who is to provide notice of intent to provide home instruction; changing notice of intent frequency from annually to a one time notification; removing requirement that notice of intent include the grade level of child; requiring notice of intent include certain assurances; requiring notice upon termination of home instruction for a child who is of compulsory attendance age or change in county of residence; removing requirement for notice of intent two weeks prior to withdrawal from school; modifying requirement that the person providing home instruction have a high school diploma or equivalent; removing requirement that person providing home instruction outline plan of instruction for ensuing year; replacing specific annual deadline for obtaining an academic assessment of the child with the requirement that the assessment be obtained annually; removing requirement to submit results of the assessment to superintendent annually; removing requirement for parent or legal guardian to pay assessment cost when given outside public school; allowing use of a nationally normed standardized achievement test normed not more than ten years from the date of administration; removing requirement that the nationally normed

standardized achievement test be administered under standardized conditions; requiring nationally normed standardized achievement test be administered by a person qualified in accordance with the test's published guidelines; permitting parent or legal guardian to administer nationally normed standardized achievement test; modifying criteria for determining acceptable progress under the nationally normed standardized achievement test academic assessment option; removing requirement to provide written narrative of portfolio assessment to superintendent annually; removing requirement to provide certification number of the certified teacher providing written narrative; removing requirement that criteria for acceptable progress be mutually agreed upon by certain parties under the alternative academic assessment of proficiency academic assessment option; requiring parent or legal guardian to keep academic assessments for three years; making requirement for county board to notify parent or legal guardian of services available to assist in the assessment of the child's eligibility for special education services applicable only upon request; and requiring parent or legal guardian to submit to superintendent results of required assessments at grade levels three, five, eight and eleven by certain date.

Be it enacted by the Legislature of West Virginia:

That §18-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Compulsory school attendance; exemptions.

- 1 (a) Exemption from the requirements of compulsory public
- 2 school attendance established in section one-a of this article shall
- 3 be made on behalf of any child for the causes or conditions set
- 4 forth in this section. Each cause or condition set forth in this
- 5 section is subject to confirmation by the attendance authority of
- 6 the county. A child who is exempt from compulsory school

7 attendance under this section is not subject to prosecution under
8 section two of this article, nor is such a child a status offender as
9 defined by section two hundred two, article one, chapter
10 forty-nine of this code.

11 (b) A child is exempt from the compulsory school attendance
12 requirement set forth in section one-a of this article if the
13 requirements of this subsection, relating to instruction in a
14 private, parochial or other approved school, are met. The
15 instruction shall be in a school approved by the county board and
16 for a time equal to the instructional term set forth in section
17 forty-five, article five of this chapter. In all private, parochial or
18 other schools approved pursuant to this subsection it is the duty
19 of the principal or other person in control, upon the request of
20 the county superintendent, to furnish to the county board such
21 information and records as may be required with respect to
22 attendance, instruction and progress of students enrolled.

23 (c) A child is exempt from the compulsory school attendance
24 requirement set forth in section one-a of this article if the
25 requirements of either subdivision (1) or subdivision (2) of this
26 subsection, both relating to home instruction, are met.

27 (1) The instruction shall be in the home of the child or
28 children or at some other place approved by the county board
29 and for a time equal to the instructional term set forth in section
30 forty-five, article five of this chapter. If the request for home
31 instruction is denied by the county board, good and reasonable
32 justification for the denial shall be furnished in writing to the
33 applicant by the county board. The instruction shall be conducted
34 by a person or persons who, in the judgment of the county
35 superintendent and county board, are qualified to give instruction
36 in subjects required to be taught in public elementary schools in
37 the state. The person or persons providing the instruction, upon
38 request of the county superintendent, shall furnish to the county
39 board information and records as may be required periodically

40 with respect to attendance, instruction and progress of students
41 receiving the instruction. The state board shall develop
42 guidelines for the home schooling of special education students
43 including alternative assessment measures to assure that
44 satisfactory academic progress is achieved.

45 (2) The child meets the requirements set forth in this
46 subdivision: *Provided*, That the county superintendent may, after
47 a showing of probable cause, seek from the circuit court of the
48 county an order denying home instruction of the child. The order
49 may be granted upon a showing of clear and convincing
50 evidence that the child will suffer neglect in his or her education
51 or that there are other compelling reasons to deny home
52 instruction.

53 (A) Upon commencing home instruction under this section
54 the parent of a child receiving home instruction shall present to
55 the county superintendent or county board a notice of intent to
56 provide home instruction that includes the name, address, and
57 age of any child of compulsory school age to be instructed and
58 assurance that the child shall receive instruction in reading,
59 language, mathematics, science and social studies and that the
60 child shall be assessed annually in accordance with this
61 subdivision. The person providing home instruction shall notify
62 the county superintendent upon termination of home instruction
63 for a child who is of compulsory attendance age. Upon
64 establishing residence in a new county, the person providing
65 home instruction shall notify the previous county superintendent
66 and submit a new notice of intent to the superintendent of the
67 new county of residence: *Provided*, That if a child is enrolled in
68 a public school, notice of intent to provide home instruction shall
69 be given on or before the date home instruction is to begin.

70 (B) The person or persons providing home instruction shall
71 submit satisfactory evidence of a high school diploma or
72 equivalent, or a post-secondary degree or certificate from a

73 regionally accredited institution or from an institution of higher
74 education that has been authorized to confer a post-secondary
75 degree or certificate in West Virginia by the West Virginia
76 Council for Community and Technical College Education or by
77 the West Virginia Higher Education Policy Commission.

78 (C) Annually, the person or persons providing home
79 instruction shall obtain an academic assessment of the child for
80 the previous school year in one of the following ways:

81 (i) The child receiving home instruction takes a nationally
82 normed standardized achievement test published or normed not
83 more than ten years from the date of administration and
84 administered under the conditions as set forth by the published
85 instructions of the selected test and by a person qualified in
86 accordance with the test's published guidelines in the subjects of
87 reading, language, mathematics, science and social studies. The
88 child is considered to have made acceptable progress when the
89 mean of the child's test results in the required subject areas for
90 any single year is within or above the fourth stanine or, if below
91 the fourth stanine, shows improvement from the previous year's
92 results;

93 (ii) The child participates in the testing program currently in
94 use in the state's public schools. The test shall be administered
95 to the child at a public school in the county of residence.
96 Determination of acceptable progress shall be based on current
97 guidelines of the state testing program;

98 (iii) A portfolio of samples of the child's work is reviewed
99 by a certified teacher who determines whether the child's
100 academic progress for the year is in accordance with the child's
101 abilities. The teacher shall provide a written narrative about the
102 child's progress in the areas of reading, language, mathematics,
103 science and social studies and shall note any areas which, in the
104 professional opinion of the reviewer, show need for

105 improvement or remediation. If the narrative indicates that the
106 child's academic progress for the year is in accordance with the
107 child's abilities, the child is considered to have made acceptable
108 progress; or

109 (iv) The child completes an alternative academic assessment
110 of proficiency that is mutually agreed upon by the parent or legal
111 guardian and the county superintendent.

112 (D) A parent or legal guardian shall maintain copies of each
113 student's Academic Assessment for three years. When the
114 annual assessment fails to show acceptable progress, the person
115 or persons providing home instruction shall initiate a remedial
116 program to foster acceptable progress. The county board upon
117 request shall notify the parents or legal guardian of the child, in
118 writing, of the services available to assist in the assessment of
119 the child's eligibility for special education services.
120 Identification of a disability does not preclude the continuation
121 of home schooling. In the event that the child does not achieve
122 acceptable progress for a second consecutive year, the person or
123 persons providing instruction shall submit to the county
124 superintendent additional evidence that appropriate instruction
125 is being provided.

126 (E) The parent or legal guardian shall submit to the county
127 superintendent the results of the academic assessment of the
128 child at grade levels three, five, eight and eleven, as applicable,
129 by June 30 of the year in which the assessment was
130 administered.

131 (3) This subdivision applies to both home instruction
132 exemptions set forth in subdivisions (1) and (2) of this
133 subsection. The county superintendent or a designee shall offer
134 such assistance, including textbooks, other teaching materials
135 and available resources, all subject to availability, as may assist
136 the person or persons providing home instruction. Any child

137 receiving home instruction may upon approval of the county
138 board exercise the option to attend any class offered by the
139 county board as the person or persons providing home
140 instruction may consider appropriate subject to normal
141 registration and attendance requirements.

142 (d) A child is exempt from the compulsory school attendance
143 requirement set forth in section one-a of this article if the
144 requirements of this subsection, relating to physical or mental
145 incapacity, are met. Physical or mental incapacity consists of
146 incapacity for school attendance and the performance of school
147 work. In all cases of prolonged absence from school due to
148 incapacity of the child to attend, the written statement of a
149 licensed physician or authorized school nurse is required.
150 Incapacity shall be narrowly defined and in any case the
151 provisions of this article may not allow for the exclusion of the
152 mentally, physically, emotionally or behaviorally handicapped
153 child otherwise entitled to a free appropriate education.

154 (e) A child is exempt from the compulsory school attendance
155 requirement set forth in section one-a of this article if conditions
156 rendering school attendance impossible or hazardous to the life,
157 health or safety of the child exist.

158 (f) A child is exempt from the compulsory school attendance
159 requirement set forth in section one-a of this article upon regular
160 graduation from a standard senior high school or alternate
161 secondary program completion as determined by the state board.

162 (g) A child is exempt from the compulsory school attendance
163 requirement set forth in section one-a of this article if the child
164 is granted a work permit pursuant to the subsection. After due
165 investigation the county superintendent may grant work permits
166 to youths under the termination age designated in section one-a
167 of this article, subject to state and federal labor laws and
168 regulations. A work permit may not be granted on behalf of any
169 youth who has not completed the eighth grade of school.

170 (h) A child is exempt from the compulsory school attendance
171 requirement set forth in section one-a of this article if a serious
172 illness or death in the immediate family of the child has
173 occurred. It is expected that the county attendance director will
174 ascertain the facts in all cases of such absences about which
175 information is inadequate and report the facts to the county
176 superintendent.

177 (i) A child is exempt from the compulsory school attendance
178 requirement set forth in section one-a of this article if the
179 requirements of this subsection, relating to destitution in the
180 home, are met. Exemption based on a condition of extreme
181 destitution in the home may be granted only upon the written
182 recommendation of the county attendance director to the county
183 superintendent following careful investigation of the case. A
184 copy of the report confirming the condition and school
185 exemption shall be placed with the county director of public
186 assistance. This enactment contemplates every reasonable effort
187 that may properly be taken on the part of both school and public
188 assistance authorities for the relief of home conditions officially
189 recognized as being so destitute as to deprive children of the
190 privilege of school attendance. Exemption for this cause is not
191 allowed when the destitution is relieved through public or private
192 means.

193 (j) A child is exempt from the compulsory school attendance
194 requirement set forth in section one-a of this article if the
195 requirements of this subsection, relating to church ordinances
196 and observances of regular church ordinances, are met. The
197 county board may approve exemption for religious instruction
198 upon written request of the person having legal or actual charge
199 of a child or children. This exemption is subject to the rules
200 prescribed by the county superintendent and approved by the
201 county board.

202 (k) A child is exempt from the compulsory school attendance
203 requirement set forth in section one-a of this article if the

204 requirements of this subsection, relating to alternative private,
205 parochial, church or religious school instruction, are met.
206 Exemption shall be made for any child attending any private
207 school, parochial school, church school, school operated by a
208 religious order or other nonpublic school which elects to comply
209 with the provisions of article twenty-eight of this chapter.

210 (l) Completion of the eighth grade does not exempt any child
211 under the termination age designated in section one-a of this
212 article from the compulsory attendance provision of this article.

CHAPTER 94

**(H. B. 4461 - By Delegates Arvon, Duke, Espinosa,
Howell, Hill, Blackwell and Border)**

[Passed on March 11, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to School Building Authority School Major Improvement Fund eligibility; removing requirement for certain annual amounts to be expended by county board for facility maintenance; and requiring county board to provide facility maintenance expenditure data for review to assist authority in project determinations.

Be it enacted by the Legislature of West Virginia:

That §18-9D-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

1 (a) It is the intent of the Legislature to empower the School
2 Building Authority to facilitate and provide state funds and to
3 administer all federal funds provided for the construction and
4 major improvement of school facilities so as to meet the
5 educational needs of the people of this state in an efficient and
6 economical manner. The authority shall make funding
7 determinations in accordance with the provisions of this article
8 and shall assess existing school facilities and each facility's
9 school major improvement plan in relation to the needs of the
10 individual student, the general school population, the
11 communities served by the facilities and facility needs statewide.

12 (b) An amount that is not more than three percent of the sum
13 of moneys that are determined by the authority to be available
14 for distribution during the then current fiscal year from:

15 (1) Moneys paid into the School Building Capital
16 Improvements Fund pursuant to section ten, article nine-a of this
17 chapter;

18 (2) The issuance of revenue bonds for which moneys in the
19 School Building Debt Service Fund or the Excess Lottery School
20 Building Debt Service Fund are pledged as security;

21 (3) Moneys paid into the School Construction Fund pursuant
22 to section six of this article; and

23 (4) Any other moneys received by the authority, except
24 moneys paid into the School Major Improvement Fund pursuant
25 to section six of this article and moneys deposited into the
26 School Access Safety Fund pursuant to section five, article
27 nine-f of this chapter, may be allocated and may be expended by
28 the authority for projects authorized in accordance with the
29 provisions of section sixteen of this article that service the
30 educational community statewide or, upon application by the
31 state board, for educational programs that are under the
32 jurisdiction of the state board. In addition, upon application by
33 the state board or the administrative council of an area
34 vocational educational center established pursuant to article
35 two-b of this chapter, the authority may allocate and expend
36 under this subsection moneys for school major improvement
37 projects authorized in accordance with the provisions of section
38 sixteen of this article proposed by the state board or an
39 administrative council for school facilities under the direct
40 supervision of the state board or an administrative council,
41 respectively. Furthermore, upon application by a county board,
42 the authority may allocate and expend under this subsection
43 moneys for school major improvement projects for vocational
44 programs at comprehensive high schools, vocational programs
45 at comprehensive middle schools, vocational schools
46 cooperating with community and technical college programs, or
47 any combination of the three. Each county board is encouraged
48 to cooperate with community and technical colleges in the use of
49 existing or development of new vocational technical facilities.
50 All projects eligible for funds from this subsection shall be
51 submitted directly to the authority which shall be solely
52 responsible for the project's evaluation, subject to the following:

53 (A) The authority may not expend any moneys for a school
54 major improvement project proposed by the state board or the
55 administrative council of an area vocational educational center
56 unless the state board or an administrative council has submitted
57 a ten-year facilities plan; and

58 (B) The authority shall, before allocating any moneys to the
59 state board or the administrative council of an area vocational
60 educational center for a school improvement project, consider all
61 other funding sources available for the project.

62 (c) An amount that is not more than two percent of the
63 moneys that are determined by the authority to be available for
64 distribution during the current fiscal year from:

65 (1) Moneys paid into the School Building Capital
66 Improvements Fund pursuant to section ten, article nine-a of this
67 chapter;

68 (2) The issuance of revenue bonds for which moneys in the
69 School Building Debt Service Fund or the Excess Lottery School
70 Building Debt Service Fund are pledged as security;

71 (3) Moneys paid into the School Construction Fund pursuant
72 to section six of this article; and

73 (4) Any other moneys received by the authority, except
74 moneys deposited into the School Major Improvement Fund and
75 moneys deposited into the School Access Safety Fund pursuant
76 to section five, article nine-f of this chapter, shall be set aside by
77 the authority as an emergency fund to be distributed in
78 accordance with the guidelines adopted by the authority.

79 (d) An amount that is not more than five percent of the
80 moneys that are determined by the authority to be available for
81 distribution during the current fiscal year from:

82 (1) Moneys paid into the School Building Capital
83 Improvements Fund pursuant to section ten, article nine-a of this
84 chapter;

85 (2) The issuance of revenue bonds for which moneys in the
86 School Building Debt Service Fund or the Excess Lottery School
87 Building Debt Service Fund are pledged as security;

88 (3) Moneys paid into the School Construction Fund pursuant
89 to section six of this article; and

90 (4) Any other moneys received by the authority, except
91 moneys deposited into the School Major Improvement Fund and
92 moneys deposited into the School Access Safety Fund pursuant
93 to section five, article nine-f of this chapter, may be reserved by
94 the authority for multiuse vocational-technical education
95 facilities projects that may include post-secondary programs as
96 a first priority use. The authority may allocate and expend under
97 this subsection moneys for any purposes authorized in this article
98 on multiuse vocational-technical education facilities projects,
99 including equipment and equipment updates at the facilities,
100 authorized in accordance with the provisions of section sixteen
101 of this article. If the projects approved under this subsection do
102 not require the full amount of moneys reserved, moneys above
103 the amount required may be allocated and expended in
104 accordance with other provisions of this article. A county board,
105 the state board, an administrative council or the joint
106 administrative board of a vocational-technical education facility
107 which includes post-secondary programs may propose projects
108 for facilities or equipment, or both, which are under the direct
109 supervision of the respective body: *Provided*, That the authority
110 shall, before allocating any moneys for a project under this
111 subsection, consider all other funding sources available for the
112 project.

113 (e) The remaining moneys determined by the authority to be
114 available for distribution during the then current fiscal year
115 from:

116 (1) Moneys paid into the School Building Capital
117 Improvements Fund pursuant to section ten, article nine-a of this
118 chapter;

119 (2) The issuance of revenue bonds for which moneys in the
120 School Building Debt Service Fund or the Excess Lottery School
121 Building Debt Service Fund are pledged as security;

122 (3) Moneys paid into the School Construction Fund pursuant
123 to section six of this article; and

124 (4) Any other moneys received by the authority, except
125 moneys deposited into the School Major Improvement Fund and
126 moneys deposited into the School Access Safety Fund pursuant
127 to section five, article nine-f of this chapter, shall be allocated
128 and expended on the basis of need and efficient use of resources
129 for projects funded in accordance with the provisions of section
130 sixteen of this article.

131 (f) If a county board proposes to finance a project that is
132 authorized in accordance with section sixteen of this article
133 through a lease with an option to purchase leased premises upon
134 the expiration of the total lease period pursuant to an investment
135 contract, the authority may not allocate moneys to the county
136 board in connection with the project: *Provided*, That the
137 authority may transfer moneys to the state board which, with the
138 authority, shall lend the amount transferred to the county board
139 to be used only for a one-time payment due at the beginning of
140 the lease term, made for the purpose of reducing annual lease
141 payments under the investment contract, subject to the following
142 conditions:

143 (1) The loan shall be secured in the manner required by the
144 authority, in consultation with the state board, and shall be
145 repaid in a period and bear interest at a rate as determined by the
146 state board and the authority and shall have any terms and
147 conditions that are required by the authority, all of which shall
148 be set forth in a loan agreement among the authority, the state
149 board and the county board;

150 (2) The loan agreement shall provide for the state board and
151 the authority to defer the payment of principal and interest upon
152 any loan made to the county board during the term of the
153 investment contract, and annual renewals of the investment
154 contract, among the state board, the authority, the county board
155 and a lessor, subject to the following:

156 (A) In the event a county board which has received a loan
157 from the authority for a one-time payment at the beginning of the
158 lease term does not renew the lease annually until performance
159 of the investment contract in its entirety is completed, the county
160 board is in default and the principal of the loan, together with all
161 unpaid interest accrued to the date of the default, shall, at the
162 option of the authority, in consultation with the state board,
163 become due and payable immediately or subject to renegotiation
164 among the state board, the authority and the county board;

165 (B) If a county board renews the lease annually through the
166 performance of the investment contract in its entirety, the county
167 board shall exercise its option to purchase the leased premises;

168 (C) The failure of the county board to make a scheduled
169 payment pursuant to the investment contract constitutes an event
170 of default under the loan agreement;

171 (D) Upon a default by a county board, the principal of the
172 loan, together with all unpaid interest accrued to the date of the
173 default, shall, at the option of the authority, in consultation with
174 the state board, become due and payable immediately or subject
175 to renegotiation among the state board, the authority and the
176 county board; and

177 (E) If the loan becomes due and payable immediately, the
178 authority, in consultation with the state board, shall use all
179 means available under the loan agreement and law to collect the
180 outstanding principal balance of the loan, together with all

181 unpaid interest accrued to the date of payment of the outstanding
182 principal balance; and

183 (3) The loan agreement shall provide for the state board and
184 the authority to forgive all principal and interest of the loan upon
185 the county board purchasing the leased premises pursuant to the
186 investment contract and performance of the investment contract
187 in its entirety.

188 (g) To encourage county boards to proceed promptly with
189 facilities planning and to prepare for the expenditure of any state
190 moneys derived from the sources described in this section, any
191 county board or other entity to whom moneys are allocated by
192 the authority that fails to expend the money within three years of
193 the allocation shall forfeit the allocation and thereafter is
194 ineligible for further allocations pursuant to this section until it
195 is ready to expend funds in accordance with an approved
196 facilities plan: *Provided*, That the authority may authorize an
197 extension beyond the three-year forfeiture period not to exceed
198 an additional two years. Any amount forfeited shall be added to
199 the total funds available in the School Construction Fund of the
200 authority for future allocation and distribution. Funds may not be
201 distributed for any project under this article unless the
202 responsible entity has a facilities plan approved by the state
203 board and the School Building Authority and is prepared to
204 commence expenditure of the funds during the fiscal year in
205 which the moneys are distributed.

206 (h) The remaining moneys that are determined by the
207 authority to be available for distribution during the then current
208 fiscal year from moneys paid into the School Major
209 Improvement Fund pursuant to section six of this article shall be
210 allocated and distributed on the basis of need and efficient use of
211 resources for projects authorized in accordance with the
212 provisions of section sixteen of this article, subject to the
213 following:

214 (1) The moneys may not be distributed for any project under
215 this section unless the responsible entity has a facilities plan
216 approved by the state board and the authority and is to
217 commence expenditures of the funds during the fiscal year in
218 which the moneys are distributed;

219 (2) Any moneys allocated to a project and not distributed for
220 that project shall be deposited in an account to the credit of the
221 project, the principal amount to remain to the credit of and
222 available to the project for a period of two years; and

223 (3) Any moneys which are unexpended after a two-year
224 period shall be redistributed on the basis of need from the School
225 Major Improvement Fund in that fiscal year.

226 (i) Local matching funds may not be required under the
227 provisions of this section. However, this article does not negate
228 the responsibilities of the county boards to maintain school
229 facilities. Therefore, as a prerequisite for eligibility to receive an
230 allocation of school major improvement funds from the
231 authority, a county board must provide annual school facility
232 maintenance expenditure data to the authority which shall be
233 jointly reviewed by the authority and the state Department of
234 Education Office of School Facilities and Transportation to
235 assist the authority in its determination of the most meritorious
236 projects to be funded through the School Major Improvement
237 Fund. The state board shall promulgate rules relating to county
238 boards' school facility maintenance budgets, including items
239 which shall be included in these budgets.

240 (j) Any county board may use moneys provided by the
241 authority under this article in conjunction with local funds
242 derived from bonding, special levy or other sources. Distribution
243 to a county board, or to the state board or the administrative
244 council of an area vocational educational center pursuant to
245 subsection (b) of this section, may be in a lump sum or in

246 accordance with a schedule of payments adopted by the authority
247 pursuant to guidelines adopted by the authority.

248 (k) Funds in the School Construction Fund shall first be
249 transferred and expended as follows:

250 (1) Any funds deposited in the School Construction Fund
251 shall be expended first in accordance with an appropriation by
252 the Legislature.

253 (2) To the extent that funds are available in the School
254 Construction Fund in excess of that amount appropriated in any
255 fiscal year, the excess funds may be expended for projects
256 authorized in accordance with the provisions of section sixteen
257 of this article.

258 (l) It is the intent of the Legislature to encourage county
259 boards to explore and consider arrangements with other counties
260 that may facilitate the highest and best use of all available funds,
261 which may result in improved transportation arrangements for
262 students or which otherwise may create efficiencies for county
263 boards and the students. In order to address the intent of the
264 Legislature contained in this subsection, the authority shall grant
265 preference to those projects which involve multicounty
266 arrangements as the authority shall determine reasonable and
267 proper.

268 (m) County boards shall submit all designs for construction
269 of new school buildings to the School Building Authority for
270 review and approval prior to preparation of final bid documents.
271 A vendor who has been debarred pursuant to the provisions of
272 sections thirty-three-a through thirty-three-f, inclusive, article
273 three, chapter five-a of this code may not bid on or be awarded
274 a contract under this section.

275 (n) The authority may elect to disburse funds for approved
276 construction projects over a period of more than one year subject
277 to the following:

278 (1) The authority may not approve the funding of a school
279 construction project over a period of more than three years;

280 (2) The authority may not approve the use of more than fifty
281 percent of the revenue available for distribution in any given
282 fiscal year for projects that are to be funded over a period of
283 more than one year; and

284 (3) In order to encourage local participation in funding
285 school construction projects, the authority may set aside limited
286 funding, not to exceed \$500,000, in reserve for one additional
287 year to provide a county the opportunity to complete financial
288 planning for a project prior to the allocation of construction
289 funds. Any funding shall be on a reserve basis and converted to
290 a part of the construction grant only after all project budget funds
291 have been secured and all county commitments have been
292 fulfilled. Failure of the county to solidify the project budget and
293 meet its obligations to the state within eighteen months of the
294 date the funding is set aside by the authority will result in
295 expiration of the reserve and the funds shall be reallocated by the
296 authority in the succeeding funding cycle.

CHAPTER 95

**(H. B. 4316 - By Delegates Espinosa, Ellington,
Duke, Perry, Moye, Upson, Wagner, Ambler,
Cooper, D. Evans and Kelly)**

[Passed March 11, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §18A-4-2a of the Code of West Virginia, 1931, as amended, relating to reimbursement of

certification fee for National Board for Professional Teaching Standards certification; and requiring the submission of satisfactory evidence to the West Virginia Department of Education for reimbursement.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

1 (a) The Legislature finds and declares that the rigorous
2 standards and processes for certification by the National Board
3 for Professional Teaching Standards helps to promote the quality
4 of teaching and learning. Therefore, classroom teachers in the
5 public schools of West Virginia should be encouraged to achieve
6 national board certification through a reimbursement of expenses
7 and an additional salary bonus which reflects their additional
8 certification, to be paid in accordance with the provisions of this
9 section.

10 (b) (1) Three thousand five hundred dollars shall be paid
11 annually to each classroom teacher who holds a valid certificate
12 issued by the National Board for Professional Teaching
13 Standards for the life of the certification, but in no event more
14 than ten years for any one certification.

15 (2) Three thousand five hundred dollars shall be paid
16 annually to each classroom teacher who holds a valid renewal
17 certificate issued by the National Board for Professional
18 Teaching Standards for the life of the renewal certificate, but in
19 no event more than ten years for any one renewal certificate.

20 (c) The payments:

21 (1) Shall be in addition to any amounts prescribed in the
22 applicable state minimum salary schedule;

23 (2) Shall be paid in equal monthly installments; and

24 (3) Shall be considered a part of the state minimum salaries
25 for teachers.

26 (d) For initial certification, one half of the certification fee
27 shall be paid for reimbursement once to each teacher who
28 submits satisfactory evidence to the West Virginia Department
29 of Education of enrollment in the program for the National
30 Board for Professional Teaching Standards certification as
31 verified by the National Board for Professional Teaching
32 Standards. The remaining one half of the certification fee shall
33 be paid for reimbursement once to each teacher who submits
34 satisfactory evidence to the West Virginia Department of
35 Education of completion of the National Board for Professional
36 Teaching Standards certification as verified by the National
37 Board for Professional Teaching Standards. Teachers who
38 achieve National Board for Professional Teaching Standards
39 certification may be reimbursed a maximum of \$600 for
40 expenses actually incurred while obtaining the National Board
41 for Professional Teaching Standards certification.

42 (e) For renewal certification, each teacher who completes the
43 National Board for Professional Teaching Standards certification
44 renewal process shall be reimbursed for the renewal certification
45 fee. Completion of the certification renewal process means the
46 submission of satisfactory evidence to the West Virginia
47 Department of Education of the successful renewal of the
48 ten-year certification as verified by the National Board for
49 Professional Teaching Standards.

50 (f) The state board shall establish selection criteria for the
51 teachers by the legislative rule required pursuant to subsection
52 (h) of this section.

53 (g) Funding for reimbursement of the initial certification fee
54 and expenses actually incurred while obtaining the National
55 Board for Professional Teaching Standards certifications and
56 funding for reimbursement of the renewal certification fee shall
57 be administered by the state Department of Education from an
58 appropriation established for that purpose by the Legislature. If
59 funds appropriated by the Legislature to accomplish the purposes
60 of this subsection are insufficient, the state department shall
61 prorate the reimbursements for expenses and shall request of the
62 Legislature, at its next regular session, funds sufficient to
63 accomplish the purposes of this subsection, including needed
64 retroactive payments.

65 (h) The state board shall promulgate legislative rules
66 pursuant to article three-b, chapter twenty-nine-a of this code to
67 implement the provisions of this section.

CHAPTER 96

**(Com. Sub. for H. B. 4013 - By Delegates Lane,
Anderson, Blair, Hamrick, Ambler, D. Evans, Border,
McCuskey, Householder, Ireland and Zatezalo)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §3-1-51; to amend and reenact §3-2-11 and §3-2-12 of said code; and to amend and reenact §17B-2-1 of said code, all relating to voting procedures; requiring a person desiring to vote on or after January 1, 2018 to present

valid document identifying the voter to one of the poll clerks; requiring poll clerk to inspect valid identifying document and confirm information with individual's voter registration record; requiring poll clerk to confirm, if document contains a photograph, that displayed image is truly an image of the person presenting the document; setting forth requirements for valid identifying document; identifying documents considered to be valid identifying document; permitting registered voter to be accompanied to polling place by adult known to registered voter for at least six months; permitting voter to vote if accompanying adult signs affidavit and presents valid identifying document; authorizing poll worker to allow voter known to the poll worker for at least six months to vote without presenting valid identifying document; permitting person desiring to vote to cast provisional ballot after executing affidavit; setting conditions for counting of provisional ballot; setting content of affidavit to be used for casting provisional ballot; permitting voter who votes in person at precinct polling place located in building which is part of state licensed care facility where voter is resident without presenting valid identifying document; requiring person entering voter information into centralized voter registration database to notate when a voter has not presented valid identifying documentation and executed a voter identity affidavit; making confidential voter's residential or mailing address if voter is participant in Address Confidentiality Program except for certain statutory and administrative purposes; directing Secretary of State to educate voters about requirement to present valid identifying document; requiring Secretary of State to develop a program to help ensure that all eligible voters obtain identification; directing members of receiving board to challenge the right of person requesting ballot to vote in election if person fails to present valid identifying documentation; modifying provisional ballot procedures; requiring clerk of county commission to send letter to voters who execute voter identity affidavit; setting deadline for letters to be mailed; specifying

contents of letter; directing clerk of county commission to cause letters returned as undeliverable to be referred to Secretary of State; directing clerk of county commission to forward to Secretary of State a list of persons who were mailed letters and notified clerk that they did not vote; requiring Secretary of State to investigate to determine whether fraudulent voting occurred; requiring Secretary of State to submit report to Joint Committee on the Judiciary and Joint Committee on Government and Finance detailing results of all investigations of voter identity affidavits; requiring Division of Motor Vehicles to collect certain information from individuals applying for issuance, renewal or change of address of driver's license or official identification card; requiring Division of Motor Vehicles to release all information obtained to Secretary of State unless applicant affirmatively declines to become registered to vote or update voter registration; requiring Secretary of State to forward information to county clerk for relevant county to process newly registered voter or updated information for already-registered voter; requiring Division of Motor Vehicles to release certain information to Secretary of State if applicant affirmatively declines to become registered to vote; requiring Division of Motor Vehicles to notify applicant that signature submission grants written consent for submission of that information; clarifying that qualified voter who is automatically registered to vote need not present identification in order to make registration valid; directing Secretary of State to establish procedures to protect confidentiality of information obtained from Division of Motor Vehicles; permitting person registered to vote to cancel voter registration at any time; clarifying that Division of Motor Vehicles not required to determine eligibility for voter registration and voting; making changes regarding automatic voter registration effective July 1, 2017; requiring Division of Motor Vehicles report to Joint Committee on Government and Finance if unable to meet requirements by February 1, 2017; directing Secretary of State to promulgate legislative rules; permitting

certain uses of moneys in Combined Voter Registration and Driver Licensing Fund; requiring balance in Fund in excess of \$100,000 be transferred to General Revenue annually; prohibiting Division of Motor Vehicles from charging fees for issuance of identification card if applicant intends to use identification card as form of identification for voting; providing certain provisions for issuance of driver's license or identification card to persons over the age of fifty years; and providing certain provisions for issuance of driver's license or identification card to persons over the age of seventy years.

Be it enacted by the Legislature of West Virginia:

That §3-1-34 and §3-1-41 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 §3-1-51; that §3-2-11 and §3-2-12 of said code be amended and reenacted; and that §17B-2-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; identification; assistance to voters; voting records; penalties.

- 1 (a) A person desiring to vote in an election shall, upon
- 2 entering the election room, clearly state his or her name and
- 3 residence to one of the poll clerks who shall thereupon announce
- 4 the same in a clear and distinct tone of voice. For elections
- 5 occurring on or after January 1, 2018, the person desiring to vote
- 6 shall present to one of the poll clerks a valid identifying
- 7 document meeting the requirements of subdivisions (1) or (2) of
- 8 this subsection, and the poll clerk shall inspect and confirm that
- 9 the name on the valid identifying document conforms to the
- 10 name in the individual's voter registration record and that, if the

11 valid identifying document contains a photograph, the image
12 displayed is truly an image of the person presenting the
13 document. If that person is found to be duly registered as a voter
14 at that precinct, he or she shall sign his or her name in the
15 designated location provided at the precinct. If that person is
16 physically or otherwise unable to sign his or her name, his or her
17 mark shall be affixed by one of the poll clerks in the presence of
18 the other and the name of the poll clerk affixing the voter's mark
19 shall be indicated immediately under the affixation. No ballot
20 may be given to the person until he or she signs his or her name
21 on the designated location or his or her signature is affixed
22 thereon.

23 (1) A document shall be deemed to be a valid identifying
24 document if it:

25 (A) Has been issued either by the State of West Virginia, or
26 one of its subsidiaries, or by the United States Government; and

27 (B) Contains the name of the person desiring to vote.

28 (2) Notwithstanding the provisions of subdivision (1) of this
29 subsection, the following documents, if they contain the voter's
30 name, shall be considered valid identifying documents, and a
31 person desiring to vote may produce any of the following:

32 (A) A valid West Virginia driver's license or valid West
33 Virginia identification card issued by the West Virginia Division
34 of Motor Vehicles;

35 (B) A valid driver's license issued by a state other than the
36 State of West Virginia;

37 (C) A valid United States passport or passport card;

38 (D) A valid employee identification card with a photograph
39 of the eligible voter issued by any branch, department, agency,

40 or entity of the United States Government or of the State of West
41 Virginia, or by any county, municipality, board, authority, or
42 other political subdivision of West Virginia;

43 (E) A valid student identification card with a photograph of
44 the eligible voter issued by an institution of higher education in
45 West Virginia, or a valid high school identification card issued
46 by a West Virginia high school;

47 (F) A valid military identification card issued by the United
48 States with a photograph of the person desiring to vote;

49 (G) A valid concealed carry (pistol/revolver) permit issued
50 by the sheriff of the county with a photograph of the person
51 desiring to vote;

52 (H) A valid Medicare card or Social Security card;

53 (I) A valid birth certificate;

54 (J) A valid voter registration card issued by a county clerk in
55 the State of West Virginia;

56 (K) A valid hunting or fishing license issued by the State of
57 West Virginia;

58 (L) A valid identification card issued to the voter by the
59 West Virginia Supplemental Nutrition Assistance (SNAP)
60 program;

61 (M) A valid identification card issued to the voter by the
62 West Virginia Temporary Assistance for Needy Families
63 (TANF) program;

64 (N) A valid identification card issued to the voter by West
65 Virginia Medicaid;

66 (O) A valid bank card or valid debit card;

67 (P) A valid utility bill issued within six months of the date
68 of the election;

69 (Q) A valid bank statement issued within six months of the
70 date of the election; or

71 (R) A valid health insurance card issued to the voter.

72 (3) In lieu of providing a valid identifying document, as
73 required by this section, a registered voter may be accompanied
74 at the polling place by an adult known to the registered voter for
75 at least six months. That adult may sign an affidavit on a form
76 provided to clerks and poll workers by the Secretary of State,
77 which states under oath or affirmation that the adult has known
78 the registered voter for at least six months, and that in fact the
79 registered voter is the same person who is present for the
80 purpose of voting. For the affidavit to be considered valid, the
81 adult shall present a valid identifying document with his or her
82 name, address, and photograph.

83 (4) A poll worker may allow a voter, whom the poll worker
84 has known for at least six months, to vote without presenting a
85 valid identifying document.

86 (5) If the person desiring to vote is unable to furnish a valid
87 identifying document, or if the poll clerk determines that the
88 proof of identification presented by the voter does not qualify as
89 a valid identifying document, the person desiring to vote shall be
90 permitted to cast a provisional ballot after executing an affidavit
91 affirming his or her identity pursuant to paragraph (B) of this
92 subdivision.

93 (A) The provisional ballot is entitled to be counted once the
94 election authority verifies the identity of the individual by
95 comparing that individual's signature to the current signature on
96 file with the election authority and determines that the individual
97 was otherwise eligible to cast a ballot at the polling place where
98 the ballot was cast.

99 (B) The affidavit to be used for voting shall be substantially
100 in the following form:

101 "State of West Virginia

102 County of.....

103 I do solemnly swear (or affirm) that my name is
104; that I reside at.....;
105 and that I am the person listed in the precinct register under this
106 name and at this address.

107 I understand that knowingly providing false information is
108 a violation of law and subjects me to possible criminal
109 prosecution.

110

111 Signature of voter

112 Subscribed and affirmed before me this..... day of
113, 20....

114

115 Name of Election Official

116

117 Signature of Election Official".

118 (6) A voter who votes in person at a precinct polling place
119 that is located in a building which is part of a state licensed care
120 facility where the voter is a resident is not required to provide
121 proof of identification as a condition before voting in an election.

122 (7) The person entering voter information into the
123 centralized voter registration database shall cause the records to

124 indicate when a voter has not presented a valid identifying
125 document and has executed a voter identity affidavit.

126 (8) If a voter participating in the Address Confidentiality
127 Program established by section one hundred three, article
128 twenty-eight-a, chapter forty-eight of this code, executes a voter
129 identity affidavit, the program participant's residential or
130 mailing address is subject to the confidentiality provisions of
131 section one hundred eight, article twenty-eight-a, chapter
132 forty-eight of this code and shall be used only for those statutory
133 and administrative purposes authorized by this section.

134 (9) Prior to the primary and general elections to be held in
135 calendar year 2018, the Secretary of State shall educate voters
136 about the requirement to present a valid identifying document
137 and develop a program to help ensure that all eligible voters are
138 able to obtain a valid identifying document.

139 (b) The clerk of the county commission is authorized, upon
140 verification that the precinct at which a handicapped person is
141 registered to vote is not handicap accessible, to transfer that
142 person's registration to the nearest polling place in the county
143 which is handicap accessible. A request by a handicapped person
144 for a transfer of registration must be received by the county clerk
145 no later than thirty days prior to the date of the election. A
146 handicapped person who has not made a request for a transfer of
147 registration at least thirty days prior to the date of the election
148 may vote a provisional ballot at a handicap accessible polling
149 place in the county of his or her registration. If during the
150 canvass the county commission determines that the person had
151 been registered in a precinct that is not handicap accessible, the
152 voted ballot, if otherwise valid, shall be counted. The
153 handicapped person may vote in the precinct to which the
154 registration was transferred only as long as the disability exists
155 or the precinct from which the handicapped person was
156 transferred remains inaccessible to the handicapped. To ensure

157 confidentiality of the transferred ballot, the county clerk
158 processing the ballot shall provide the voter with an unmarked
159 envelope and an outer envelope designated “provisional
160 ballot/handicapped voter”. After validation of the ballot at the
161 canvass, the outer envelope shall be destroyed and the
162 handicapped voter’s ballot shall be placed with other approved
163 provisional ballots prior to removal of the ballot from the
164 unmarked envelope.

165 (c) When the voter’s signature is properly marked and the
166 voter has presented a valid identifying document, the two poll
167 clerks shall sign their names in the places indicated on the back
168 of the official ballot and deliver the ballot to the voter to be
169 voted by him or her without leaving the election room. If he or
170 she returns the ballot spoiled to the clerks, they shall
171 immediately mark the ballot “spoiled” and it shall be preserved
172 and placed in a spoiled ballot envelope together with other
173 spoiled ballots to be delivered to the board of canvassers and
174 deliver to the voter another official ballot, signed by the clerks
175 on the reverse side. The voter shall thereupon retire alone to the
176 booth or compartment prepared within the election room for
177 voting purposes and there prepare his or her ballot. In voting for
178 candidates in general and special elections, the voter shall
179 comply with the rules and procedures prescribed in section five,
180 article six of this chapter.

181 (d) It is the duty of a poll clerk, in the presence of the other
182 poll clerk, to indicate by a check mark, or by other means,
183 inserted in the appropriate place on the registration record of
184 each voter the fact that the voter voted in the election. In primary
185 elections the clerk shall also insert on the registration record of
186 each voter a distinguishing initial or initials of the political party
187 for whose candidates the voter voted. If a person is challenged
188 at the polls, the challenge shall be indicated by the poll clerks on
189 the registration record, together with the name of the challenger.

190 The subsequent removal of the challenge shall be recorded on
191 the registration record by the clerk of the county commission.

192 (e) (1) No voter may receive any assistance in voting unless,
193 by reason of blindness, disability, advanced age or inability to
194 read and write, that voter is unable to vote without assistance.
195 Any voter so qualified to receive assistance in voting may:

196 (A) Declare his or her choice of candidates to an Election
197 Commissioner of each political party who, in the presence of the
198 voter and in the presence of each other, shall prepare the ballot
199 for voting in the manner provided in this section and, on
200 request, shall read to the voter the names of the candidates
201 selected on the ballot;

202 (B) Require the Election Commissioners to indicate to him
203 or her the relative position of the names of the candidates on the
204 ballot, the voter shall then retire to one of the booths or
205 compartments to prepare his or her ballot in the manner
206 provided in this section;

207 (C) Be assisted by any person of the voter's choice, other
208 than the voter's present or former employer or agent of that
209 employer, the officer or agent of a labor union of which the voter
210 is a past or present member or a candidate on the ballot or an
211 official write-in candidate; or

212 (D) If he or she is handicapped, vote from an automobile
213 outside the polling place or precinct by the absentee balloting
214 method provided in subsection (e), section five, article three of
215 this chapter in the presence of an Election Commissioner of each
216 political party if all of the following conditions are met:

217 (i) The polling place is not handicap accessible; and

218 (ii) No voters are voting or waiting to vote inside the polling
219 place.

220 (2) The voted ballot shall then be returned to the precinct
221 officials and secured in a sealed envelope to be returned to the
222 clerk of the county commission with all other election materials.
223 The ballot shall then be tabulated using the appropriate method
224 provided in section eight of this chapter as it relates to the
225 specific voting system in use.

226 (3) A voter who requests assistance in voting but who is
227 believed not to be qualified for assistance under the provisions
228 of this section shall nevertheless be permitted to vote a
229 provisional ballot with the assistance of any person herein
230 authorized to render assistance.

231 (4) One or more of the Election Commissioners or poll
232 clerks in the precinct may challenge the ballot on the ground that
233 the voter received assistance in voting it when in his, her or their
234 opinion the person who received assistance in voting is not so
235 illiterate, blind, disabled or of such advanced age as to have been
236 unable to vote without assistance. The Election Commissioner
237 or poll clerk or commissioners or poll clerks making the
238 challenge shall enter the challenge and the reason for such
239 challenge on the form and in the manner prescribed or
240 authorized by article three of this chapter.

241 (5) An Election Commissioner or other person who assists
242 a voter in voting:

243 (A) May not in any manner request or seek to persuade or
244 induce the voter to vote a particular ticket or for a particular
245 candidate or for or against any public question and must not keep
246 or make any memorandum or entry of anything occurring within
247 the voting booth or compartment and must not, directly or
248 indirectly, reveal to any person the name of a candidate voted
249 for by the voter, which ticket he or she had voted or how he or
250 she had voted on any public question or anything occurring
251 within the voting booth, compartment, or voting machine booth

252 except when required by law to give testimony as to the matter
253 in a judicial proceeding; and

254 (B) Shall sign a written oath or affirmation before assisting
255 the voter on a form prescribed by the Secretary of State stating
256 that he or she will not override the actual preference of the voter
257 being assisted, attempt to influence the voter's choice or mislead
258 the voter into voting for someone other than the candidate of
259 voter's choice. The person assisting the voter shall also swear or
260 affirm that he or she believes that the voter is voting free of
261 intimidation or manipulation. No person providing assistance to
262 a voter is required to sign an oath or affirmation where the
263 reason for requesting assistance is the voter's inability to vote
264 without assistance because of blindness as defined in section
265 three, article fifteen, chapter five of this code and the inability to
266 vote without assistance because of blindness is certified in
267 writing by a physician of the voter's choice and is on file in the
268 office of the clerk of the county commission.

269 (6) In accordance with instructions issued by the Secretary
270 of State, the clerk of the county commission shall provide a form
271 entitled "list of assisted voters", on a form as prescribed by the
272 Secretary of State. The commissioners shall enter the name of
273 each voter receiving assistance in voting the ballot, together with
274 the poll slip number of that voter and the signature of the person
275 or the commissioner from each party who assisted the voter. If
276 no voter has been assisted in voting, the commissioners shall
277 make and subscribe to an oath of that fact on the list.

278 (f) After preparing the ballot, the voter shall fold the ballot
279 so that the face is not exposed and the names of the poll clerks
280 on it are seen. The voter shall announce his or her name and
281 present his or her ballot to one of the commissioners who shall
282 hand the same to another commissioner, of a different political
283 party, who shall deposit it in the ballot box if the ballot is the
284 official one and properly signed. The commissioner of election

285 may inspect every ballot before it is deposited in the ballot box
286 to ascertain whether it is single; but without unfolding or
287 unrolling it so as to disclose its content. When the voter has
288 voted, he or she shall retire immediately from the election room
289 and beyond the sixty-foot limit and not return except by
290 permission of the commissioners.

291 (g) Following the election, the oaths or affirmations required
292 by this section from those assisting voters, together with the “list
293 of assisted voters”, shall be returned by the Election
294 Commissioners to the clerk of the county commission along with
295 the election supplies, records and returns. The clerk of the
296 county commission shall make the oaths, affirmations and list
297 available for public inspection and preserve them for a period of
298 twenty-two months or until disposition is authorized or directed
299 by the Secretary of State or court of record. The clerk may use
300 these records to update the voter registration records in
301 accordance with subsection (d), section eighteen, article two of
302 this chapter.

303 (h) Any person making an oath or affirmation required under
304 the provisions of this section who knowingly swears falsely or
305 any person who counsels, advises, aids or abets another in the
306 commission of false swearing under this section, is guilty of a
307 misdemeanor and, upon conviction thereof, shall be fined not
308 more than \$1,000 or confined in jail for a period of not more
309 than one year, or both fined and confined.

310 (i) Any Election Commissioner or poll clerk who authorizes
311 or provides unchallenged assistance to a voter when the voter is
312 known to the Election Commissioner or poll clerk not to require
313 assistance in voting, is guilty of a felony and, upon conviction
314 thereof, shall be fined not more than \$5,000 or imprisoned in a
315 state correctional facility for a period of not less than one year
316 nor more than five years, or both fined and imprisoned.

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

1 (a) It is the duty of the members of the receiving board,
2 jointly or severally, to challenge the right of any person
3 requesting a ballot to vote in any election:

4 (1) If the person's registration record is not available at the
5 time of the election;

6 (2) If the signature written by the person in the poll book
7 does not correspond with the signature purported to be his or
8 hers on the registration record;

9 (3) If the registration record of the person indicates any other
10 legal disqualification;

11 (4) If the person fails to present a valid identifying document
12 pursuant to section thirty-four of this article; or

13 (5) If any other valid challenge exists against the voter
14 pursuant to section ten, article three of this chapter.

15 (b) Any person challenged shall nevertheless be permitted to
16 vote in the election. He or she shall be furnished an official
17 ballot not endorsed by the poll clerks. In lieu of the
18 endorsements, the poll clerks shall complete and sign an
19 appropriate form indicating the challenge, the reason thereof and
20 the name or names of the challengers. The form shall be
21 securely attached to the voter's ballot and deposited together
22 with the ballot in a separate box or envelope marked
23 "provisional ballots".

24 (c) At the time that an individual casts a provisional ballot,
25 the poll clerk shall give the individual written information
26 stating that an individual who casts a provisional ballot will be

27 able to ascertain under the free access system established in this
28 section whether the vote was counted and, if the vote was not
29 counted, the reason that the vote was not counted.

30 (d) Before an individual casts a provisional ballot, the poll
31 clerk shall provide the individual written instructions, supplied
32 by the board of ballot commissioners, stating that if the voter is
33 casting a ballot in the incorrect precinct, the ballot cast may not
34 be counted for that election: *Provided*, That if the voter is found
35 to be in the incorrect precinct, then the poll worker shall attempt
36 to ascertain the appropriate precinct for the voter to cast a ballot
37 and immediately give the voter the information if ascertainable.

38 (e) Provisional ballots may not be counted by the election
39 officials. The county commission shall, on its own motion, at
40 the time of canvassing of the election returns, sit in session to
41 determine the validity of any challenges according to the
42 provisions of this chapter. If the county commission determines
43 that the challenges are unfounded, each provisional ballot of
44 each challenged voter, if otherwise valid, shall be counted and
45 tallied together with the regular ballots cast in the election. The
46 county commission, as the board of canvassers, shall protect the
47 privacy of each provisional ballot cast. The county commission
48 shall disregard technical errors, omissions or oversights if it can
49 reasonably be ascertained that the challenged voter was entitled
50 to vote.

51 (f) Any person duly appointed as an Election Commissioner
52 or clerk under the provisions of section twenty-eight of this
53 article who serves in that capacity in a precinct other than the
54 precinct in which the person is legally entitled to vote may cast
55 a provisional ballot in the precinct in which the person is serving
56 as a commissioner or clerk. The ballot is not invalid for the sole
57 reason of having been cast in a precinct other than the precinct
58 in which the person is legally entitled to vote. The county
59 commission shall record the provisional ballot on the voter's

60 permanent registration record: *Provided*, That the county
61 commission may count only the votes for the offices that the
62 voter was legally authorized to vote for in his or her own
63 precinct.

64 (g) The Secretary of State shall establish a free access
65 system, which may include a toll-free telephone number or an
66 Internet website, that may be accessed by any individual who
67 casts a provisional ballot to discover whether his or her vote was
68 counted and, if not, the reason that the vote was not counted.

§3-1-51. Identity verification of voters executing voter identity affidavit.

1 (a) The clerk of the county commission shall cause a letter
2 to be mailed by first class mail to each voter who executed a
3 voter identity affidavit pursuant to section thirty-four of this
4 article. The letter shall be mailed within sixty days after the
5 election. The clerk shall mark the envelope with instructions to
6 the United States Post Office not to forward the letter and to
7 provide address correction information. The letter shall notify
8 the addressee that a person who did not present a valid
9 identifying document voted using his or her name and address
10 and instruct the addressee to contact the clerk immediately if he
11 or she did not vote. The letter shall also inform the addressee of
12 the procedure for obtaining an identification card from the
13 Division of Motor Vehicles for voting purposes.

14 (b) The clerk of the county commission shall cause letters
15 mailed pursuant to subsection (a) of this section that are returned
16 as undeliverable by the United States Post Office to be referred
17 to the Secretary of State. The clerk shall also prepare and
18 forward to the Secretary of State a list of all persons who were
19 mailed letters under subsection (a) of this section and who
20 notified the clerk that they did not vote. Upon receipt of notice
21 from a person who receives a letter mailed pursuant to

22 subsection (a) of this section that the person did not vote, or
23 upon receipt of a referral from the clerk, the Secretary of State
24 shall cause an investigation to be made to determine whether
25 fraudulent voting occurred. Beginning July 1, 2019 and each
26 year thereafter, the Secretary of State shall submit a report to the
27 Joint Committee on the Judiciary and the Joint Committee on
28 Government and Finance detailing the results of all
29 investigations of voter identity affidavits, including, but not
30 limited to, the number of investigations, the number of ballots
31 cast, and the number and results of any determinations made
32 regarding fraudulent voting.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-11. Registration in conjunction with driver licensing.

1 (a) The Division of Motor Vehicles or other division or
2 department that may be established by law to perform motor
3 vehicle driver licensing services shall obtain, as an integral and
4 simultaneous part of every process of application for the
5 issuance, renewal or change of address of a motor vehicle
6 driver's license or official identification card pursuant to the
7 provisions of article two, chapter seventeen-b of this code, when
8 the division's regional offices are open for regular business, the
9 following information from each qualified registrant:

10 (1) Full name, including first, middle, last and any premarital
11 names;

12 (2) Date of birth;

13 (3) Residence address and mailing address, if different;

14 (4) The applicant's electronic signature;

15 (5) Telephone number, if available;

16 (6) Email address, if available;

17 (7) Political party membership, if any;

18 (8) Driver's license number and last four digits of social
19 security number;

20 (9) A notation that the applicant has attested that he or she
21 meets all voter eligibility requirements, including United States
22 citizenship;

23 (10) Whether the applicant affirmatively declined to become
24 registered to vote during the transaction with the Division of
25 Motor Vehicles;

26 (11) Date of application; and

27 (12) Any other information specified in rules adopted to
28 implement this section.

29 (b) Unless the applicant affirmatively declines to become
30 registered to vote or update their voter registration during the
31 transaction with the Division of Motor Vehicles, the Division of
32 Motor Vehicles shall release all of the information obtained
33 pursuant to subsection (a) of this section to the Secretary of
34 State, who shall forward the information to the county clerk for
35 the relevant county to process the newly registered voter or
36 updated information for the already-registered voter pursuant to
37 law. Notwithstanding any other provision of this code to the
38 contrary, if the applicant affirmatively declines to become
39 registered to vote, the Division of Motor Vehicles is required to
40 release the first name, middle name, last name, premarital name,
41 if applicable, complete residence address, complete date of birth
42 of an applicant and the applicant's electronic signature, entered
43 in the division's records for driver license or nonoperator
44 identification purposes to the Secretary of State in order to
45 facilitate any future attempt of the applicant to register to vote
46 online, along with the notation that the applicant affirmatively

47 declined to become registered at that time. The Division of
48 Motor Vehicles shall notify that applicant that by submitting his
49 or her signature, the applicant grants written consent for the
50 submission of the information obtained and required to be
51 submitted to the Secretary of State pursuant to this section.

52 (c) Information regarding a person's failure to sign the voter
53 registration application is confidential and may not be used for
54 any purpose other than to determine voter registration.

55 (d) A qualified voter who submits the required information
56 or update to his or her voter registration, pursuant to the
57 provisions of subsection (a) of this section, in person at a driver
58 licensing facility at the time of applying for, obtaining, renewing
59 or transferring his or her driver's license or official identification
60 card and who presents identification and proof of age at that time
61 is not required to make his or her first vote in person or to again
62 present identification in order to make that registration valid.

63 (e) A qualified voter who submits by mail or by delivery by
64 a third party an application for registration on the form used in
65 conjunction with driver licensing is required to make his or her
66 first vote in person and present identification as required for
67 other mail registration in accordance with the provisions of
68 subsection (g), section ten of this article. If the applicant has
69 been previously registered in the jurisdiction and the application
70 is for a change of address, change of name, change of political
71 party affiliation or other correction, the presentation of
72 identification and first vote in person is not required.

73 (f) An application for voter registration submitted pursuant
74 to the provisions of this section updates a previous voter
75 registration by the applicant and authorizes the cancellation of
76 registration in any other county or state in which the applicant
77 was previously registered.

78 (g) A change of address from one residence to another
79 within the same county which is submitted for driver licensing
80 or nonoperator's identification purposes in accordance with
81 applicable law serves as a notice of change of address for voter
82 registration purposes if requested by the applicant after notice
83 and written consent of the applicant.

84 (h) Completed applications for voter registration or change
85 of address for voting purposes received by an office providing
86 driver licensing services shall be forwarded to the Secretary of
87 State within five days of receipt unless other means are available
88 for a more expedited transmission. The Secretary of State shall
89 remove and file any forms which have not been signed by the
90 applicant and shall forward completed, signed applications to the
91 clerk of the appropriate county commission within five days of
92 receipt.

93 (i) Voter registration application forms containing voter
94 information which are returned to a driver licensing office
95 unsigned shall be collected by the Division of Motor Vehicles,
96 submitted to the Secretary of State and maintained by the
97 Secretary of State's office according to the retention policy
98 adopted by the Secretary of State.

99 (j) The Secretary of State shall establish procedures to
100 protect the confidentiality of the information obtained from the
101 Division of Motor Vehicles, including any information otherwise
102 required to be confidential by other provisions of this code.

103 (k) A person registered to vote pursuant to this section may
104 cancel his or her voter registration at any time by any method
105 available to any other registered voter.

106 (l) This section shall not be construed as requiring the
107 Division of Motor Vehicles to determine eligibility for voter
108 registration and voting.

109 (m) The changes made to this section during the 2016
110 Regular Legislative Session shall become effective on July 1,
111 2017, and any costs associated therewith shall be paid by the
112 Division of Motor Vehicles. If the Division of Motor Vehicles
113 is unable to meet the requirements of this section by February 1,
114 2017, it shall make a presentation to the Joint Committee on
115 Government and Finance explaining any resources necessary to
116 meet the requirements or any changes to the code that it
117 recommends immediately prior to the 2017 Regular Legislative
118 Session.

119 (n) The Secretary of State shall propose rules for legislative
120 approval in accordance with the provisions of article three,
121 chapter twenty-nine-a of this code in order to implement the
122 requirements of this section.

***§3-2-12. Combined voter registration and driver licensing fund;
transfer of funds.**

1 (a) Fifty cents of each license fee collected pursuant to the
2 provisions of section one, article three, chapter seventeen of this
3 code shall be paid into the State Treasury to the credit of a
4 special revenue fund to be known as the “Combined Voter
5 Registration and Driver Licensing Fund.” The moneys so
6 credited to such fund may be used by the Secretary of State for
7 the following purposes:

8 (1) Printing and distribution of combined driver licensing or
9 other agency applications and voter registration forms, or for the
10 printing of voter registration forms to be used in conjunction
11 with driver licensing or other agency applications, or for
12 implementing the automatic voter registration program
13 authorized in section eleven of this article;

* **NOTE:** This section was also amended by Com. Sub. for S. B. 591
(Chapter 97), which passed prior to this act.

14 (2) Printing and distribution of mail voter registration forms
15 for purposes of this article;

16 (3) Supplies, postage and mailing costs for correspondence
17 relating to voter registration for agency registration sites and for
18 the return of completed voter registration forms to the
19 appropriate state or county election official;

20 (4) Reimbursement of postage and mailing costs incurred by
21 clerks of the county commissions for sending a verification
22 mailing, confirmation of registration or other mailings directly
23 resulting from an application to register, change or update a
24 voter's registration through a driver licensing or other agency;

25 (5) Reimbursement to state funded agencies, with the
26 exception of the Division of Motor Vehicles, designated to
27 provide voter registration services under this chapter for
28 personnel costs associated with the time apportioned to voter
29 registration services and assistance;

30 (6) The purchase, printing and distribution of public
31 information and other necessary materials or equipment to be
32 used in conjunction with voter registration services provided by
33 state funded agencies designated pursuant to the provisions of
34 this article;

35 (7) The development and continued maintenance of a
36 statewide program of uniform voter registration computerization
37 for use by each county registration office and the Secretary of
38 State, purchase of uniform voter registration software, payment
39 of software installation costs and reimbursement to the county
40 commissions of not more than fifty percent of the cost per voter
41 for data entry or data conversion from a previous voter
42 registration software program;

43 (8) Efforts to maintain correct voter information and conduct
44 general list maintenance to remove ineligible voters and ensure

45 new residents receive voter registration information, including
46 collaborating with other states and non-profit corporations
47 dedicated to improving the election system;

48 (9) Payment of any dues or fees associated with a program
49 to match and transfer data to and from other states;

50 (10) Resources related to voter registration and list
51 maintenance; and

52 (11) Payment or reimbursement of other costs associated
53 with implementation of the requirements of the National Voter
54 Registration Act of 1993 (42 U. S. C. 1973gg): *Provided*, That
55 revenue received by the fund in any fiscal year shall first be
56 allocated to the purposes set forth in subdivisions (1) through
57 (10), inclusive, of this subsection.

58 (b) The Secretary of State shall promulgate rules pursuant to
59 the provisions of chapter twenty-nine-a of this code to provide
60 for the administration of the fund established in subsection (a) of
61 this section.

62 (c) Any balance in the fund created by subsection (a) of this
63 section which exceeds \$100,000 as of June 30, 2017, and on
64 June 30 of each year thereafter, shall be transferred to the
65 General Revenue Fund.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

1 (a) (1) No person, except those hereinafter expressly
2 exempted, may drive a motor vehicle upon a street or highway

3 in this state or upon a subdivision street used by the public
4 generally unless the person has a valid driver's license issued
5 pursuant to this code for the type or class of vehicle being
6 driven.

7 (2) Any person licensed to operate a motor vehicle pursuant
8 to this code may exercise the privilege thereby granted in the
9 manner provided in this code and, except as otherwise provided
10 by law, is not required to obtain any other license to exercise the
11 privilege by a county, municipality or local board or body having
12 authority to adopt local police regulations.

13 (b) The division, upon issuing a driver's license, shall
14 indicate on the license the type or general class or classes of
15 vehicles the licensee may operate in accordance with this code,
16 federal law or rule. Licenses shall be issued in different colors
17 for those drivers under age eighteen, those drivers age eighteen
18 to twenty-one and adult drivers. The commissioner is authorized
19 to select and assign colors to the licenses of the various age
20 groups.

21 (c) The following drivers licenses classifications are hereby
22 established:

23 (1) A Class A, B or C license shall be issued to those persons
24 eighteen years of age or older with two years of driving
25 experience who have qualified for the commercial driver's
26 license established by chapter seventeen-e of this code and the
27 federal Motor Carrier Safety and Improvement Act of 1999 and
28 subsequent rules and have paid the required fee.

29 (2) A Class D license shall be issued to those persons
30 eighteen years and older with one year of driving experience
31 who operate motor vehicles other than those types of vehicles
32 which require the operator to be licensed under the provisions of
33 chapter seventeen-e of this code and federal law and rule and

34 whose primary function or employment is the transportation of
35 persons or property for compensation or wages and have paid the
36 required fee. For the purpose of regulating the operation of
37 motor vehicles, wherever the term “chauffeur’s license” is used
38 in this code, it means the Class A, B, C or D license described in
39 this section or chapter seventeen-e of this code or federal law or
40 rule: *Provided*, That anyone not required to be licensed under the
41 provisions of chapter seventeen-e of this code and federal law or
42 rule and who operates a motor vehicle registered or required to
43 be registered as a Class A motor vehicle, as that term is defined
44 in section one, article ten, chapter seventeen-a of this code, with
45 a gross vehicle weight rating of less than eight thousand one
46 pounds, is not required to obtain a Class D license.

47 (3) A Class E license shall be issued to persons who have
48 qualified for a driver’s license under the provisions of this
49 chapter and who are not required to obtain a Class A, B, C or D
50 license and who have paid the required fee. The Class E license
51 may be endorsed under the provisions of section seven-b of this
52 article for motorcycle operation. The Class E or G license for
53 a person under the age of eighteen may also be endorsed with the
54 appropriate graduated driver license level in accordance with the
55 provisions of section three-a of this article.

56 (4) A Class F license shall be issued to those persons who
57 successfully complete the motorcycle examination procedure
58 provided by this chapter and have paid the required fee but who
59 do not possess a Class A, B, C, D or E driver’s license.

60 (5) A Class G driver’s license or instruction permit shall be
61 issued to a person using bioptic telescopic lenses who has
62 successfully completed an approved driver training program and
63 complied with all other requirements of article two-b of this
64 chapter.

65 (d) All licenses issued under this section may contain
66 information designating the licensee as a diabetic, organ donor,

67 as deaf or hard-of-hearing, as having any other handicap or
68 disability or that the licensee is an honorably discharged veteran
69 of any branch of the Armed Forces of the United States,
70 according to criteria established by the division, if the licensee
71 requests this information on the license. An honorably
72 discharged veteran may be issued a replacement license without
73 charge if the request is made before the expiration date of the
74 current license and the only purpose for receiving the
75 replacement license is to get the veterans designation placed on
76 the license.

77 (e) No person, except those hereinafter expressly exempted,
78 may drive a motorcycle on a street or highway in this state or
79 on a subdivision street used by the public generally unless the
80 person has a valid motorcycle license, a valid license which has
81 been endorsed under section seven-b of this article for
82 motorcycle operation or a valid motorcycle instruction permit.

83 (f) (1) An identification card may be issued to a person who:

84 (A) Is a resident of this state in accordance with the
85 provisions of section one-a, article three, chapter seventeen-a of
86 this code;

87 (B) Has reached the age of two years or, for good cause
88 shown, under the age of two.

89 (C) Has paid the required fee of \$2.50 per year: *Provided*,
90 That no fees or charges, including renewal fees, are required if
91 the applicant:

92 (i) Is sixty-five years or older;

93 (ii) Is legally blind; or

94 (iii) Will be at least eighteen years of age at the next general,
95 municipal or special election and intends to use this
96 identification card as a form of identification for voting; and

97 (D) Presents a birth certificate or other proof of age and
98 identity acceptable to the division with a completed application
99 on a form furnished by the division.

100 (2) The identification card shall contain the same
101 information as a driver's license except that the identification
102 card shall be clearly marked as an identification card. The
103 division may issue an identification card with less information
104 to persons under the age of sixteen. An identification card may
105 be renewed annually on application and payment of the fee
106 required by this section.

107 (A) Every identification card issued to a person who has
108 attained his or her twenty-first birthday expires on the licensee's
109 birthday in those years in which the licensee's age is evenly
110 divisible by five. Except as provided in paragraph (B) of this
111 subdivision, no identification card may be issued for less than
112 three years or for more than seven years and expires on the
113 licensee's birthday in those years in which the licensee's age is
114 evenly divisible by five.

115 (B) Every identification card issued to a person who has not
116 attained his or her twenty-first birthday expires thirty days after
117 the licensee's twenty-first birthday.

118 (C) Every identification card issued to persons under the age
119 of sixteen shall be issued for a period of two years and expire on
120 the last day of the month in which the applicant's birthday
121 occurs.

122 (3) The division may issue an identification card to an
123 applicant whose privilege to operate a motor vehicle has been
124 refused, canceled, suspended or revoked under the provisions of
125 this code.

126 (g) For any person over the age of fifty years who wishes to
127 obtain a driver's license or identification card under the
128 provisions of this section:

129 (1) A raised seal or stamp on the birth certificate or certified
130 copy of the birth certificate is not required if the issuing
131 jurisdiction does not require one; and

132 (2) If documents are lacking to prove all changes of name in
133 the history of any such applicant, applicants renewing a driver's
134 license or identification card under the provisions of this section
135 may complete a Name Variance Approval Document as
136 instituted by the division, so long as they can provide:

137 (A) Proof of identity;

138 (B) Proof of residency; and

139 (C) A valid Social Security number.

140 (3) The division may waive any documents necessary to
141 prove a match between names, so long as the division determines
142 the person is not attempting to:

143 (A) Change his or her identity;

144 (B) Assume another person's identity; or

145 (C) Commit a fraud.

146 (h) A person over the age of seventy years, or who is on
147 Social Security disability, who wishes to obtain or renew a
148 driver's license or identification card under the provisions of this
149 section, may not be required to furnish a copy of a birth
150 certificate if they can provide:

151 (1) Proof of identity;

152 (2) Proof of residency;

153 (3) A valid Social Security number; and

154 (4) One of the following identifying items:

155 (A) A form of military identification, including a DD214 or
156 equivalent;

- 157 (B) A U.S. passport, whether valid or expired;
- 158 (C) School records, including a yearbook;
- 159 (D) A religious document, that in the judgment of the
160 Division is sufficient and authentic to reflect that the person was
161 born in the United States; or
- 162 (E) An expired driver's license, employment identification
163 card, or other reliable identification card with a recognizable
164 photograph of the person.
- 165 (i) Any person violating the provisions of this section is
166 guilty of a misdemeanor and, upon conviction, shall be fined not
167 more than \$500 and, upon a second or subsequent conviction,
168 shall be fined not more than \$500 or confined in jail not more
169 than six months, or both fined and confined.

CHAPTER 97

**(Com. Sub. for S. B. 591 - By Senators Trump, Gaunch,
Walters, Ashley, Snyder, Beach, Takubo, Maynard, Kessler,
Palumbo, Blair, Miller, Williams, Kirkendoll, Woelfel, Romano,
Mullins, Unger, Laird, Sypolt, Stollings and Plymale)**

[Passed March 11, 2016; in effect from passage.]
[Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §3-2-3, §3-2-4a and §3-2-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §3-2-23a all relating to creation and maintenance of voter registration lists; creating additional duties for Secretary of State relating to voter

registration; authorizing Secretary of State to undertake voter registration list maintenance in a county under certain circumstances; requiring Secretary of State to provide written notice to clerk of county commission of need for voter registration record maintenance and allow ninety days before undertaking voter registration list maintenance in a county; delineating notice requirements; clarifying duty of Secretary of State to perform certain ongoing voter registration database maintenance; directing Secretary of State to enter into agreement with Division of Motor Vehicles for Division of Motor Vehicles to provide certain information regarding persons eligible to vote; setting forth information to be provided by Division of Motor Vehicles; permitting Secretary of State to use information for voter registration list maintenance comparison through interstate data-sharing agreement as designated by Secretary of State; identifying additional permissible uses of funds in Combined Voter Registration and Driver Licensing Fund; providing for periodic transfer of funds from that fund to General Revenue Fund under certain circumstances; authorizing cancellation of registration of deceased or ineligible voters; and granting certain rule-making authority to Secretary of State.

Be it enacted by the Legislature of West Virginia:

That §3-2-3, §3-2-4a and §3-2-12 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 as §3-2-23a, all to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-3. State authority relating to voter registration; chief election official.

- 1 (a) The Secretary of State, as chief election official of the
- 2 state as provided in section six, article one-a of this chapter, shall

3 have general supervision of the voter registration procedures and
4 practices and the maintenance of voter registration records in the
5 state and shall have authority to require reports and investigate
6 violations to ensure the proper conduct of voter registration
7 throughout the state and all of its subdivisions. Upon written
8 notice to the clerk of the county commission of a county of the
9 need for voter registration record maintenance and the failure of
10 that clerk to complete such maintenance within ninety days of
11 the notice, the Secretary of State may make changes in the voter
12 registration data necessary to comply with list maintenance
13 requirements of sections four-a, twenty-three, twenty-five,
14 twenty-six and twenty-seven of this article: *Provided*, That the
15 secretary shall send the notice by certified mail, return receipt
16 requested.

17 (b) The Secretary of State, as chief election official of the
18 state, is responsible for implementing, in a uniform and
19 nondiscriminatory manner, a single, uniform, official,
20 centralized, interactive computerized statewide voter registration
21 list defined, maintained and administered at the state level that
22 contains the name and registration information of every legally
23 registered voter in the state and assigns a unique identifier to
24 each legally registered voter in the state.

25 (c) The Secretary of State is hereby designated as the chief
26 election official responsible for the coordination of this state's
27 responsibilities under 42 U.S.C. §1973gg, et seq., the "National
28 Voter Registration Act of 1993". The Secretary of State shall
29 have general supervision of voter registration procedures and
30 practices at agencies and locations providing services as required
31 by the provisions of this article and shall have the authority to
32 propose procedural, interpretive and legislative rules for
33 promulgation in accordance with the provisions of article three,
34 chapter twenty-nine-a of this code for application for
35 registration, transmission of applications, reporting and

36 maintenance of records required by the provisions of this article
37 and for the development, implementation and application of
38 other provisions of this article.

§3-2-4a. Statewide voter registration database.

1 (a) The Secretary of State shall implement and maintain a
2 single, official, statewide, centralized, interactive computerized
3 voter registration database of every legally registered voter in the
4 state, as follows:

5 (1) The statewide voter registration database shall serve as
6 the single system for storing and managing the official list of
7 registered voters throughout the state.

8 (2) The statewide voter registration database shall contain
9 the name, registration information and voter history of every
10 legally registered voter in the state.

11 (3) In the statewide voter registration database, the Secretary
12 of State shall assign a unique identifier to each legally registered
13 voter in the state.

14 (4) The statewide voter registration database shall be
15 coordinated with other agency databases within the state and
16 elsewhere, as appropriate.

17 (5) The Secretary of State, any clerk of the county
18 commission, or any authorized designee of the Secretary of State
19 or clerk of the county commission, may obtain immediate
20 electronic access to the information contained in the statewide
21 voter registration database.

22 (6) The clerk of the county commission shall electronically
23 enter voter registration information into the statewide voter
24 registration database on an expedited basis at the time the
25 information is provided to the clerk.

26 (7) The Secretary of State shall provide necessary support to
27 enable every clerk of the county commission in the state to enter
28 information as described in subdivision (6) of this subsection.

29 (8) The statewide voter registration database shall serve as
30 the official voter registration list for conducting all elections in
31 the state.

32 (b) The provisions of subdivision (6), subsection (a) of this
33 section notwithstanding, the Secretary of State or any clerk of a
34 county commission shall perform maintenance with respect to
35 the statewide voter registration database on a regular basis as
36 follows:

37 (1) If an individual is to be removed from the statewide voter
38 registration database he or she shall be removed in accordance
39 with the provisions of 42 U. S. C. §1973gg, et seq., the National
40 Voter Registration Act of 1993.

41 (2) The Secretary of State shall coordinate the statewide
42 voter registration database with state agency records and shall
43 establish procedures for the removal of names of individuals
44 who are not qualified to vote due to felony status or death. No
45 state agency may withhold information regarding a voter's status
46 as deceased or as a felon unless ordered by a court of law.

47 (c) The list maintenance performed under subsection (b) of
48 this section shall be conducted in a manner that ensures that:

49 (1) The name of each registered voter appears in the
50 statewide voter registration database;

51 (2) Only voters who are not registered, who have requested
52 in writing that their voter registration be canceled, or who are not
53 eligible to vote are removed from the statewide voter registration
54 database;

55 (3) Duplicate names are eliminated from the statewide voter
56 registration database; and

57 (4) Deceased individuals' names are eliminated from the
58 statewide voter registration database.

59 (d) The Secretary of State and the clerks of all county
60 commissions shall provide adequate technological security
61 measures to prevent the unauthorized access to the statewide
62 voter registration database established under this section.

63 (e) The Secretary of State shall ensure, and may perform
64 such maintenance necessary to ensure, that voter registration
65 records in the state are accurate and updated regularly, including
66 the following:

67 (1) A system of file maintenance that makes a reasonable
68 effort to remove registrants who are ineligible to vote from the
69 official list of eligible voters. Under the system, consistent with
70 42 U. S. C. §1973gg, et seq., registrants who have not responded
71 to a notice sent pursuant to section twenty six, article two of this
72 chapter, who have not otherwise updated their voter registration
73 address, and who have not voted in two consecutive general
74 elections for federal office shall be removed from the official list
75 of eligible voters, except that no registrant may be removed
76 solely by reason of a failure to vote;

77 (2) By participation in programs across state lines to share
78 data specifically for voter registration to ensure that voters who
79 have moved across state lines or become deceased in another
80 state are removed in accordance with state law and 42 U. S. C.
81 §1973gg, et seq.; and

82 (3) Through safeguards to ensure that eligible voters are not
83 removed in error from the official list of eligible voters.

84 (f) Applications for voter registration may be accepted only
85 when the following information is provided:

86 (1) Except as provided in subdivision (2) of this subsection
87 and notwithstanding any other provision of law to the contrary,
88 an application for voter registration may not be accepted or
89 processed unless the application includes:

90 (A) In the case of an applicant who has been issued a current
91 and valid driver's license, the applicant's driver's license
92 number;

93 (B) In the case of an applicant who has been issued an
94 identification card by the Division of Motor Vehicles, the
95 applicant's identification number; or

96 (C) In the case of any other applicant, the last four digits of
97 the applicant's Social Security number; and

98 (2) If an applicant for voter registration has not been issued
99 a current and valid driver's license, Division of Motor Vehicles
100 identification card, or a Social Security number, the Secretary of
101 State shall assign the applicant a number which will serve to
102 identify the applicant for voter registration purposes. The
103 number assigned under this subdivision shall be the unique
104 identifying number assigned under the statewide voter
105 registration database.

106 (g)(1) The Secretary of State and the Commissioner of the
107 Division of Motor Vehicles shall enter into an agreement to
108 match and transfer applicable information in the statewide voter
109 registration database with information in the database of the
110 Division of Motor Vehicles to the extent required to enable each
111 official to verify the accuracy of the information provided on
112 applications for voter registration.

113 (2) The Secretary of State and the Commissioner of the
114 Division of Motor Vehicles shall enter into an agreement for the
115 Division of Motor Vehicles to provide all name fields, residence

116 and mailing address fields, driver's license or state identification
117 number, last four digits of the Social Security number, date of
118 birth, license or identification issuance and expiration dates, and
119 current record status of individuals eligible to register to vote to
120 the Secretary of State for the purpose of voter registration list
121 maintenance comparison through an interstate data-sharing
122 agreement designated by the Secretary of State as permitted by
123 subdivision (2), subsection (e) of this section.

124 (h) The Commissioner of the Division of Motor Vehicles
125 shall enter into an agreement with the Commissioner of Social
126 Security under 42 U. S. C. §401, et seq., the Social Security Act.
127 All fees associated with this agreement shall be paid for from
128 moneys in the fund created under section twelve of this article.

***§3-2-12. Combined voter registration and driver licensing fund;
transfer of funds.**

1 (a) Fifty cents of each license fee collected pursuant to the
2 provisions of section one, article three, chapter seventeen of this
3 code shall be paid into the State Treasury to the credit of a
4 special revenue fund to be known as the Combined Voter
5 Registration and Driver Licensing Fund. The moneys so credited
6 to such fund may be used by the Secretary of State for the
7 following purposes:

8 (1) Printing and distribution of combined driver licensing or
9 other agency applications and voter registration forms, or for the
10 printing of voter registration forms to be used in conjunction
11 with driver licensing or other agency applications;

12 (2) Printing and distribution of mail voter registration forms
13 for purposes of this article;

* **NOTE:** This section was also amended by H. B. 4013 (Chapter 96),
which passed subsequent to this act.

14 (3) Supplies, postage and mailing costs for correspondence
15 relating to voter registration for agency registration sites and for
16 the return of completed voter registration forms to the
17 appropriate state or county election official;

18 (4) Reimbursement of postage and mailing costs incurred by
19 clerks of the county commissions for sending a verification
20 mailing, confirmation of registration or other mailings directly
21 resulting from an application to register, change or update a
22 voter's registration through a driver licensing or other agency;

23 (5) Reimbursement to state funded agencies designated to
24 provide voter registration services under this chapter for
25 personnel costs associated with the time apportioned to voter
26 registration services and assistance;

27 (6) The purchase, printing and distribution of public
28 information and other necessary materials or equipment to be
29 used in conjunction with voter registration services provided by
30 state funded agencies designated pursuant to the provisions of
31 this article;

32 (7) The development of a statewide program of uniform
33 voter registration computerization for use by each county
34 registration office and the Secretary of State, purchase of
35 uniform voter registration software, payment of software
36 installation costs and reimbursement to the county commissions
37 of not more than fifty percent of the cost per voter for data entry
38 or data conversion from a previous voter registration software
39 program;

40 (8) Payment of up to fifty percent of the costs of conducting
41 a joint program with participating counties to identify ineligible
42 voters by using the United States postal service information as
43 provided in section twenty-five of this article: *Provided*, That
44 such assistance shall be available only to counties which

45 maintain voter registration lists on the statewide uniform voter
46 data system;

47 (9) Payment of any dues or fees associated with a program
48 to match and transfer data to and from other states;

49 (10) Resources related to voter registration and list
50 maintenance; and

51 (11) Payment or reimbursement of other costs associated
52 with implementation of the requirements of the National Voter
53 Registration Act of 1993 (42 U. S. C. §1973gg): *Provided*, That
54 revenue received by the fund in any fiscal year shall first be
55 allocated to the purposes set forth in subdivisions (1) through
56 (10), inclusive, of this subsection.

57 (b) The Secretary of State shall promulgate rules pursuant to
58 the provisions of chapter twenty-nine-a of this code to provide
59 for the administration of the fund established in subsection (a) of
60 this section.

61 (c) Any balance in the fund created by subsection (a) of this
62 section which exceeds \$100,000 as of June 30, 2017, and on
63 June 30 of each year thereafter, shall be transferred to the
64 General Revenue Fund.

§3-2-23a. Cancellation of registration of deceased or ineligible voter.

1 The Secretary may propose legislative rules regarding the
2 maintenance of the security and privacy of the voter registration
3 records and the procedures to be followed by clerks of the
4 county commission and the Secretary to make changes in voter
5 registration records, including cancellations.

CHAPTER 98

(S. B. 379 - By Senators Trump, Palumbo, Gaunch, Williams, Beach, Yost and Miller)

[Passed March 4, 2016; in effect from passage.]
[Approved by the Governor on March 10, 2016.]

AN ACT to amend and reenact §3-5-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-8-5b of said code, all relating to candidate filings; directing candidates for circuit and family court judge to pay their filing fees to the election official with whom certificate of announcement is to be filed; providing for apportionment of certain candidate filing fees to counties; and requiring campaign finance statements for circuit and family court judges to be filed with Secretary of State.

Be it enacted by the Legislature of West Virginia:

That §3-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-8-5b of said code be amended and reenacted, all to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. Filing fees and their disposition.

1 (a) Every person who becomes a candidate for nomination
2 for or election to office in any primary election shall, at the time
3 of filing the certificate of announcement as required in this
4 article, pay a filing fee as follows:

5 (1) A candidate for president of the United States, for vice
6 president of the United States, for United States Senator, for
7 member of the United States House of Representatives, for

8 Governor and for all other state elective offices shall pay a fee
9 equivalent to one percent of the annual salary of the office for
10 which the candidate announces: *Provided*, That the filing fee for
11 any candidate for president or vice president of the United States
12 shall not exceed \$2,500 commencing with the 2004 filing period;

13 (2) A candidate for the office of judge of a circuit court and
14 judge of a family court shall pay a fee equivalent to one percent
15 of the total annual salary of the office for which the candidate
16 announces;

17 (3) A candidate for member of the House of Delegates shall
18 pay a fee of one-half percent of the total annual salary of the
19 office and a candidate for state Senator shall pay a fee of one
20 percent of the total annual salary of the office;

21 (4) A candidate for sheriff, prosecuting attorney, circuit
22 clerk, county clerk, assessor, member of the county commission
23 and magistrate shall pay a fee equivalent to one percent of the
24 annual salary, excluding any additional compensation or
25 commission of the office for which the candidate announces. A
26 candidate for county board of education shall pay a fee of \$25.
27 A candidate for any other county office shall pay a fee of \$10;

28 (5) Delegates to the national convention of any political
29 party shall pay the following filing fees:

30 (A) A candidate for delegate-at-large shall pay a fee of \$20;
31 and

32 (B) A candidate for delegate from a congressional district
33 shall pay a fee of \$10;

34 (6) Candidates for members of political executive
35 committees and other political committees shall pay the
36 following filing fees:

37 (A) A candidate for member of a state executive committee
38 of any political party shall pay a fee of \$20;

39 (B) A candidate for member of a county executive
40 committee of any political party shall pay a fee of \$10; and

41 (C) A candidate for member of a congressional, senatorial or
42 delegate district committee of any political party shall pay a fee
43 of \$5.

44 (b) Candidates shall pay the filing fee to the election official
45 with whom the certificate of announcement is filed according to
46 the provisions of section seven of this article at the time of filing
47 their certificates of announcement and no certificate of
48 announcement shall be received until the filing fee is paid.

49 (c) All moneys received by the clerk from the fees shall be
50 credited to the general county fund. Moneys received by the
51 Secretary of State from fees paid by candidates for offices to be
52 filled by all the voters of the state shall be deposited in a special
53 fund for that purpose and shall be apportioned and paid by him
54 or her to the several counties on the basis of population and that
55 received from candidates from a district or judicial circuit of
56 more than one county shall be apportioned to the counties
57 comprising the district or judicial circuit in like manner. When
58 such moneys are received by sheriffs it shall be credited to the
59 general county fund. Moneys received by the Secretary of State
60 from fees paid by candidates for judicial or legislative offices to
61 be filled by the voters of one county shall be apportioned to the
62 county in which the boundaries of the district lie.

ARTICLE 8. REGULATION AND CONTROL OF ELECTION.

***§3-8-5b. Where financial statements shall be filed; filing date prescribed.**

1 (a) The financial statements provided in this article shall be
2 filed, by or on behalf of candidates, with:

* **NOTE:** This section was also amended by Com. Sub. for H. B. 2588 (Chapter 100), which passed subsequent to this act.

3 (1) The Secretary of State for legislative offices, circuit
4 judge and family court judge and for statewide and other offices
5 to be nominated or elected by the voters of a political division
6 greater than a county;

7 (2) The clerk of the county commission by candidates for
8 offices to be nominated or elected by the voters of a single
9 county or a political division within a single county except
10 circuit judge and family court judge; or

11 (3) The proper municipal officer by candidates for office to
12 be nominated or elected to municipal office.

13 (b) The statements may be filed by mail, in person, or by
14 facsimile or other electronic means of transmission: *Provided*,
15 That the financial statements filed by or on behalf of candidates
16 for Governor, Secretary of State, Attorney General, Auditor,
17 Treasurer, Commissioner of Agriculture and Supreme Court of
18 Appeals shall be filed electronically by the means of an Internet
19 program to be established by the Secretary of State.

20 (c) Committees required to report electronically may apply
21 to the State Election Commission for an exemption from
22 mandatory electronic filing in the case of hardship. An
23 exemption may be granted at the discretion of the State Election
24 Commission.

25 (d) For purposes of this article, the filing date of a financial
26 statement shall, in the case of mailing, be the date of the
27 postmark of the United States Postal Service and, in the case of
28 hand delivery or delivery by facsimile or other electronic means
29 of transmission, the date delivered to the office of the Secretary
30 of State or to the office of the clerk of the county commission, in
31 accordance with the provisions of subsection (a) of this section,
32 during regular business hours of such office.

33 (e) The sworn financial statements required to be filed by
34 this section with the Secretary of State shall be posted on the
35 Internet by the Secretary of State within ten business days from
36 the date the financial statement was filed.

CHAPTER 99

(S. B. 32 - By Senators Palumbo, Beach and Miller)

[Passed February 6, 2016; in effect from passage.]

[Approved by the Governor on February 11, 2016.]

AN ACT to amend and reenact §3-5-11, §3-5-18 and §3-5-19 of the Code of West Virginia, 1931, as amended, all relating to withdrawal of candidates for office and filling vacancies; requiring Secretary of State to create a notarized statement of withdrawal form; setting certain deadlines for filing of notarized statement of withdrawal form in order to withdraw as a candidate and to have one's name removed from ballot; setting deadline for when Secretary of State shall certify names of general election candidates to counties; requiring certification of names of candidates that are the nominee of the party following the filling of a vacancy; prohibiting certification of names of candidates who timely filed a notarized statement of withdrawal; clarifying process for determining if candidate is disqualified; designating proper filing officer; removing State Election Commission from the process of voluntary withdrawal of candidates; authorizing executive committee to replace candidate who files a timely notarized statement of withdrawal and whose name would have otherwise appeared on the general election ballot; and setting and adjusting certain deadlines.

Be it enacted by the Legislature of West Virginia:

That §3-5-11, §3-5-18 and §3-5-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

1 (a) A candidate who has filed a certificate of announcement
2 and wishes to withdraw and decline to stand as a candidate for
3 the office shall file a signed and notarized statement of
4 withdrawal on a form provided by the Secretary of State with the
5 same officer with whom the certificate of announcement was
6 filed. If the notarized statement of withdrawal is received by the
7 proper officer by the deadlines set forth in subsection (b) of this
8 section then the candidate's withdrawal is final and his or her
9 name shall not be certified as a candidate nor printed on any
10 ballot. If a candidate files a notarized statement of withdrawal
11 after the deadlines set forth in subsection (b) of this section, the
12 candidate shall not be withdrawn and the candidate's name shall
13 remain on the ballot.

14 (b) Deadlines for withdrawing as a candidate:

15 (1) For primary or special primary elections or nonpartisan
16 elections held in conjunction with a primary election: The
17 notarized statement of withdrawal must be received by the same
18 officer with whom the certificate of announcement was filed by
19 the close of business of that officer not later than the third
20 Tuesday following the close of the candidate filing period.

21 (2) For general or special general elections or nonpartisan
22 elections held in conjunction with a general election: The
23 notarized statement of withdrawal must be received by the same

24 officer with whom the certificate of announcement was filed by
25 the close of business of that officer not later than eighty-four
26 days before the general election.

27 (c) Upon request of the candidate's family, the board of
28 ballot commissioners may remove the name of a candidate who
29 dies before the ballots are printed. If a candidate dies after the
30 ballots are printed but before the election, the clerk of the county
31 commission shall give a written notice which shall be posted
32 with the sample ballot at each precinct with the county to the
33 following effect: "To the voter: (name) of (residence), a
34 candidate for (office) is deceased."

35 (d) If after the time is closed for announcing as a candidate
36 there is a vacancy on the ballot caused by failure of any person
37 of a party to file for each available seat of each available office,
38 the executive committee of the party for the political division
39 within which such candidate was to be voted for, or its chair if
40 the committee fails to act, may fill the vacancy and certify the
41 candidate named to the appropriate filing officer. Certification
42 of the appointment by the executive committee or its chair, the
43 candidate's certificate of announcement and the filing fee must
44 be received by the appropriate filing officer as follows: For an
45 appointment by an executive committee, no later than the second
46 Friday following the close of filing, for an appointment by its
47 chair, no later than the third Tuesday following the close of
48 filing. A candidate appointed to fill a vacancy on the ballot
49 under this subsection shall have his or her name printed on the
50 primary ballot for that party.

§3-5-18. Disposition of certificates of results.

1 (a) The certificates of the board of canvassers made pursuant
2 to the preceding section shall be by them disposed of as follows:
3 One of the certificates showing the votes received by each

4 candidate of each party for each office to be filled by the voters
5 of a political division greater than a county, including members
6 of the state Executive Committee, shall be filed with the
7 Secretary of State, and preserved in his or her office, and a copy
8 thereof filed in the office of the clerk of the county commission
9 of the county of such board, to be preserved by the clerk, and
10 which shall be open to public inspection; one certificate showing
11 the votes received by each candidate of each party for each
12 office to be filled by the voters of the county or magisterial
13 district within such county, including members of the county
14 executive committee, shall be filed with the clerk of the county
15 commission, and preserved in his or her office. If requested, the
16 board of canvassers shall furnish to the county chairman of each
17 political party a certificate showing the number of votes received
18 by each of the candidates of such party in the county or any
19 magisterial district therein.

20 (b) The Secretary of State shall certify by the seventy-first
21 day next preceding the date of the general election, under the
22 seal of the state, to the clerk of the county commission of each
23 county in which a candidate is to be voted for, the name of the
24 candidate of each political party receiving the highest number of
25 votes in the political division in which he or she is a candidate,
26 and who is entitled to have his or her name placed on the official
27 ballot in the general election as the nominee of the party for such
28 office. However, the certification shall include any candidates
29 entitled to have their name placed on the official ballot in the
30 general election as the nominee of the party following the filling
31 of vacancies made pursuant to section nineteen of this article or
32 other relevant state law. The Secretary of State shall also certify
33 in the same manner the names of all candidates nominated by
34 political parties or by groups of citizens, not constituting a
35 political party, in any manner provided for making such
36 nominations in this chapter.

37 (c) The Secretary of State may not include in the
38 certification any person who has timely filed a notarized
39 statement of withdrawal according to section eleven of this
40 article.

§3-5-19. Vacancies in nominations; how filled; fees.

1 (a) If any vacancy occurs in the party nomination of
2 candidates for office nominated at the primary election or by
3 appointment under the provisions of section eleven of this
4 article, the vacancies may be filled, subject to the following
5 requirements and limitations:

6 (1) Each appointment made under this section shall be made
7 by the executive committee of the political party for the political
8 division in which the vacancy occurs: *Provided*, That if the
9 executive committee holds a duly called meeting in accordance
10 with section nine, article one of this chapter but fails to make an
11 appointment or fails to certify the appointment of the candidate
12 to the proper filing officer within the time required, the
13 chairperson of the executive committee may make the
14 appointment not later than two days following the deadline for
15 the executive committee.

16 (2) Each appointment made under this section is complete
17 only upon the receipt by the proper filing officer of the
18 certificate of appointment by the executive committee, or its
19 chairperson, as the case may be, the certificate of announcement
20 of the candidate as prescribed in section seven of this article and,
21 except for appointments made under subdivision (4), (5), (6) or
22 (7) of this subsection, the filing fee or waiver of fee as prescribed
23 in section eight or eight-a of this article. The proper filing
24 officer is the officer with whom the original certificate of
25 announcement is regularly filed for that office.

26 (3) If a vacancy in nomination will be caused by the failure
27 of a candidate to file for an office, or by withdrawal of a

28 candidate no later than the third Tuesday following the close of
29 candidate filing pursuant to the provisions of section eleven of
30 this article, a nominee may be appointed by the executive
31 committee and certified to the proper filing officer no later than
32 thirty days after the last day to file a certificate of announcement
33 pursuant to section seven of this article.

34 (4) If a vacancy in nomination is caused by the
35 disqualification of a candidate and the vacancy occurs not later
36 than eighty-four days before the general election, a nominee may
37 be appointed by the executive committee and certified to the
38 proper filing officer not later than seventy-eight days before the
39 general election. A candidate may be determined disqualified if
40 a written request is made by an individual with information to
41 show a candidate's ineligibility to the State Election
42 Commission no later than eighty-four days before the general
43 election explaining grounds why a candidate is not eligible to be
44 placed on the general election ballot or not eligible to hold the
45 office, if elected. The State Election Commission shall review
46 the reasons for the request. If the commission finds the
47 circumstances warrant the disqualification of the candidate, the
48 commission shall authorize appointment by the executive
49 committee to fill the vacancy. Upon receipt of the authorization
50 a nominee may be appointed by the executive committee and
51 certified to the proper filing officer no later than seventy-eight
52 days before the general election.

53 (5) If a vacancy in nomination is caused by the incapacity of
54 the candidate and if the vacancy occurs not later than eighty-four
55 days before the general election, a nominee may be appointed by
56 the executive committee and certified to the proper filing officer
57 no later than seventy-eight days before the general election.

58 (6) If a vacancy in nomination is caused by the timely filing
59 of a notarized statement of withdrawal, according to section
60 eleven of this article, of a candidate whose name would

61 otherwise appear on the general election ballot, a replacement on
62 the general election ballot may be appointed by the executive
63 committee and certified to the proper filing officer no later than
64 seventy-eight days before the general election.

65 (7) If a vacancy in nomination is caused by the death of the
66 candidate occurring no later than twenty-five days before the
67 general election, a nominee may be appointed by the executive
68 committee and certified to the proper filing officer no later than
69 twenty-one days following the date of death or no later than
70 twenty-two days before the general election, whichever date
71 occurs first.

72 (b) Except as otherwise provided in article ten of this
73 chapter, if any vacancy occurs in a partisan office or position
74 other than political party executive committee, which creates an
75 unexpired term for a position which would not otherwise appear
76 on the ballot in the general election, and the vacancy occurs after
77 the close of candidate filing for the primary election but not later
78 than eighty-four days before the general election, a nominee of
79 each political party may be appointed by the executive
80 committee and certified to the proper filing officer no later than
81 seventy-eight days before the general election. Appointments
82 shall be filed in the same manner as provided in subsection (a)
83 of this section, except that the filing fee shall be paid before the
84 appointment is complete.

85 (c) When a vacancy occurs in the board of education after
86 the close of candidate filing for the primary election but not later
87 than eighty-four days before the general election, a special
88 candidate filing period shall be established. Candidates seeking
89 election to any unexpired term for board of education shall file
90 a certificate of announcement and pay the filing fee to the clerk
91 of the county commission no earlier than the first Monday in
92 August and no later than seventy-seven days before the general
93 election.

CHAPTER 100

**(Com. Sub. for H. B. 2588 - By E. Nelson, Lane,
Howell, Kurcaba, O'Neal, Westfall, McCuskey,
Byrd, Gearheart, Storch and Espinosa)**

[Passed March 10, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §3-8-5b of the Code of West Virginia, 1931, as amended, relating to the filing of financial statements with Secretary of State; requiring all candidates who file financial statements with Secretary of State to file electronically beginning January 1, 2018; making candidates required to file electronically eligible for exemption in the case of hardship; providing for exceptions in instances where a candidate has been unable to file the financial statement; directing candidates unable to file financial statement electronically to file by certified mail; and providing for exceptions in the case of hardship.

Be it enacted by the Legislature of West Virginia:

That §3-8-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

***§3-8-5b. Where financial statements shall be filed; filing date prescribed.**

- 1 (a) The financial statements provided for in this article shall
- 2 be filed, by or on behalf of candidates, with:

* **NOTE:** This section was also amended by S. B. 379 (Chapter 98), which passed prior to this act.

3 (1) The Secretary of State for legislative offices, circuit
4 judge and family court judge, and for statewide and other offices
5 to be nominated or elected by the voters of a political division
6 greater than a county;

7 (2) The clerk of the county commission by candidates for
8 offices to be nominated or elected by the voters of a single
9 county or a political division within a single county except
10 circuit judge and family court judge; or

11 (3) The proper municipal officer by candidates for office to
12 be nominated or elected to municipal office.

13 (b) The statements may be filed by mail, in person, or by
14 facsimile or other electronic means of transmission: *Provided*,
15 That the financial statements filed by or on behalf of candidates
16 for Governor, Secretary of State, Attorney General, Auditor,
17 Treasurer, Commissioner of Agriculture and Supreme Court of
18 Appeals shall be filed electronically by the means of an Internet
19 program that has been established by the Secretary of State on
20 forms or in a format prescribed by the Secretary of State:
21 *Provided, however*, That after January 1, 2018, unless a
22 committee has been granted an exemption in case of hardship
23 pursuant to subsection (c) of this section, all such statements
24 required to be filed with the Secretary of State, on or behalf of a
25 candidate for any elective office, shall be filed electronically by
26 means of the internet program that has been established by the
27 Secretary of State. If through or by no fault of the candidate, the
28 candidate is unable to file the campaign financial statement, the
29 candidate shall then file said statement in person, via facsimile
30 or other electronic means of transmission, or by certified mail
31 postmarked at the first reasonable opportunity.

32 (c) Committees required to report electronically may apply
33 to the State Election Commission for an exemption from
34 mandatory electronic filing in the case of hardship. An

35 exemption may be granted at the discretion of the State Election
36 Commission.

37 (d) For purposes of this article, the filing date of a financial
38 statement shall, in the case of mailing, be the date of the
39 postmark of the United States Postal Service, and in the case of
40 hand delivery or delivery by facsimile or other electronic means
41 of transmission, the date delivered to the office of the Secretary
42 of State or to the office of the clerk of the county commission, in
43 accordance with the provisions of subsection (a) of this section,
44 during regular business hours of that office.

45 (e) The sworn financial statements required to be filed by
46 this section with the Secretary of State shall be posted on the
47 internet by the Secretary of State within ten business days from
48 the date the financial statement is filed.

CHAPTER 101

(Com. Sub. for H. B. 4587 - By Delegates Moffatt and Miller)

[Passed March 10, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §3-9-19 of the Code of West Virginia, 1931, as amended, relating to violations associated with absent voters' ballots; changing reference of clerk of circuit court to clerk of county commission; making clerk of county commission guilty of misdemeanor if he or she refuses or neglects to perform duties required by him or her related to voting by absentees; making clerk of county commission guilty of misdemeanor if he or she discloses to any other person or persons how any absent voter voted; changing gender references; and making other technical and

grammatical changes relating to the language in the misdemeanor provisions of this section.

Be it enacted by the Legislature of West Virginia:

That §3-9-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-19. Violations concerning absent voters' ballots; penalties.

1 (a) Any person who, with the intent to commit fraud,
2 obtains, removes, or disseminates an absent voter's ballot,
3 intimidates an absent voter, or completes or alters an absent
4 voter's ballot, is guilty of a felony and, upon conviction thereof,
5 shall be fined not less than \$10,000 nor more than \$20,000,
6 imprisoned in a state correctional facility for not less than one
7 nor more than five years, or both fined and imprisoned.

8 (b) Notwithstanding subsection (a) of this section, any
9 person who, having procured an absent voter's official ballot or
10 ballots, shall willfully neglect or refuse to return the same as
11 provided in article three of this chapter, or who shall otherwise
12 willfully violate any of the provisions of said article three of this
13 chapter, is guilty of a misdemeanor and, on conviction thereof,
14 shall be fined not more than \$250, or confined in jail for not
15 more than three months. If the clerk of the county commission
16 of any county, or any member of the board of ballot
17 commissioners, or any member of the board of canvassers
18 refuses or neglects to perform any of the duties required of him
19 or her by any of the provisions of articles three, five and six of
20 this chapter relating to voting by absentees or discloses to any
21 other person or persons how any absent voter voted, he or she
22 shall, in each instance, be guilty of a misdemeanor and, upon
23 conviction thereof, shall be fined not more than \$500, or
24 confined in jail for not more than six months.

CHAPTER 102

**(H. B. 4725 - By Delegates Lane, Hanshaw,
McCuskey, Fleischauer, Azinger, Shaffer, Sobonya, Deem,
Fluharty, Skinner and Manchin)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, all relating to providing the procedures for the filling of vacancies in the offices of Justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications concerning procedures to be followed when an unexpired term is for a period of more than two years.

Be it enacted by the Legislature of West Virginia:

That §3-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States Senators, Justices, judges, and magistrates.

- 1 (a) Any vacancy occurring in the offices of Secretary of
2 State, Auditor, Treasurer, Attorney General, Commissioner of
3 Agriculture, or in any office created or made elective to be filled
4 by the voters of the entire state, is filled by the Governor of the
5 state by appointment and subsequent election to fill the
6 remainder of the term, if required by section one of this article.

- 7 (b) Any vacancy occurring in the offices of Justice of the
8 Supreme Court of Appeals, judge of a circuit court or judge of a

9 family court is filled by the Governor of the state by appointment
10 and, if the unexpired term be for a period of more than two
11 years, by a subsequent election to fill the remainder of the term,
12 as required by subsection (d) of this section. If an election is
13 required under subsection (d) of this section, the Governor,
14 circuit court or the chief judge thereof in vacation, is responsible
15 for the proper proclamation by order and notice required by
16 section one of this article.

17 (c) Any vacancy in the office of magistrate is appointed
18 according to the provisions of section six, article one, chapter
19 fifty of this code, and, if the unexpired term be for a period of
20 more than two years, by a subsequent election to fill the
21 remainder of the term, as required by subsection (d) of this
22 section.

23 (d) (1) When the vacancy in the office of Justice of the
24 Supreme Court of Appeals, judge of the circuit court, judge of a
25 family court or magistrate occurs after the eighty-fourth day
26 before a general election, and the affected term of office ends on
27 the thirty-first day of December following the succeeding
28 general election two years later, the person appointed to fill the
29 vacancy shall continue in office until the completion of the term.

30 (2) When the vacancy occurs before the close of the
31 candidate filing period for the primary election, and, if the
32 unexpired term be for a period of greater than two years, the
33 vacancy shall be filled by election in the nonpartisan judicial
34 election held concurrently with the primary election, and the
35 appointment shall continue until a successor is elected and
36 certified.

37 (3) When the vacancy occurs after the close of candidate
38 filing for the primary election and not later than eighty-four days
39 before the general election, and, if the unexpired term be for a
40 period of greater than two years, the vacancy shall be filled by

41 election in a nonpartisan judicial election held concurrently with
42 the general election, and the appointment shall continue until a
43 successor is elected and certified.

44 (e) When an election to fill a vacancy is required to be held
45 at the general election according to the provisions of subsection
46 (d) of this section, a special candidate filing period shall be
47 established. Candidates seeking election to any unexpired term
48 for Justice of the Supreme Court of Appeals, judge of a circuit
49 court, judge of the family court or magistrate shall file a
50 certificate of announcement and pay the filing fee no earlier than
51 the first Monday in August and no later than seventy-seven days
52 before the general election.

CHAPTER 103

(Com. Sub. for H. B. 4586 - By Delegate Cowles)

[Passed on March 11, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §54-2-4 of the Code of West Virginia, 1931, as amended, relating to representation in condemnation proceedings where a property owner or other party is under a legal disability; providing that the court shall protect the rights of any person who is under a legal disability because he or she is a protected person, incarcerated, or whose ownership interest, lien, or other claim to property requires them to be a party in a condemnation action; providing that a protected person who is a party in a condemnation action may be represented by a conservator or guardian or by a limited guardian appointed by the court; providing that an incarcerated person who is a party in a

condemnation action and has an attorney or committee shall be represented by the attorney or committee; providing that an incarcerated person who is a party in a condemnation action who does not have an attorney or committee shall be represented by a court appointed attorney; providing that the court shall appoint a guardian ad litem to defend the interests of an unknown owner or owners of property subject to condemnation; clarifying that the statutory procedures for condemnation actions control; and authorizing payment for court appointed attorneys to be paid in an amount to be fixed by the court or judge, to be taxed as costs and paid by the applicant.

Be it enacted by the Legislature of West Virginia:

That §54-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. PROCEDURE.

§54-2-4. Persons under disability.

1 (a) The court shall protect the rights of any person who is
2 under a legal disability because he or she is a protected person,
3 as defined in section two (a), article one, chapter forty-four-a of
4 this code, or incarcerated, and whose ownership interest, lien or
5 other claim to property requires them to be a party in a
6 condemnation action brought pursuant to the provisions of this
7 chapter.

8 (b) A protected person who is a party in a condemnation
9 action may be represented by a conservator or guardian or by a
10 limited guardian appointed by the court to represent the
11 protected person in the condemnation action.

12 (c) An incarcerated person who is a party in a condemnation
13 action and who has an attorney or committee shall be

14 represented by the attorney or committee. An incarcerated
15 person who is a party in a condemnation action who does not
16 have an attorney or committee shall be represented by an
17 attorney appointed by the court.

18 (d) The court shall appoint a guardian ad litem to defend the
19 interests of an unknown owner or owners of property subject to
20 condemnation.

21 (e) Notwithstanding any other provisions of this code to the
22 contrary, the provisions of this chapter regarding the procedure
23 in condemnation actions shall be followed.

24 (f) The court may direct payment of a limited guardian,
25 attorney or guardian ad litem appointed in an amount to be fixed
26 by the court or judge, to be taxed as costs and paid by the
27 applicant.

CHAPTER 104

**(Com. Sub. for S. B. 484 - By Senators Romano,
Leonhardt, Plymale and Kessler)**

[Passed March 9, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §15-1F-8 of the Code of West Virginia, 1931, as amended, relating to the reemployment rights of military personnel; extending reemployment rights protection to members of the organized militia in the active service of another state; and clarifying that the Uniformed Services Employment and Reemployment Rights Act of 1994 is considered applicable federal law.

Be it enacted by the Legislature of West Virginia:

That §15-1F-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-8. Reemployment rights of members of the organized militia.

1 Members of the organized militia in the active service of the
2 state or another state shall be entitled to the same reemployment
3 rights granted to members of the reserve components of the
4 Armed Forces of the United States by applicable federal law,
5 including rights protected by the Uniformed Services
6 Employment and Reemployment Rights Act of 1994
7 (USERRA), as amended, 38 U. S. C. §§4301-4334.

CHAPTER 105

**(Com. Sub. for H. B. 4507 - By Delegates Upson,
J. Nelson, Cooper, Blair, Trecost,
Householder, Espinosa and Frich)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-11-9a, all relating to granting preference in hiring to veteran or disabled veteran; defining “veteran”; providing that veteran or disabled veteran meet knowledge, skill and eligibility requirements of job; and clarifying that preference does not violate state equal employment opportunity law.

Be it enacted by the Legislature of West Virginia:

That §5-11-9 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 §5-11-9a, all to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-9. Unlawful discriminatory practices.

1 It shall be an unlawful discriminatory practice, unless based
2 upon a bona fide occupational qualification, or except where
3 based upon applicable security regulations established by the
4 United States or the State of West Virginia or its agencies or
5 political subdivisions:

6 (1) For any employer to discriminate against an individual
7 with respect to compensation, hire, tenure, terms, conditions or
8 privileges of employment if the individual is able and competent
9 to perform the services required even if such individual is blind
10 or disabled: *Provided*, That it shall not be an unlawful
11 discriminatory practice for an employer to observe the
12 provisions of any bona fide pension, retirement, group or
13 employee insurance or welfare benefit plan or system not
14 adopted as a subterfuge to evade the provisions of this
15 subdivision: *Provided, however*, That an employer may grant
16 preference in hiring to a veteran or a disabled veteran in
17 accordance with the provisions of section nine-a of this article
18 without violating the provisions of this article.

19 (2) For any employer, employment agency or labor
20 organization, prior to the employment or admission to
21 membership, to: (A) Elicit any information or make or keep a
22 record of or use any form of application or application blank
23 containing questions or entries concerning the race, religion,

24 color, national origin, ancestry, sex or age of any applicant for
25 employment or membership; (B) print or publish or cause to be
26 printed or published any notice or advertisement relating to
27 employment or membership indicating any preference,
28 limitation, specifications or discrimination based upon race,
29 religion, color, national origin, ancestry, sex, disability or age;
30 or (C) deny or limit, through a quota system, employment or
31 membership because of race, religion, color, national origin,
32 ancestry, sex, age, blindness or disability;

33 (3) For any labor organization because of race, religion,
34 color, national origin, ancestry, sex, age, blindness or disability
35 of any individual to deny full and equal membership rights to
36 any individual or otherwise to discriminate against such
37 individual with respect to hire, tenure, terms, conditions or
38 privileges of employment or any other matter, directly or
39 indirectly, related to employment;

40 (4) For an employer, labor organization, employment agency
41 or any joint labor-management committee controlling apprentice
42 training programs to:

43 (A) Select individuals for an apprentice training program
44 registered with the State of West Virginia on any basis other than
45 their qualifications as determined by objective criteria which
46 permit review;

47 (B) Discriminate against any individual with respect to his
48 or her right to be admitted to or participate in a guidance
49 program, an apprenticeship training program, on-the-job training
50 program or other occupational training or retraining program;

51 (C) Discriminate against any individual in his or her pursuit
52 of such programs or to discriminate against such a person in the
53 terms, conditions or privileges of such programs;

54 (D) Print or circulate or cause to be printed or circulated any
55 statement, advertisement or publication, or to use any form of
56 application for these programs or to make any inquiry in
57 connection with a program which expresses, directly or
58 indirectly, discrimination or any intent to discriminate unless
59 based upon a bona fide occupational qualification;

60 (5) For any employment agency to fail or refuse to classify
61 properly, refer for employment or otherwise to discriminate
62 against any individual because of his or her race, religion, color,
63 national origin, ancestry, sex, age, blindness or disability;

64 (6) For any person being the owner, lessee, proprietor,
65 manager, superintendent, agent or employee of any place of
66 public accommodations to:

67 (A) Refuse, withhold from or deny to any individual because
68 of his or her race, religion, color, national origin, ancestry, sex,
69 age, blindness or disability, either directly or indirectly, any of
70 the accommodations, advantages, facilities, privileges or
71 services of the place of public accommodations;

72 (B) Publish, circulate, issue, display, post or mail, either
73 directly or indirectly, any written or printed communication,
74 notice or advertisement to the effect that any of the
75 accommodations, advantages, facilities, privileges or services of
76 any such place shall be refused, withheld from or denied to any
77 individual on account of race, religion, color, national origin,
78 ancestry, sex, age, blindness or disability, or that the patronage
79 or custom thereat of any individual, belonging to or purporting
80 to be of any particular race, religion, color, national origin,
81 ancestry, sex or age, or who is blind or disabled, is unwelcome,
82 objectionable, not acceptable, undesired or not solicited; or

83 (7) For any person, employer, employment agency, labor
84 organization, owner, real estate broker, real estate salesman or
85 financial institution to:

86 (A) Engage in any form of threats or reprisal, or to engage
87 in, or hire, or conspire with others to commit acts or activities of
88 any nature, the purpose of which is to harass, degrade, embarrass
89 or cause physical harm or economic loss or to aid, abet, incite,
90 compel or coerce any person to engage in any of the unlawful
91 discriminatory practices defined in this section;

92 (B) Willfully obstruct or prevent any person from complying
93 with the provisions of this article, or to resist, prevent, impede or
94 interfere with the commission or any of its members or
95 representatives in the performance of a duty under this article; or

96 (C) Engage in any form of reprisal or otherwise discriminate
97 against any person because he or she has opposed any practices
98 or acts forbidden under this article or because he or she has filed
99 a complaint, testified or assisted in any proceeding under this
100 article.

§5-11-9a. Veterans preference not a violation of equal employment opportunity under certain circumstances.

1 An employer may grant preference in hiring to a veteran or
2 disabled veteran who has been honorably discharged from the
3 United States Armed Services: *Provided*, That the veteran or
4 disabled veteran meets all of the knowledge, skills, and
5 eligibility requirements of the job, and provided further that,
6 granting the preference does not violate any state equal
7 employment opportunity law. For purposes of this section, the
8 term “veteran” means any person who has received an honorable
9 discharge and: (a) Has provided more than one hundred eighty
10 consecutive days of full-time, active-duty service in the United
11 States Armed Services or Reserve components thereof, including
12 the National Guard; or (b) has a service-connected disability
13 rating fixed by the United States Department of Veterans
14 Affairs.

CHAPTER 106

**(H. B. 4726 - By R. Smith, Ireland, Phillips,
Caputo, Eldridge, Anderson, Boggs, D. Evans, Ambler,
Lynch, Zatezalo, Upson, Cadle, P. White,
McCuskey and Storch)**

[Passed March 11, 2016; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to repeal §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-4C-6c of said code; to amend and reenact §22-1-7 of said code; to amend and reenact §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a and §22-3-30a of said code; to amend said code by adding thereto six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37 and §22-3-38; to amend and reenact §22-11-6 of said code; to amend and reenact §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-31 and §22A-1-35 of said code; to amend and reenact §22A-1A-2 of said code; to amend and reenact §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code; and to amend and reenact §22A-7-7 of said code, all relating generally to coal mining; making findings; eliminating the Department of Environmental Protection Office of Explosives and Blasting and consolidating the remaining duties and responsibilities related to blasting to the Department of Environmental Protection Division of Mining and Reclamation; adding blasting oversight; providing that the Department of Environmental Protection to revise rules on hydrologic protection and stormwater runoff analyses on mining operations and to promulgate rules that conform with the federal

regulations requirements to minimize the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas; providing that cumulative hydrologic impact assessment may be conducted; requiring a statement of probable hydrologic consequences and to prevent flooding; modifying certain findings, ventilation requirements, and roof or rib requirements; requiring the Department of Environmental Protection to follow deadlines for approving or denying applications for site specific water quality criteria; providing that state mine rescue teams may serve as backup mine rescue teams for mines in this state; providing that the Board of Mine Health and Safety to have the authority to propose rules for the use of diesel equipment in the state's mines; transferring certification authority to the Director of the Office of Miners' Health, Safety and Training for mining emergency medical technicians; requiring the State Board of Appeals to allow evidence of testing procedures and test results be introduced through notarized affidavits from Medical Review Officers and testify if necessary; providing for telephonic testimony under oath; providing that the penalty for not reporting accidents in fifteen minutes to the Office of Miners' Health, Safety and Training be modified to up to \$100,000; providing that the Director of Office of Miners' Health, Safety and Training shall have the authority to modify assessed penalties and penalties may be modified by the State Board of Appeals based on a vote of two Board members; providing a method in case a miners' wireless emergency communications device fails; and allowing company input into state supervisory training and how it is scheduled during the year.

Be it enacted by the Legislature of West Virginia:

That §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended, be repealed; that §16-4C-6c of said code be amended and reenacted; that §22-1-7 of said code be amended and reenacted; that §22-3-2, §22-3-4, §22-3-13, §22-3-13a,

§22-3-22a, §22-3-30a of said code be amended and reenacted; that said code be amended by adding thereto six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37 and §22-3-38; that §22-11-6 of said code be amended and reenacted; that §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-31 and §22A-1-35 of said code be amended and reenacted; that §22A-1A-2 of said code be amended and reenacted; that §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code be amended and reenacted; and that §22A-7-7 of said code be amended and reenacted; all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6c. Certification requirements for emergency medical technician-mining.

- 1 (a) Commencing July 1, 2016, an applicant for certification
- 2 as an emergency medical technician-mining shall:
 - 3 (1) Be at least eighteen years old;
 - 4 (2) Apply on a form prescribed by the Director of Miners'
 - 5 Health, Safety and Training;
 - 6 (3) Pay the application fee;
 - 7 (4) Possess a valid cardiopulmonary resuscitation (CPR)
 - 8 certification;
 - 9 (5) Successfully complete an emergency medical
 - 10 technician-mining education program authorized by the Director
 - 11 of Miners' Health, Safety and Training in consultation with the
 - 12 Board of Miner Training, Education and Certification; and
 - 13 (6) Successfully complete emergency medical
 - 14 technician-mining cognitive and skills examinations authorized

15 by the Director of Miners' Health, Safety and Training in
16 consultation with the Board of Miner Training, Education and
17 Certification.

18 (b) The emergency medical technician-mining certification
19 is valid for three years.

20 (c) A certified emergency medical technician-mining may
21 only practice on mining operations, as defined in section three,
22 article thirteen-c, chapter eleven of this code.

23 (d) To be recertified as an emergency medical
24 technician-mining, a certificate holder shall:

25 (1) Apply on a form prescribed by the Director of Miners'
26 Health, Safety and Training;

27 (2) Pay the application fee;

28 (3) Possess a valid cardiopulmonary resuscitation (CPR)
29 certification;

30 (4) Successfully complete one of the following:

31 (A) A one-time thirty-two hour emergency medical
32 technician- mining recertification course authorized by the
33 Director of Miners' Health, Safety and Training in consultation
34 with the Board of Miner Training, Education and Certification;
35 or

36 (B) Three annual eight-hour retraining and testing programs
37 authorized by the Director of Miners' Health, Safety and
38 Training in consultation with the Board of Miner Training,
39 Education and Certification; and

40 (5) Successfully complete emergency medical technician-I
41 mining cognitive and skills recertification examinations
42 authorized by the Director of Miners' Health, Safety and

43 Training in consultation with the Board of Miner Training,
44 Education and Certification.

45 (e) The education program, training, courses, and cognitive
46 and skills examinations required for certification and
47 recertification as an emergency medical technician-miner, also
48 known as emergency medical technician-mining, in existence on
49 January 1, 2014, shall remain in effect for the certification and
50 recertification of emergency medical technician-industrial until
51 they are changed by legislative rule by the commissioner in
52 consultation with the Board of Miner Training, Education and
53 Certification.

54 (f) The administration of the emergency medical technician
55 mining certification and recertification program by the Director
56 of Miners' Health, Safety and Training shall be done in
57 consultation with the Board of Miner Training, Education and
58 Certification.

59 (g) The Director of Miners' Health, Safety and Training
60 shall propose rules for legislative approval, pursuant to the
61 provisions of article three, chapter twenty-nine-a of this code, in
62 consultation with the Board of Miner Training, Education and
63 Certification, and may propose emergency rules, to:

64 (1) Establish emergency medical technician-mining
65 certification and recertification courses and examinations;

66 (2) Authorize providers to administer the certification and
67 recertification courses and examinations, including mine training
68 personnel, independent trainers, community and technical
69 colleges, and Regional Educational Service Agencies (RESA):
70 *Provided*, That the mine training personnel and independent
71 trainers must have a valid cardiopulmonary resuscitation (CPR)
72 certification and must be an approved MSHA or OSHA certified
73 instructor;

- 74 (3) Establish a fee schedule: *Provided*, That the application
75 fee may not exceed \$10 and there shall be no fee for a certificate;
76 and
- 77 (4) Implement the provisions of this section.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-7. Offices within division.

- 1 Consistent with the provisions of this article, the secretary
2 shall, at a minimum, maintain the following offices within the
3 division:
- 4 (1) The Office of Abandoned Mine Lands and Reclamation,
5 which is charged, at a minimum, with administering and
6 enforcing, under the supervision of the secretary, the provisions
7 of article two of this chapter;
- 8 (2) The Division of Mining and Reclamation, which is
9 charged, at a minimum, with administering and enforcing, under
10 the supervision of the secretary, the provisions of articles three
11 and four of this chapter;
- 12 (3) The Division of Air Quality, which is charged, at a
13 minimum, with administering and enforcing, under the
14 supervision of the secretary, the provisions of article five of this
15 chapter;
- 16 (4) The Office of Oil and Gas, which is charged, at a
17 minimum, with administering and enforcing, under the
18 supervision of the secretary, the provisions of articles six, seven,
19 eight, nine and ten of this chapter; and

20 (5) The Division of Water and Waste Management, which is
21 charged, at a minimum, with administering and enforcing, under
22 the supervision of the secretary, the provisions of articles eleven,
23 twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen,
24 nineteen and twenty of this chapter

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-2. Legislative findings and purpose; jurisdiction vested in Division of Environmental Protection; authority of secretary; inter-departmental cooperation.

1 (a) The Legislature finds that it is essential to the economic
2 and social well-being of the citizens of the State of West
3 Virginia to strike a careful balance between the protection of the
4 environment and the economical mining of coal needed to meet
5 energy requirements.

6 (1) Further, the Legislature finds that there is great diversity
7 in terrain, climate, biological, chemical and other physical
8 conditions in parts of this nation where mining is conducted; that
9 the State of West Virginia in particular needs an environmentally
10 sound and economically healthy mining industry; and therefor it
11 may be necessary for the secretary to promulgate rules which
12 vary from federal regulations as is provided for in sections 101
13 (f) and 201 (c)(9) of the federal Surface Mining Control and
14 Reclamation Act of 1977, as amended, "Public Law 95-87."

15 (2) Further, the Legislature finds that unregulated surface
16 coal mining operations may result in disturbances of surface and
17 underground areas that burden and adversely affect commerce,
18 public welfare and safety by destroying or diminishing the utility
19 of land for commercial, industrial, residential, recreational,
20 agricultural and forestry purposes; by causing erosion and
21 landslides; by contributing to floods; by polluting the water and

22 river and stream beds; by destroying fish, aquatic life and
23 wildlife habitats; by impairing natural beauty; by damaging the
24 property of citizens; by creating hazards dangerous to life and
25 property; and by degrading the quality of life in local
26 communities, all where proper mining and reclamation is not
27 practiced.

28 (3) Further, the Legislature finds that the reasonable control
29 of blasting associated with surface mining within the State of
30 West Virginia is in the public interest and will promote the
31 protection of the citizens of the State of West Virginia and their
32 property without sacrificing economic development. It is the
33 policy of the State of West Virginia, in cooperation with other
34 governmental agencies, public and private organizations, and the
35 citizens of this state, to use reasonable means and measures to
36 prevent harm from the effects of blasting to its property and
37 citizens.

38 (b) Therefore, it is the purpose of this article to:

39 (1) Expand the established and effective statewide program
40 to protect the public and the environment from the adverse
41 effects of surface-mining operations;

42 (2) Assure that the rights of surface and mineral owners and
43 other persons with legal interest in the land or appurtenances to
44 land are adequately protected from the operations;

45 (3) Assure that surface-mining operations are not conducted
46 where reclamation as required by this article is not feasible;

47 (4) Assure that surface-mining operations are conducted in
48 a manner to adequately protect the environment;

49 (5) Assure that adequate procedures are undertaken to
50 reclaim surface areas as contemporaneously as possible with the
51 surface-mining operations;

52 (6) Assure that adequate procedures are provided for public
53 participation where appropriate under this article;

54 (7) Assure the exercise of the full reach of state common
55 law, statutory and constitutional powers for the protection of the
56 public interest through effective control of surface-mining
57 operations;

58 (8) Assure that the coal production essential to the nation's
59 energy requirements and to the State's economic and social
60 well-being is provided; and

61 (9) Vest in the secretary the authority to enforce all of the
62 laws, regulations and rules established to regulate blasting
63 consistent with the authority granted in sections thirty-four
64 through thirty-nine of this article.

65 (c) In recognition of these findings and purposes, the
66 Legislature vests authority in the secretary of the Department of
67 Environmental Protection to:

68 (1) Administer and enforce the provisions of this article as
69 it relates to surface mining to accomplish the purposes of this
70 article;

71 (2) Conduct hearings and conferences or appoint persons to
72 conduct them in accordance with this article;

73 (3) Promulgate, administer and enforce rules pursuant to this
74 article;

75 (4) Enter into a cooperative agreement with the Secretary of
76 the United States Department of the Interior to provide for state
77 regulation of surface-mining operations on federal lands within
78 West Virginia consistent with section 523 of the federal Surface
79 Mining Control and Reclamation Act of 1977, as amended; and

80 (5) Administer and enforce rules promulgated pursuant to
81 this chapter to accomplish the requirements of programs under
82 the federal Surface Mining Control and Reclamation Act of
83 1977, as amended.

84 (d) The secretary of the Department of Environmental
85 Protection and the director of the Office of Miners Health, Safety
86 and Training shall cooperate with respect to each agency's
87 programs and records to effect an orderly and harmonious
88 administration of the provisions of this article. The secretary of
89 the Department of Environmental Protection may avail himself
90 or herself of any services which may be provided by other state
91 agencies in this State and other states or by agencies of the
92 federal government, and may reasonably compensate them for
93 those services. Also, he or she may receive any federal funds,
94 state funds or any other funds, and enter into cooperative
95 agreements, for the reclamation of land affected by surface
96 mining.

§22-3-4. Reclamation; duties and functions of secretary.

1 (a) The secretary shall administer the provisions of this
2 article relating to surface-mining operations. The secretary has
3 within his or her jurisdiction and supervision all lands and areas
4 of the State, mined or susceptible of being mined, for the
5 removal of coal and all other lands and areas of the State
6 deforested, burned over, barren or otherwise denuded,
7 unproductive and subject to soil erosion and waste. Included
8 within the lands and areas are lands seared and denuded by
9 chemical operations and processes, abandoned coal mining
10 areas, swamplands, lands and areas subject to flowage easements
11 and backwaters from river locks and dams, and river, stream,
12 lake and pond shore areas subject to soil erosion and waste. The
13 jurisdiction and supervision exercised by the secretary shall be
14 consistent with other provisions of this chapter.

15 (b) The secretary may:

16 (1) Propose rules for promulgation, in accordance with the
17 provisions of article three, chapter twenty-nine-a of this code, to
18 implement the provisions of this article: *Provided*, That the
19 secretary shall give notice by publication of the public hearing
20 required in article three, chapter twenty-nine-a of this code:
21 *Provided, however*, That any forms, handbooks or similar
22 materials having the effect of a rule as defined in article three,
23 chapter twenty-nine-a of this code were issued, developed or
24 distributed by the director pursuant to or as a result of a rule are
25 subject to the provisions of article three, chapter twenty-nine-a
26 of this code;

27 (2) Make investigations or inspections necessary to ensure
28 complete compliance with the provisions of this code;

29 (3) Conduct hearings or appoint persons to conduct hearings
30 under provisions of this article or rules adopted by the secretary;
31 and for the purpose of any investigation or hearing under this
32 article, the secretary or his or her designated representative, may
33 administer oaths or affirmations, subpoena witnesses, compel
34 their attendance, take evidence and require production of any
35 books, papers, correspondence, memoranda, agreements or other
36 documents or records relevant or material to the inquiry;

37 (4) Enforce the provisions of this article as provided in this
38 article;

39 (5) Appoint such advisory committees as may be of
40 assistance to the secretary in the development of programs and
41 policies: *Provided*, That such advisory committees shall, in each
42 instance, include members representative of the general public;
43 and

44 (6) In relation to blasting on all surface-mining operations
45 and all surface-blasting activities related to underground mining
46 operations:

- 47 (A) Regulate blasting on all surface-mining operations;
- 48 (B) Implement and oversee the preblast survey process, as
49 set forth in section thirteen-a, article three of this chapter;
- 50 (C) Maintain and operate a system to receive and address
51 questions, concerns and complaints relating to mining
52 operations;
- 53 (D) Set the qualifications for individuals and firms
54 performing preblast surveys;
- 55 (E) Educate, train, examine and certify blasters; and
- 56 (F) Propose rules for legislative approval pursuant to the
57 provisions of section fifteen, article three, chapter twenty-nine-a
58 of this code for the implementation of sections thirty-four
59 through thirty-nine of this article.
- 60 (c)(1) After the secretary has adopted the rules required by
61 this article, any person may petition the secretary to initiate a
62 proceeding for the issuance, amendment or appeal of a rule
63 under this article.
- 64 (2) The petition shall be filed with the secretary and shall set
65 forth the facts which support the issuance, amendment or appeal
66 of a rule under this article.
- 67 (3) The secretary may hold a public hearing or may conduct
68 such investigation or proceeding as he or she considers
69 appropriate in order to determine whether the petition should be
70 granted or denied.
- 71 (4) Within ninety days after filing of a petition described in
72 subdivision (1) of this subsection, the secretary shall either grant
73 or deny the petition. If the secretary grants the petition, he or she
74 shall promptly commence an appropriate proceeding in

75 accordance with the provisions of chapter twenty-nine-a of this
76 code. If the secretary denies the petition, he or she shall notify
77 the petitioner in writing setting forth the reasons for the denial.

§22-3-13. General environmental protection performance standards for surface mining; variances.

1 (a) Any permit issued by the secretary pursuant to this article
2 to conduct surface mining operations shall require that the
3 surface mining operations meet all applicable performance
4 standards of this article and other requirements set forth in
5 legislative rules proposed by the secretary.

6 (b) The following general performance standards are
7 applicable to all surface mines and require the operation, at a
8 minimum, to:

9 (1) Maximize the utilization and conservation of the solid
10 fuel resource being recovered to minimize re-affecting the land
11 in the future through surface mining;

12 (2) Restore the land affected to a condition capable of
13 supporting the uses which it was capable of supporting prior to
14 any mining, or higher or better uses of which there is reasonable
15 likelihood so long as the use or uses do not present any actual or
16 probable hazard to public health or safety or pose any actual or
17 probable threat of water diminution or pollution and the permit
18 applicant's declared proposed land use following reclamation is
19 not considered to be impractical or unreasonable, inconsistent
20 with applicable land use policies and plans, involves
21 unreasonable delay in implementation or is violative of federal,
22 state or local law;

23 (3) Except as provided in subsection (c) of this section, with
24 respect to all surface mines, backfill, compact where advisable
25 to ensure stability or to prevent leaching of toxic materials and

26 grade in order to restore the approximate original contour:
27 *Provided*, That in surface mining which is carried out at the
28 same location over a substantial period of time where the
29 operation transects the coal deposit and the thickness of the coal
30 deposits relative to the volume of the overburden is large and
31 where the operator demonstrates that the overburden and other
32 spoil and waste materials at a particular point in the permit area
33 or otherwise available from the entire permit area is insufficient,
34 giving due consideration to volumetric expansion, to restore the
35 approximate original contour, the operator, at a minimum, shall
36 backfill, grade and compact, where advisable, using all available
37 overburden and other spoil and waste materials to attain the
38 lowest practicable grade, but not more than the angle of repose,
39 to provide adequate drainage and to cover all acid-forming and
40 other toxic materials in order to achieve an ecologically sound
41 land use compatible with the surrounding region: *Provided*,
42 *however*, That in surface mining where the volume of
43 overburden is large relative to the thickness of the coal deposit
44 and where the operator demonstrates that due to volumetric
45 expansion the amount of overburden and other spoil and waste
46 materials removed in the course of the mining operation is more
47 than sufficient to restore the approximate original contour, the
48 operator shall, after restoring the approximate contour, backfill,
49 grade and compact, where advisable, the excess overburden and
50 other spoil and waste materials to attain the lowest grade, but not
51 more than the angle of repose, and to cover all acid-forming and
52 other toxic materials in order to achieve an ecologically sound
53 land use compatible with the surrounding region and the
54 overburden or spoil shall be shaped and graded in a way as to
55 prevent slides, erosion and water pollution and revegetated in
56 accordance with the requirements of this article: *Provided*
57 *further*, That the secretary shall propose rules for legislative
58 approval in accordance with article three, chapter twenty-nine-a
59 of this code governing variances to the requirements for return
60 to approximate original contour or highwall elimination and

61 where adequate material is not available from surface mining
62 operations permitted after the effective date of this article for:
63 (A) Underground mining operations existing prior to August 3,
64 1977; or (B) for areas upon which surface mining prior to July
65 1, 1977, created highwalls;

66 (4) Stabilize and protect all surface areas, including spoil
67 piles, affected by the surface mining operation to effectively
68 control erosion and attendant air and water pollution;

69 (5) Remove the topsoil from the land in a separate layer,
70 replace it on the backfill area or, if not utilized immediately,
71 segregate it in a separate pile from other spoil and, when the
72 topsoil is not replaced on a backfill area within a time short
73 enough to avoid deterioration of the topsoil, maintain a
74 successful vegetative cover by quick growing plants or by other
75 similar means in order to protect topsoil from wind and water
76 erosion and keep it free of any contamination by other acid or
77 toxic material: *Provided*, That if topsoil is of insufficient
78 quantity or of poor quality for sustaining vegetation, or if other
79 strata can be shown to be more suitable for vegetation
80 requirements, then the operator shall remove, segregate and
81 preserve in a like manner any other strata which is best able to
82 support vegetation;

83 (6) Restore the topsoil or the best available subsoil which is
84 best able to support vegetation;

85 (7) Ensure that all prime farmlands are mined and reclaimed
86 in accordance with the specifications for soil removal, storage,
87 replacement and reconstruction established by the United States
88 Secretary of Agriculture and the Soil Conservation Service
89 pertaining thereto. The operator, at a minimum, shall: (A)
90 Segregate the A horizon of the natural soil, except where it can
91 be shown that other available soil materials will create a final
92 soil having a greater productive capacity and, if not utilized

93 immediately, stockpile this material separately from other spoil
94 and provide needed protection from wind and water erosion or
95 contamination by other acid or toxic material; (B) segregate the
96 B horizon of the natural soil, or underlying C horizons or other
97 strata, or a combination of the horizons or other strata that are
98 shown to be both texturally and chemically suitable for plant
99 growth and that can be shown to be equally or more favorable
100 for plant growth than the B horizon, in sufficient quantities to
101 create in the regraded final soil a root zone of comparable depth
102 and quality to that which existed in the natural soil and, if not
103 utilized immediately, stockpile this material separately from
104 other spoil and provide needed protection from wind and water
105 erosion or contamination by other acid or toxic material; (C)
106 replace and regrade the root zone material described in
107 paragraph (B) of this subdivision with proper compaction and
108 uniform depth over the regraded spoil material; and (D)
109 redistribute and grade in a uniform manner the surface soil
110 horizon described in paragraph (A) of this subdivision;

111 (8) Create, if authorized in the approved surface mining and
112 reclamation plan and permit, permanent impoundments of water
113 on mining sites as part of reclamation activities in accordance
114 with rules promulgated by the secretary;

115 (9) Where augering is the method of recovery, seal all auger
116 holes with an impervious and noncombustible material in order
117 to prevent drainage except where the secretary determines that
118 the resulting impoundment of water in the auger holes may
119 create a hazard to the environment or the public welfare and
120 safety: *Provided*, That the secretary may prohibit augering if
121 necessary to maximize the utilization, recoverability or
122 conservation of the mineral resources or to protect against
123 adverse water quality impacts;

124 (10) Minimize the disturbances to the prevailing hydrologic
125 balance at the mine site and in associated off-site areas and to the

126 quality and quantity of water in surface and groundwater systems
127 both during and after surface mining operations and during
128 reclamation by: (A) Avoiding acid or other toxic mine drainage
129 by such measures as, but not limited to: (i) Preventing or
130 removing water from contact with toxic producing deposits; (ii)
131 treating drainage to reduce toxic content which adversely affects
132 downstream water upon being released to water courses; and (iii)
133 casing, sealing or otherwise managing boreholes, shafts and
134 wells and keep acid or other toxic drainage from entering ground
135 and surface waters; (B) conducting surface mining operations so
136 as to prevent to the extent possible, using the best technology
137 currently available, additional contributions of suspended solids
138 to streamflow or runoff outside the permit area, but in no event
139 may contributions be in excess of requirements set by applicable
140 state or federal law; (C) constructing an approved drainage
141 system pursuant to paragraph (B) of this subdivision, prior to
142 commencement of surface mining operations, the system to be
143 certified by a person approved by the secretary to be constructed
144 as designed and as approved in the reclamation plan; (D)
145 avoiding channel deepening or enlargement in operations
146 requiring the discharge of water from mines; (E) unless
147 otherwise authorized by the secretary, cleaning out and removing
148 temporary or large settling ponds or other siltation structures
149 after disturbed areas are revegetated and stabilized, and
150 depositing the silt and debris at a site and in a manner approved
151 by the secretary; (F) restoring recharge capacity of the mined
152 area to approximate premining conditions; and (G) any other
153 actions prescribed by the secretary;

154 (11) With respect to surface disposal of mine wastes,
155 tailings, coal processing wastes and other wastes in areas other
156 than the mine working excavations: (A) Stabilize all waste piles
157 in designated areas through construction in compacted layers,
158 including the use of noncombustible and impervious materials if
159 necessary, and assure the final contour of the waste pile will be

160 compatible with natural surroundings and that the site will be
161 stabilized and revegetated according to the provisions of this
162 article; and (B) assure that the construction of any coal waste
163 pile or other coal waste storage area utilizes appropriate
164 technologies, such as capping or the use of liners, or any other
165 demonstrated technologies or measures which are consistent
166 with good engineering practices, to prevent an acid mine
167 drainage discharge;

168 (12) Design, locate, construct, operate, maintain, enlarge,
169 modify and remove or abandon, in accordance with standards
170 and criteria developed pursuant to subsection (f) of this section,
171 all existing and new coal mine waste piles consisting of mine
172 wastes, tailings, coal processing wastes or other liquid and solid
173 wastes and used either temporarily or permanently as dams or
174 embankments;

175 (13) Refrain from surface mining within five hundred feet of
176 any active and abandoned underground mines in order to prevent
177 breakthroughs and to protect health or safety of miners:
178 *Provided*, That the secretary shall permit an operator to mine
179 near, through or partially through an abandoned underground
180 mine or closer to an active underground mine if: (A) The nature,
181 timing and sequencing of the approximate coincidence of
182 specific surface mine activities with specific underground mine
183 activities are coordinated jointly by the operators involved and
184 approved by the secretary; and (B) the operations will result in
185 improved resource recovery, abatement of water pollution or
186 elimination of hazards to the health and safety of the public:
187 *Provided, however*, That any breakthrough which does occur
188 shall be sealed;

189 (14) Ensure that all debris, acid-forming materials, toxic
190 materials or materials constituting a fire hazard are treated or
191 buried and compacted, or otherwise disposed of in a manner
192 designed to prevent contamination of ground or surface waters,

193 and that contingency plans are developed to prevent sustained
194 combustion: *Provided*, That the operator shall remove or bury all
195 metal, lumber, equipment and other debris resulting from the
196 operation before grading release;

197 (15) Ensure that explosives are used only in accordance with
198 existing state and federal law and the rules promulgated by the
199 secretary, which shall include provisions to:

200 (A) Maintain for a period of at least three years and make
201 available for public inspection, upon written request, a log
202 detailing the location of the blasts, the pattern and depth of the
203 drill holes, the amount of explosives used per hole and the order
204 and length of delay in the blasts; and

205 (B) Require that all blasting operations be conducted by
206 persons certified by the Division of Mining and Reclamation.

207 (16) Ensure that all reclamation efforts proceed in an
208 environmentally sound manner and as contemporaneously as
209 practicable with the surface mining operations. Time limits shall
210 be established by the secretary requiring backfilling, grading and
211 planting to be kept current: *Provided*, That where surface mining
212 operations and underground mining operations are proposed on
213 the same area, which operations must be conducted under
214 separate permits, the secretary may grant a variance from the
215 requirement that reclamation efforts proceed as
216 contemporaneously as practicable to permit underground mining
217 operations prior to reclamation:

218 (A) If the secretary finds in writing that:

219 (i) The applicant has presented, as part of the permit
220 application, specific, feasible plans for the proposed
221 underground mining operations;

222 (ii) The proposed underground mining operations are
223 necessary or desirable to assure maximum practical recovery of
224 the mineral resource and will avoid multiple disturbance of the
225 surface;

226 (iii) The applicant has satisfactorily demonstrated that the
227 plan for the underground mining operations conforms to
228 requirements for underground mining in the jurisdiction and that
229 permits necessary for the underground mining operations have
230 been issued by the appropriate authority;

231 (iv) The areas proposed for the variance have been shown by
232 the applicant to be necessary for the implementing of the
233 proposed underground mining operations;

234 (v) No substantial adverse environmental damage, either
235 on-site or off-site, will result from the delay in completion of
236 reclamation as required by this article; and

237 (vi) Provisions for the off-site storage of spoil will comply
238 with subdivision (22), subsection (b) of this section;

239 (B) If the secretary has promulgated specific rules to govern
240 the granting of the variances in accordance with the provisions
241 of this subparagraph and has imposed any additional
242 requirements as the secretary considers necessary;

243 (C) If variances granted under the provisions of this
244 paragraph are reviewed by the secretary not more than three
245 years from the date of issuance of the permit: *Provided*, That the
246 underground mining permit shall terminate if the underground
247 operations have not commenced within three years of the date
248 the permit was issued, unless extended as set forth in subdivision
249 (3), section eight of this article; and

250 (D) If liability under the bond filed by the applicant with the
251 secretary pursuant to subsection (b), section eleven of this article

252 is for the duration of the underground mining operations and
253 until the requirements of subsection (g), section eleven of this
254 article and section twenty-three of this article have been fully
255 complied with;

256 (17) Ensure that the construction, maintenance and
257 post-mining conditions of access and haul roads into and across
258 the site of operations will control or prevent erosion and
259 siltation, pollution of water, damage to fish or wildlife or their
260 habitat, or public or private property: *Provided*, That access
261 roads constructed for and used to provide infrequent service to
262 surface facilities, such as ventilators or monitoring devices, are
263 exempt from specific construction criteria provided adequate
264 stabilization to control erosion is achieved through alternative
265 measures;

266 (18) Refrain from the construction of roads or other access
267 ways up a stream bed or drainage channel or in proximity to the
268 channel so as to significantly alter the normal flow of water;

269 (19) Establish on the regraded areas, and all other lands
270 affected, a diverse, effective and permanent vegetative cover of
271 the same seasonal variety native to the area of land to be affected
272 or of a fruit, grape or berry producing variety suitable for human
273 consumption and capable of self-regeneration and plant
274 succession at least equal in extent of cover to the natural
275 vegetation of the area, except that introduced species may be
276 used in the revegetation process where desirable or when
277 necessary to achieve the approved post-mining land use plan;

278 (20) Assume the responsibility for successful revegetation,
279 as required by subdivision (19) of this subsection, for a period of
280 not less than five growing seasons, as defined by the secretary,
281 after the last year of augmented seeding, fertilizing, irrigation or
282 other work in order to assure compliance with subdivision (19)
283 of this subsection: *Provided*, That when the secretary issues a

284 written finding approving a long-term agricultural post-mining
285 land use as a part of the mining and reclamation plan, the
286 director may grant exception to the provisions of subdivision
287 (19) of this subsection: *Provided, however,* That when the
288 director approves an agricultural post-mining land use, the
289 applicable five growing seasons of responsibility for
290 revegetation begins on the date of initial planting for the
291 agricultural post-mining land use;

292 On lands eligible for re-mining assume the responsibility for
293 successful revegetation, as required by subdivision (19) of this
294 subsection, for a period of not less than two growing seasons, as
295 defined by the director after the last year of augmented seeding,
296 fertilizing, irrigation or other work in order to assure compliance
297 with subdivision (19) of this subsection;

298 (21) Protect off-site areas from slides or damage occurring
299 during surface mining operations and not deposit spoil material
300 or locate any part of the operations or waste accumulations
301 outside the permit area: *Provided,* That spoil material may be
302 placed outside the permit area if approved by the secretary after
303 a finding that environmental benefits will result from the placing
304 of spoil material outside the permit area;

305 (22) Place all excess spoil material resulting from surface
306 mining activities in a manner that: (A) Spoil is transported and
307 placed in a controlled manner in position for concurrent
308 compaction and in a way as to assure mass stability and to
309 prevent mass movement; (B) the areas of disposal are within the
310 bonded permit areas and all organic matter is removed
311 immediately prior to spoil placements; (C) appropriate surface
312 and internal drainage system or diversion ditches are used to
313 prevent spoil erosion and movement; (D) the disposal area does
314 not contain springs, natural water courses or wet weather seeps,
315 unless lateral drains are constructed from the wet areas to the
316 main under drains in a manner that filtration of the water into the

317 spoil pile will be prevented; (E) if placed on a slope, the spoil is
318 placed upon the most moderate slope among those upon which,
319 in the judgment of the secretary, the spoil could be placed in
320 compliance with all the requirements of this article, and is
321 placed, where possible, upon, or above, a natural terrace, bench
322 or berm, if placement provides additional stability and prevents
323 mass movement; (F) where the toe of the spoil rests on a
324 downslope, a rock toe buttress, of sufficient size to prevent mass
325 movement, is constructed; (G) the final configuration is
326 compatible with the natural drainage pattern and surroundings
327 and suitable for intended uses; (H) the design of the spoil
328 disposal area is certified by a qualified registered professional
329 engineer in conformance with professional standards; and (I) all
330 other provisions of this article are met: *Provided*, That where the
331 excess spoil material consists of at least eighty percent, by
332 volume, sandstone, limestone or other rocks that do not slake in
333 water and will not degrade to soil material, the secretary may
334 approve alternate methods for disposal of excess spoil material,
335 including fill placement by dumping in a single lift, on a
336 site-specific basis: *Provided, however*, That the services of a
337 qualified registered professional engineer experienced in the
338 design and construction of earth and rockfill embankment are
339 utilized: *Provided further*, That the approval may not be
340 unreasonably withheld if the site is suitable;

341 (23) Meet any other criteria necessary to achieve reclamation
342 in accordance with the purposes of this article, taking into
343 consideration the physical, climatological and other
344 characteristics of the site;

345 (24) To the extent possible, using the best technology
346 currently available, minimize disturbances and adverse impacts
347 of the operation on fish, wildlife and related environmental
348 values, and achieve enhancement of these resources where
349 practicable; and

350 (25) Retain a natural barrier to inhibit slides and erosion on
351 permit areas where outcrop barriers are required: *Provided*, That
352 constructed barriers may be allowed where: (A) Natural barriers
353 do not provide adequate stability; (B) natural barriers would
354 result in potential future water quality deterioration; and (C)
355 natural barriers would conflict with the goal of maximum
356 utilization of the mineral resource: *Provided, however*, That at
357 a minimum, the constructed barrier shall be of sufficient width
358 and height to provide adequate stability and the stability factor
359 shall equal or exceed that of the natural outcrop barrier:
360 *Provided further*, That where water quality is paramount, the
361 constructed barrier shall be composed of impervious material
362 with controlled discharge points.

363 (c)(1) The secretary may prescribe procedures pursuant to
364 which he or she may permit surface mining operations for the
365 purposes set forth in subdivision (3) of this subsection.

366 (2) Where an applicant meets the requirements of
367 subdivisions (3) and (4) of this subsection, a permit without
368 regard to the requirement to restore to approximate original
369 contour set forth in subsection (b) or (d) of this section may be
370 granted for the surface mining of coal where the mining
371 operation will remove an entire coal seam or seams running
372 through the upper fraction of a mountain, ridge or hill, except as
373 provided in paragraph (A), subdivision (4) of this subsection, by
374 removing all of the overburden and creating a level plateau or a
375 gently rolling contour with no highwalls remaining and capable
376 of supporting post-mining uses in accordance with the
377 requirements of this subsection.

378 (3) In cases where an industrial, commercial, agricultural,
379 commercial forestry, residential or public facility including
380 recreational uses is proposed for the post-mining use of the
381 affected land, the secretary may grant a permit for a surface
382 mining operation of the nature described in subdivision (2) of

383 this subsection where: (A) The proposed post-mining land use is
384 determined to constitute an equal or better use of the affected
385 land, as compared with premining use; (B) the applicant presents
386 specific plans for the proposed post-mining land use and
387 appropriate assurances that the use will be: (i) Compatible with
388 adjacent land uses; (ii) practicable with respect to achieving the
389 proposed use; (iii) obtainable according to data regarding
390 expected need and market; (iv) supported by commitments from
391 public agencies where appropriate; (v) practicable with respect
392 to private financial capability for completion of the proposed
393 use; (vi) planned pursuant to a schedule attached to the
394 reclamation plan so as to integrate the mining operation and
395 reclamation with the post-mining land use; and (vii) designed by
396 a person approved by the secretary in conformance with
397 standards established to assure the stability, drainage and
398 configuration necessary for the intended use of the site; (C) the
399 proposed use would be compatible with adjacent land uses, and
400 existing state and local land use plans and programs; (D) the
401 secretary provides the county commission of the county in which
402 the land is located and any state or federal agency which the
403 secretary, in his or her discretion, determines to have an interest
404 in the proposed use, an opportunity of not more than sixty days
405 to review and comment on the proposed use; and (E) all other
406 requirements of this article will be met.

407 (4) In granting any permit pursuant to this subsection, the
408 secretary shall require that: (A) A natural barrier be retained to
409 inhibit slides and erosion on permit areas where outcrop barriers
410 are required: *Provided*, That constructed barriers may be allowed
411 where: (i) Natural barriers do not provide adequate stability; (ii)
412 natural barriers would result in potential future water quality
413 deterioration; and (iii) natural barriers would conflict with the
414 goal of maximum utilization of the mineral resource: *Provided*,
415 *however*, That, at a minimum, the constructed barrier shall be
416 sufficient in width and height to provide adequate stability and
417 the stability factor shall equal or exceed that of the natural

418 outcrop barrier: *Provided further*, That where water quality is
419 paramount, the constructed barrier shall be composed of
420 impervious material with controlled discharge points; (B) the
421 reclaimed area is stable; (C) the resulting plateau or rolling
422 contour drains inward from the out slopes except at specific
423 points; (D) no damage will be done to natural watercourses; (E)
424 spoil will be placed on the mountaintop bench as is necessary to
425 achieve the planned post-mining land use: *And provided further*,
426 That all excess spoil material not retained on the mountaintop
427 shall be placed in accordance with the provisions of subdivision
428 (22), subsection (b) of this section; and (F) ensure stability of the
429 spoil retained on the mountaintop and meet the other
430 requirements of this article.

431 (5) All permits granted under the provisions of this
432 subsection shall be reviewed not more than three years from the
433 date of issuance of the permit; unless the applicant affirmatively
434 demonstrates that the proposed development is proceeding in
435 accordance with the terms of the approved schedule and
436 reclamation plan.

437 (d) In addition to those general performance standards
438 required by this section, when surface mining occurs on slopes
439 of twenty degrees or greater, or on lesser slopes as may be
440 defined by rule after consideration of soil and climate, no debris,
441 abandoned or disabled equipment, spoil material or waste
442 mineral matter will be placed on the natural downslope below
443 the initial bench or mining cut: *Provided*, That soil or spoil
444 material from the initial cut of earth in a new surface mining
445 operation may be placed on a limited specified area of the
446 downslope below the initial cut if the permittee can establish to
447 the satisfaction of the secretary that the soil or spoil will not slide
448 and that the other requirements of this section can still be met.

449 (e) The secretary may propose rules for legislative approval
450 in accordance with article three, chapter twenty-nine-a of this
451 code that permit variances from the approximate original contour

452 requirements of this section: *Provided*, That the watershed
453 control of the area is improved: *Provided, however*, That
454 complete backfilling with spoil material is required to
455 completely cover the highwall, which material will maintain
456 stability following mining and reclamation.

457 (f) The secretary shall propose rules for legislative approval
458 in accordance with article three, chapter twenty-nine-a of this
459 code for the design, location, construction, maintenance,
460 operation, enlargement, modification, removal and abandonment
461 of new and existing coal mine waste piles. In addition to
462 engineering and other technical specifications, the standards and
463 criteria developed pursuant to this subsection shall include
464 provisions for review and approval of plans and specifications
465 prior to construction, enlargement, modification, removal or
466 abandonment; performance of periodic inspections during
467 construction; issuance of certificates of approval upon
468 completion of construction; performance of periodic safety
469 inspections; and issuance of notices and orders for required
470 remedial or maintenance work or affirmative action: *Provided*,
471 That whenever the secretary finds that any coal processing waste
472 pile constitutes an imminent danger to human life, he or she
473 may, in addition to all other remedies and without the necessity
474 of obtaining the permission of any person prior or present who
475 operated or operates a pile or the landowners involved, enter
476 upon the premises where any coal processing waste pile exists
477 and may take or order to be taken any remedial action that may
478 be necessary or expedient to secure the coal processing waste
479 pile and to abate the conditions which cause the danger to human
480 life: *Provided, however*, That the cost reasonably incurred in any
481 remedial action taken by the secretary under this subsection may
482 be paid for initially by funds appropriated to the division for
483 these purposes and the sums expended shall be recovered from
484 any responsible operator or landowner, individually or jointly,
485 by suit initiated by the Attorney General at the request of the

486 secretary. For purposes of this subsection, operates or operated
487 means to enter upon a coal processing waste pile, or part of a
488 coal processing waste pile, for the purpose of disposing,
489 depositing, dumping coal processing wastes on the pile or
490 removing coal processing waste from the pile, or to employ a
491 coal processing waste pile for retarding the flow of or for the
492 impoundment of water.

493 (g) The secretary shall promulgate for review and
494 consideration by the West Virginia Legislature during the 2017
495 Regular Session of the West Virginia Legislature revisions to the
496 rules for minimizing the disturbances to the prevailing
497 hydrologic balance at a mine site and in associated off-site areas
498 both during and after surface mining operations and during
499 reclamation as required under subdivision (10), subsection (b) of
500 this section, including specifically the rules for stormwater
501 runoff and control plans. The secretary shall specifically
502 conform these rules to the federal standards codified at 30 C.F.R.
503 §816.41 (1983) and 30 C.F.R. §816.45-47 (1983) when
504 proposing revisions to the state rule. The secretary shall not
505 propose rules more stringent than the federal standards codified
506 at 30 C.F.R. §816.41 (1983) and 30 C.F.R. §816.45-47 (1983)
507 when proposing revisions to the state rule.

§22-3-13a. Preblast survey requirements.

1 (a) At least thirty days prior to commencing blasting, as
2 defined in section twenty-two-a of this article, an operator or an
3 operator's designee shall make the following notifications in
4 writing to all owners and occupants of man-made dwellings or
5 structures that the operator or operator's designee will perform
6 preblast surveys in accordance with subsection (f) of this section:

7 (1) For surface mining operations that are less than two
8 hundred acres in a single permitted area or less than three
9 hundred acres of contiguous or nearly contiguous area of two or

10 more permitted areas, the required notifications shall be to all
11 owners and occupants of man-made dwellings or structures
12 within five tenths of a mile of the permitted area or areas;

13 (2) For all other surface mining operations, the required
14 notifications shall be to all owners and occupants of man-made
15 dwellings or structures within five tenths of a mile of the
16 permitted area or areas or seven tenths of a mile of the proposed
17 blasting site, whichever is greater; and

18 (3) For permitted surface disturbance of underground mines,
19 the required notifications shall be to all owners and occupants of
20 man-made dwellings or structures within five tenths of a mile of
21 the permitted surface area or areas.

22 (b) Any operator identified in subdivision (2), subsection (a)
23 of this section that has already completed preblast surveys for
24 man-made dwellings or structures within five tenths of a mile of
25 the permit area and has commenced operations by the effective
26 date of this section shall notify in writing all additional owners
27 and occupants of man-made dwellings or structures within seven
28 tenths of a mile of the proposed blasting site. Except for those
29 dwellings or structures for which the operator secures a written
30 waiver or executes an affidavit in accordance with the
31 requirements of subsection (c) of this section, the operator or the
32 operator's designee must perform the additional preblast surveys
33 in accordance with subsection (f) of this section.

34 (c) An occupant or owner of a man-made dwelling or
35 structure within the areas described in subdivision (1) or (2),
36 subsection (a) of this section may waive the right to a preblast
37 survey in writing. If a dwelling is occupied by a person other
38 than the owner, both the owner and the occupant must waive the
39 right to a preblast survey in writing. If an occupant or owner of
40 a man-made dwelling or structure refuses to allow the operator
41 or the operator's designee access to the dwelling or structure and

42 refuses to waive in writing the right to a preblast survey or to the
43 extent that access to any portion of the structure, underground
44 water supply or well is impossible or impractical under the
45 circumstances, the preblast survey shall indicate that access was
46 refused, impossible or impractical. The operator or the operator's
47 designee shall execute a sworn affidavit explaining the reasons
48 and circumstances surrounding the refusals. The Division of
49 Mining and Reclamation may not determine the preblast survey
50 to be incomplete because it indicates that access to a particular
51 structure, underground water supply or well was refused,
52 impossible or impractical. The operator shall send copies of all
53 written waivers and affidavits executed pursuant to this
54 subsection to the Division of Mining and Reclamation.

55 (d) If a preblast survey was waived by the owner and was
56 within the requisite area and the property was sold, the new
57 owner may request a preblast survey from the operator.

58 (e) An owner within the requisite area may request, from the
59 operator, a preblast survey on structures constructed after the
60 original preblast survey.

61 (f) The preblast survey shall include:

62 (1) The names, addresses or description of structure location
63 and telephone numbers of the owner and the residents of the
64 structure being surveyed and the structure number from the
65 permit blasting map;

66 (2) The current home insurer of the owner and the residents
67 of the structure;

68 (3) The names, addresses and telephone numbers of the
69 surface mining operator and the permit number;

70 (4) The current general liability insurer of the surface mining
71 operator;

72 (5) The name, address and telephone number of the person
73 or firm performing the preblast survey;

74 (6) The current general liability insurer of the person or firm
75 performing the preblast survey;

76 (7) The date of the preblast survey and the date it was mailed
77 or delivered to the Division of Mining and Reclamation.

78 (8) A general description of the structure and its
79 appurtenances, including, but not limited to: (A) The number of
80 stories; (B) the construction materials for the frame and the
81 exterior and interior finish; (C) the type of construction
82 including any unusual or substandard construction; and (D) the
83 approximate age of the structure;

84 (9) A general description of the survey methods and the
85 direction of progression of the survey, including a key to
86 abbreviations used;

87 (10) Written documentation and drawings, videos or
88 photographs of the preblast defects and other physical conditions
89 of all structures, appurtenances and water sources which could
90 be affected by blasting;

91 (11) Written documentation and drawings, videos or
92 photographs of the exterior and interior of the structure to
93 indicate preblast defects and condition;

94 (12) Written documentation and drawings, videos or
95 photographs of the exterior and interior of any appurtenance of
96 the structure to indicate preblast defects and condition;

97 (13) Sufficient exterior and interior photographs or videos,
98 using a variety of angles, of the structure and its appurtenances
99 to indicate preblast defects and the condition of the structure and
100 appurtenances;

101 (14) Written documentation and drawings, videos or
102 photographs of any unusual or substandard construction
103 technique and materials used on the structure or its
104 appurtenances or both structure and appurtenances;

105 (15) Written documentation relating to the type of water
106 supply, including a description of the type of system and
107 treatment being used, an analysis of untreated water supplies, a
108 water analysis of water supplies other than public utilities and
109 information relating to the quantity and quality of water;

110 (16) When the water supply is a well, written documentation,
111 where available, relating to the type of well; the well log; the
112 depth, age and type of casing or lining; the static water level;
113 flow data; the pump capacity; the drilling contractor; and the
114 source or sources of the documentation;

115 (17) A description of any portion of the structure and
116 appurtenances not documented or photographed and the reasons;

117 (18) The signature of the person performing the survey; and

118 (19) Any other information required by the secretary which
119 additional information shall be established by rule in accordance
120 with article three, chapter twenty-nine-a of this code.

121 (g) Except for additional preblast surveys prepared within
122 one hundred twenty days of the effective date of this section,
123 pursuant to subsection (b) of this section, the preblast survey
124 shall be submitted to the Division of Mining and Reclamation at
125 least fifteen days prior to the commencement of any production
126 blasting. The Division of Mining and Reclamation shall review
127 each preblast survey as to form and completeness only and
128 notify the operator of any deficiencies: *Provided*, That once all
129 required surveys have been reviewed and accepted by the
130 Division of Mining and Reclamation, blasting may commence
131 sooner than fifteen days after submittal. The Division of Mining

132 and Reclamation shall provide a copy of the preblast survey to
133 the owner or occupant.

134 (h) The surface mining operator shall file notice of the
135 preblast survey or the waiver in the office of the county clerk of
136 the county commission of the county where the man-made
137 dwelling or structure is located to notify the public that a
138 preblast survey has been conducted or waived. The notice shall
139 be on a form prescribed by the Division of Mining and
140 Reclamation.

141 (i) The secretary shall propose rules for legislative approval
142 in accordance with article three, chapter twenty-nine-a of this
143 code dealing with preblast survey requirements and setting the
144 qualifications for individuals and firms performing preblast
145 surveys.

146 (j) The provisions of this section do not apply to the
147 extraction of minerals by underground mining methods.

**§22-3-22a. Blasting restrictions; site specific blasting design
requirement.**

1 (a) For purposes of this section, the term “production
2 blasting” means blasting that removes the overburden to expose
3 underlying coal seams and does not include construction
4 blasting.

5 (b) For purposes of this section, the term “construction
6 blasting” means blasting to develop haul roads, mine access
7 roads, coal preparation plants, drainage structures or
8 underground coal mine sites and does not include production
9 blasting.

10 (c) For purposes of this section, the term “protected
11 structure” means any of the following structures that are situated
12 outside the permit area: An occupied dwelling; a temporarily

13 unoccupied dwelling which has been occupied within the past
14 ninety days; a public building; a structure for commercial
15 purposes; a school; a church; a community or institutional
16 building; and a public park or a water well.

17 (d) Production blasting is prohibited within three hundred
18 feet of a protected structure or within one hundred feet of a
19 cemetery.

20 (e) Blasting within one thousand feet of a protected structure
21 shall have a site-specific blast design approved by the Division
22 of Mining and Reclamation. The site-specific blast design shall
23 limit the type of explosives and detonating equipment, the size,
24 the timing and frequency of blasts to do the following:

25 (1) Prevent injury to persons; (2) prevent damage to public
26 and private property outside the permit area; (3) prevent adverse
27 impacts on any underground mine; (4) prevent change in the
28 course, channel or availability of ground or surface water outside
29 the permit area; and (5) reduce dust outside the permit area.

30 In the development of a site-specific blasting plan,
31 consideration shall be given, but is not limited to, the physical
32 condition, type and quality of construction of the protected
33 structure, the current use of the protected structure and the
34 concerns of the owner or occupant living in the protected
35 structures identified in the blasting schedule notification area.

36 (f) An owner or occupant of a protected structure may waive
37 the blasting prohibition within three hundred feet. If a protected
38 structure is occupied by a person other than the owner, both the
39 owner and the occupant of the protected structure shall waive the
40 blasting prohibition within three hundred feet in writing. The
41 operator shall send copies of all written waivers executed
42 pursuant to this subsection to the Division of Mining and
43 Reclamation. Written waivers executed and filed with the

44 Division of Mining and Reclamation are valid during the life of
45 the permit or any renewals of the permit and are enforceable
46 against any subsequent owners or occupants of the protected
47 structure.

48 (g) The provisions of this section do not apply to the
49 following: (1) Underground coal mining operations; (2) the
50 surface operations and surface impacts incident to an
51 underground coal mine; and (3) the extraction of minerals by
52 underground mining methods or the surface impacts of the
53 underground mining methods: *Provided*, That nothing contained
54 in this section may be construed to exempt any coal mining
55 operation from the general performance standards as contained
56 in section thirteen of this article and any rules promulgated
57 pursuant to said section.

**§22-3-30a. Blasting requirements; liability and civil penalties in
the event of property damage.**

1 (a) Blasting shall be conducted in accordance with the rules
2 and laws established to regulate blasting.

3 (b) If the Department of Environmental Protection
4 establishes after an inspection that a blast at a surface coal mine
5 operation as defined by the provisions of subdivision (2),
6 subsection (a), section thirteen-a of this article was not in
7 compliance with the regulations governing blasting parameters
8 and resulted in property damage to a protected structure, as
9 defined in section twenty-two-a of this article, other than water
10 wells, the following penalties shall be imposed for each permit
11 area or contiguous permit areas where the blasting was out of
12 compliance:

13 (1) For the first offense, the operator shall be assessed a
14 penalty of not less than \$1,000 nor more than \$5,000.

15 (2) For the second offense and each subsequent offense
16 within one year of the first offense, the surface mining operator
17 shall be assessed a penalty of not less than \$5,000 nor more than
18 \$10,000.

19 (3) For the third offense and any subsequent offense within
20 one year of the first offense, or for the failure to pay any
21 assessment set forth within a reasonable time established by the
22 secretary, the surface mining operator's permit is subject to an
23 immediate issuance of a cessation order, as set out in section
24 sixteen of this article. The cessation order shall only be released
25 upon written order of the secretary of the Department of
26 Environmental Protection when the following conditions have
27 been met:

28 (A) A written plan has been established and filed with the
29 secretary assuring that additional violations will not occur;

30 (B) The permittee has provided compensation for the
31 property damages or the assurance of adequate compensation for
32 the property damages that have occurred; and

33 (C) A permittee shall provide such monetary and other
34 assurances as the secretary considers appropriate to compensate
35 for future property damages. The monetary assurances required
36 shall be in an amount at least equal to the amount of
37 compensation required in paragraph (B), subdivision (3) of this
38 subsection.

39 (4) In addition to the penalties described in subdivisions (1),
40 (2) and (3) of this subsection for the second and subsequent
41 offenses on any one permitted area regardless of the time period,
42 the owner of the protected structure is entitled to a rebuttable
43 presumption that the property damage is a result of the blast if:
44 (A) A preblast survey was performed; and (B) the blasting site

45 to which the second or subsequent offense relates is within seven
46 tenths of a mile of the protected structure.

47 (5) No more than one offense may arise out of any one shot.
48 For purposes of this section, “shot” means a single blasting event
49 composed of one or multiple detonations of explosive material
50 or the assembly of explosive materials for this purpose. One
51 “shot” may be composed of numerous explosive charges
52 detonated at intervals measured in milliseconds.

53 (c) Notwithstanding the provisions of subsections (a) and (b)
54 of this section, the Department of Environmental Protection may
55 not impose penalties, as provided for in subsection (b) of this
56 section, on an operator for the violation of any rule identified in
57 subsection (b) of this section that is merely administrative in
58 nature.

59 (d) The remedies provided in this section are not exclusive
60 and may not bar an owner or occupant from any other remedy
61 accorded by law.

62 (e) Where inspection by the Department of Environmental
63 Protection establishes that production blasting, in violation of
64 section twenty-two-a of this article, was done within three
65 hundred feet of a protected structure, without an approved
66 site-specific blast design or not in accordance with an approved
67 site-specific blast design for production blasting within one
68 thousand feet of any protected structure as defined in section
69 twenty-two-a of this article or within one hundred feet of a
70 cemetery, the monetary penalties and revocation, as set out in
71 subsection (b) of this section, apply.

72 (f) All penalties and liabilities as set forth in subsection (b)
73 of this section shall be assessed by the secretary, collected by the
74 secretary and deposited with the Treasurer of the State of West
75 Virginia in the General School Fund.

76 (g) The secretary shall propose rules for legislative approval
77 pursuant to article three, chapter twenty-nine-a of this code for
78 the implementation of this section.

79 (h) The provisions of this section do not apply to the
80 extraction of minerals by underground mining methods:
81 *Provided*, That nothing contained in this section may be
82 construed to exempt any coal mining operation from the general
83 performance standards as contained in section thirteen of this
84 article and any rules promulgated pursuant thereto.

§22-3-34. Office of explosives and blasting terminated; transfer of functions; responsibilities, personnel and assets.

1 The office of explosives and blasting within the Department
2 of Environmental Protection is hereby terminated, and its
3 authority and functions are transferred to the Division of Mining
4 and Reclamation. With this transfer, all records, assets, and
5 contracts, along with the rights and obligations thereunder,
6 obtained or signed on behalf of the office of explosives and
7 blasting are hereby transferred and assigned to the Division of
8 Mining and Reclamation. The secretary shall transfer from the
9 office of explosives and blasting to the Division of Mining and
10 Reclamation any personnel and assets presently used in the
11 performance of the duties and functions required by sections
12 thirty-four through thirty-seven of this article.

§22-3-35. Legislative rules on surface-mining blasting; disciplinary procedures for certified blasters.

1 (a) All authority to promulgate rules pursuant to article three,
2 chapter twenty-nine-a of this code is hereby transferred from the
3 office of explosives and blasting to the Division of Mining and
4 Reclamation as of the effective date of enactment of this section
5 and article during the 2016 session of the Legislature: *Provided*,
6 That any rule promulgated by the office of explosives and

7 blasting shall remain in force and effect as though promulgated
8 by the Division of Mining and Reclamation until the secretary
9 amends the rules in accordance with the provisions of article
10 three, chapter twenty-nine-a of this code. Any rules promulgated
11 by the secretary shall include, but not be limited to, the
12 following:

13 (1) A procedure for the review, modification and approval,
14 prior to the issuance of any permit, of any blasting plan required
15 to be submitted with any application for a permit to be issued by
16 the secretary pursuant to article three of this chapter, which sets
17 forth procedures for the inspection and monitoring of blasting
18 operations for compliance with blasting laws and rules, and for
19 the review and modification of the blasting plan of any operator
20 against whom an enforcement action is taken by the Department
21 of Environmental Protection;

22 (2) Specific minimum requirements for preblast surveys, as
23 set forth in section thirteen-a, article three of this chapter;

24 (3) A procedure for review of preblast surveys required to be
25 submitted under section thirteen-a, article three of this chapter;

26 (4) A procedure for the use of seismographs for production
27 blasting which shall be made part of the blasting log;

28 (5) A procedure to warn of impending blasting to the owners
29 or occupants adjoining the blasting area;

30 (6) A procedure to limit the type of explosives and
31 detonating equipment, the size, the timing and frequency of
32 blasts based upon the physical conditions of the site so as to: (A)
33 Prevent injury to persons; (B) prevent damage to public and
34 private property outside the permit area; (C) prevent adverse
35 impacts on any underground mine; (D) prevent change in the
36 course, channel or availability of ground or surface water outside
37 the permit area; and (E) reduce dust outside the permit area;

38 (7) Provisions for requiring mining operators to publish the
39 planned blasting schedule in a newspaper of general circulation
40 in the locality of the mining operation;

41 (8) Provisions for requiring mining operators to provide
42 adequate advance written notice of the proposed blasting
43 schedule to local governments, owners and occupants living
44 within the distances prescribed in subsection (a), section
45 thirteen-a, article three of this chapter;

46 (9) Provisions for establishing a process for the education,
47 training, examination and certification of blasters working on
48 surface-mining operations;

49 (10) Provisions for establishing disciplinary procedures for
50 all certified blasters responsible for blasting on surface-mining
51 operations conducted within this state in violation of any law or
52 rule promulgated by the Department of Environmental
53 Protection to regulate blasting; and

54 (11) Provisions for establishing a fee on each quantity of
55 explosive material used for any purpose on surface mining
56 operations, which fee shall be calculated to generate sufficient
57 money to provide for the operation of the explosives and blasting
58 program and the Division of Energy. The secretary shall deposit
59 all moneys received from these fees into a special revenue fund
60 in the State Treasury known as the Mountaintop Removal Fund
61 to be expended by the secretary and the Division of Energy in
62 the performance of their duties.

§22-3-36. Claims process for blasting.

1 (a) The Division of Mining and Reclamation shall establish
2 and manage a process for the filing, administration and
3 resolution of claims related to blasting.

4 (b) Claims which may be filed and determined under the
5 provisions of this section shall be those arising from both of the
6 following:

7 (1) Damage to property arising from blasting activities
8 conducted pursuant to a permit granted under article three of this
9 chapter; and

10 (2) The damage is incurred by a claimant who is the owner
11 or occupant of the property.

12 (c) The claims process established by the Division of Mining
13 and Reclamation shall include the following:

14 (1) An initial determination by the Division of Mining and
15 Reclamation of the merit of the claim; and

16 (2) An arbitration process whereby the claim can be
17 determined and resolved by an arbitrator in a manner which is
18 inexpensive, prompt and fair to all parties.

19 (d) If the operator disagrees with the initial determination
20 made by the Division of Mining and Reclamation and requests
21 arbitration, then the following shall apply:

22 (1) Any party may be represented by a representative of their
23 choice;

24 (2) At the request of the claimant, the Division of Mining
25 and Reclamation shall provide the claimant with representation
26 in the arbitration process, which representation shall not
27 necessarily be an attorney-at-law; and

28 (3) If the claim is upheld, in whole or in part, then the
29 operator shall pay the costs of the proceeding, as well as
30 reasonable representation fees and costs of the claimant, in an
31 amount not to exceed \$1,000.

32 (e) Participation in the claims process created by this section
33 shall be voluntary for the claimant. However, once the claimant
34 has submitted a claim for determination under the provisions of
35 this section, it is intended that the finding of the Division of
36 Mining and Reclamation, if not taken to arbitration, shall be
37 final. If arbitration is requested, it is intended that the results of
38 such arbitration shall be final. The Division of Mining and
39 Reclamation shall provide written notification to the claimant of
40 the provisions of this subsection and shall secure a written
41 acknowledgment from the claimant prior to processing a claim
42 pursuant to the provisions of this section.

43 (f) The operator shall pay any claim for which the operator
44 is adjudged liable within thirty days of a final determination. If
45 the claim is not paid within thirty days, the secretary shall issue
46 a cessation order pursuant to section sixteen, article three of this
47 chapter for all sites operated by the operator.

48 (g) No permit to mine coal shall be granted unless the permit
49 applicant agrees to be subject to the terms of this section.

50 (h) To fulfill its responsibilities pursuant to this section, the
51 Division of Mining and Reclamation may retain the services of
52 inspectors, experts and other persons or firms as may be
53 necessary.

**§22-3-37. Rules, orders and permits to remain in effect regarding
blasting; proceedings not affected.**

1 (a) All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses, waivers, bonds, authorizations
3 and privileges which have been issued, made, granted or allowed
4 to become effective prior to the enactment of this article shall
5 remain in effect according to their terms until modified,
6 terminated, superseded, set aside or revoked pursuant to this
7 article, by a court of competent jurisdiction, or by operation of
8 law.

9 (b) Any proceedings, including notices of proposed
10 rule-making, or any application for any license, permit or
11 certificate pending before the division are not affected by this
12 enactment.

§22-3-38. Transfer of personnel and assets.

1 The secretary shall transfer to the Division of Mining and
2 Reclamation any personnel and assets presently used to perform
3 or used in the performance of the duties and functions required
4 by sections thirty-four through thirty-nine of this article.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

**§22-11-6. Requirement to comply with standards of water quality
and effluent limitations.**

1 All persons affected by rules establishing water quality
2 standards and effluent limitations shall promptly comply with
3 the rules: *Provided*, That:

4 (1) Where necessary and proper, the secretary may specify
5 a reasonable time for persons not complying with the standards
6 and limitations to comply with the rules and upon the expiration
7 of that period of time, the secretary shall revoke or modify any
8 permit previously issued which authorized the discharge of
9 treated or untreated sewage, industrial wastes or other wastes
10 into the waters of this state which result in reduction of the
11 quality of the waters below the standards and limitations
12 established therefor by rules of the board or secretary;

13 (2) For purposes of both this article and sections 309 and 505
14 of the federal Water Pollution Control Act, compliance with a
15 permit issued pursuant to this article shall be considered
16 compliance for purposes of both this article and sections 301,
17 302, 303, 306, 307 and 403 of the federal Water Pollution
18 Control Act and with all applicable state and federal water

19 quality standards, except for any standard imposed under section
20 307 of the federal Water Pollution Control Act for a toxic
21 pollutant injurious to human health. Notwithstanding any
22 provision of this code or rule or permit condition to the contrary,
23 water quality standards themselves shall not be considered
24 “effluent standards or limitations” for the purposes of both this
25 article and sections 309 and 505 of the federal Water Pollution
26 Control Act and shall not be independently or directly enforced
27 or implemented except through the development of terms and
28 conditions of a permit issued pursuant to this article. Nothing in
29 this section, however, prevents the secretary from modifying,
30 reissuing or revoking a permit during its term. The provisions of
31 this section addressing compliance with a permit are intended to
32 apply to all existing and future discharges and permits without
33 the need for permit modifications; and

34 (3) The Legislature finds that there are concerns within West
35 Virginia regarding the applicability of the research underlying
36 the federal selenium criteria to a state such as West Virginia
37 which has high precipitation rates and free-flowing streams and
38 that the alleged environmental impacts that were documented in
39 applicable federal research have not been observed in West
40 Virginia and, further, that considerable research is required to
41 determine if selenium is having an impact on West Virginia
42 streams, to validate or determine the proper testing methods for
43 selenium and to better understand the chemical reactions related
44 to selenium mobilization in water.

45 (4) The Legislature finds that the EPA has been
46 contemplating a revision to the federally recommended criteria
47 for several years, but has yet to issue a revised standard.

48 (5) Because of the uncertainty regarding the applicability of
49 the current selenium standard, the secretary is hereby directed to
50 develop within six months of the effective date of this
51 subdivision an implementation plan for the current selenium
52 standard that will include, at minimum, the following:

- 53 (A) Implementing the criteria as a threshold standard;
- 54 (B) A monitoring plan that will include chemical speciation
55 of any selenium discharge;
- 56 (C) A fish population survey and monitoring plan that will
57 be implemented at a representative location to assess any
58 possible impacts from selenium discharges if the threshold
59 criteria are exceeded; and
- 60 (D) The results of the monitoring will be reported to the
61 department for use in the development of state-specific selenium
62 criteria.
- 63 (6) Within twenty-four months of the effective date of this
64 subdivision, the secretary shall propose rules for legislative
65 approval in accordance with the provisions of article three,
66 chapter twenty-nine of this code which establish a state-specific
67 selenium standard that protects aquatic life. Concurrent with
68 proposing a legislative rule, the secretary shall also submit the
69 proposed standard and supporting documentation to the
70 administrator of the Environmental Protection Agency. The
71 secretary shall also consult with and consider research and data
72 from the West Virginia Water Research Institute at West
73 Virginia University, the regulated community and other
74 appropriate groups in developing the state-specific selenium
75 standard.
- 76 (7) Within thirty days of the effective date of this section, the
77 secretary shall promulgate an emergency rule revising the
78 statewide aluminum water quality criteria for the protection of
79 aquatic life to incorporate aluminum criteria values using a
80 hardness-based equation. Concurrent with issuing an emergency
81 rule, the secretary shall also submit the proposed revisions and
82 supporting documentation to the administrator of the
83 Environmental Protection Agency.

84 (8) The secretary shall, within ninety days of receipt of any
85 completed request for a site specific water quality criterion,
86 approve or deny the request. Any denial or approval of an
87 application shall detail the specific basis for the denial or
88 approval and any revisions needed to the application. Any
89 denial or approval of a request may be appealed to the
90 environmental quality board pursuant to section twenty-one of
91 this article.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING ; ADMINISTRATION ; ENFORCEMENT.

§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.

1 (a) The office shall employ as many surface mine inspectors
2 as the director determines to be reasonably necessary in fully and
3 effectively carrying out the applicable provisions of this chapter.

4 (b) To be eligible for employment as a surface mine
5 inspector the applicant shall be: (1) a citizen of West Virginia,
6 in good health, not less than twenty-four years of age, of good
7 character and reputation and of temperate habits; (2) a person
8 who has had at least five years of practical experience in coal
9 mines, at least two years of which have been on surface mines
10 in this State: *Provided*, That graduation from any accredited
11 college of mining engineering may be considered the equivalent
12 of two years of practical experience; and (3) a person who has a
13 good theoretical and practical knowledge of surface mines,
14 surface mining methods, sound safety practices and applicable
15 mining laws and rules. For the purpose of this section, practical

16 experience means the performance of normal mining duties
17 requiring a person to hold a certificate of competency and
18 qualification as an experienced surface miner prior to actually
19 performing the duties.

20 (c)(1) In order to qualify for appointment as a surface mine
21 inspector, an eligible applicant shall submit to written, oral and
22 practical examinations administered by the Mine Inspectors'
23 Examining Board and furnish evidence of good health, character
24 and other facts establishing eligibility as the board may require.
25 The examinations shall relate to the duties to be performed by a
26 surface mine inspector and, subject to the approval of the mine
27 inspectors' examining board, may be prepared by the director.

28 (2) If the board finds after investigation and examination that
29 an applicant is: (A) Eligible for appointment; and (B) has passed
30 each required examination with a grade of at least seventy-five
31 percent, or an overall combined average score of eighty percent,
32 the board shall add the applicant's name and grades to the
33 register of qualified eligible candidates and promptly certify its
34 action in writing to the director. The director shall then appoint
35 one of the candidates from the three having the highest grades.

36 (d) Surface mine inspectors shall be paid an annual salary of
37 not less than \$37,332, which shall be fixed by the director, who
38 shall take into consideration ability, performance of duty, and
39 experience. Surface mine inspectors shall devote all of their time
40 to the duties of the office.

41 (e) Except as expressly provided in this section to the
42 contrary, all provisions of this article relating to the eligibility,
43 qualification, appointment, tenure, and removal of underground
44 mine inspectors, as well as those provisions relating to
45 compensatory time and reimbursement for necessary expenses,
46 are applicable to surface mine inspectors.

§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice of an inspection; reports after fatal accidents.

1 (a) The director, or his or her authorized representative, has
2 authority to visit, enter, and examine any mine, whether
3 underground or on the surface, and may call for the assistance of
4 any district mine inspector or inspectors whenever assistance is
5 necessary in the examination of any mine. The operator of every
6 coal mine shall furnish the director or his or her authorized
7 representative proper facilities for entering the mine and making
8 examination or obtaining information.

9 (b) If miners or one of their authorized representatives, have
10 reason to believe, at any time, that dangerous conditions are
11 existing or that the law is not being complied with, they may
12 request the director to have an immediate investigation made:
13 *Provided*, That miners are always encouraged to work with mine
14 management with regards to safety concerns.

15 (c) Mine inspectors shall devote their full-time and
16 undivided attention to the performance of their duties, and they
17 shall examine all of the mines in their respective districts at least
18 four times annually, and as often, in addition thereto, as the
19 director may direct, or the necessities of the case or the condition
20 of the mine or mines may require, with no advance notice of
21 inspection provided to any person, and they shall make a
22 personal examination of each working face and all entrances to
23 abandoned parts of the mine where gas is known to liberate, for
24 the purpose of determining whether an imminent danger,
25 referred to in section fifteen of this article, exists in the mine, or
26 whether any provision of article two of this chapter is being
27 violated or has been violated within the past forty-eight hours in
28 the mine. No other person shall, with the intent of undermining
29 the integrity of an unannounced mine inspection, provide
30 advance notice of any inspection or of an inspector's presence at

31 a mine to any person at that mine. Any person who, with the
32 requisite intent, knowingly causes or conspires to provide
33 advance notice of any inspection or of an inspector's presence at
34 a mine is guilty of a felony and, upon conviction thereof, shall be
35 fined not more than \$15,000 or imprisoned in a state correctional
36 facility not less than one year and not more than five years, or
37 both fined and imprisoned.

38 (d) In addition to the other duties imposed by this article and
39 article two of this chapter, it is the duty of each inspector to note
40 each violation he or she finds and issue a finding, order, or
41 notice, as appropriate for each violation so noted. During the
42 investigation of any accident, any violation may be noted
43 whether or not the inspector actually observes the violation and
44 whether or not the violation exists at the time the inspector notes
45 the violation, so long as the inspector has clear and convincing
46 evidence the violation has occurred or is occurring.

47 (e) An inspector shall require the operator or other employer
48 to investigate all complaints received by the Office of Miners'
49 Health, Safety and Training involving a certified person's
50 substance abuse or alcohol related impairment at a mine. Within
51 thirty days following notification by the Office of Miners'
52 Health, Safety and Training to the operator or other employer of
53 the complaint, the operator or other employer shall file with the
54 Director a summary of its investigation into the alleged
55 substance abuse or alcohol related impairment of a certified
56 person.

57 (f) The mine inspector shall visit the scene of each fatal
58 accident occurring in any mine within his or her district and shall
59 make an examination into the particular facts of the accident;
60 make a report to the director, setting forth the results of the
61 examination, including the condition of the mine and the cause
62 or causes of the fatal accident, if known, and all the reports shall
63 be made available to the interested parties, upon written requests.

64 (g) At the commencement of any inspection of a coal mine
65 by an authorized representative of the director, the authorized
66 representative of the miners at the mine, as well as a salaried
67 employee of management, at the time of the inspection shall be
68 given an opportunity to accompany the authorized representative
69 of the director on the inspection.

§22A-1-15. Findings, orders and notices.

1 (a) If upon any inspection of a coal mine an authorized
2 representative of the director finds that an imminent danger
3 exists, the representative shall determine the area throughout
4 which the danger exists and shall immediately issue an order
5 requiring the operator of the mine or the operator's agent to
6 cause immediately all persons, except those referred to in
7 subdivisions (1), (2), (3) and (4), subsection (e) of this section,
8 to be withdrawn from and to be prohibited from entering the area
9 until an authorized representative of the director determines that
10 the imminent danger no longer exists.

11 (b) If upon any inspection of a coal mine an authorized
12 representative of the director finds that there has been a violation
13 of the law, but the violation has not created an imminent danger,
14 he or she shall issue a notice to the operator or the operator's
15 agent fixing a reasonable time for the abatement of the violation.
16 If upon the expiration of the period of time, as originally fixed
17 or subsequently extended, an authorized representative of the
18 director finds that the violation has not been totally abated, and
19 if the director also finds that the period of time should not be
20 further extended, the director shall find the extent of the area
21 affected by the violation and shall promptly issue an order
22 requiring the operator of the mine or the operator's agent to
23 cause immediately all persons, except those referred to in
24 subdivisions (1), (2), (3) and (4), subsection (e) of this section,
25 to be withdrawn from and to be prohibited from entering the area
26 until an authorized representative of the director determines that
27 the violation has been abated.

28 (c) If upon any inspection of a coal mine an authorized
29 representative of the director finds that an imminent danger
30 exists in an area of the mine, in addition to issuing an order
31 pursuant to subsection (a) of this section, the director shall
32 review the compliance record of the mine.

33 (1) A review of the compliance record conducted in
34 accordance with this subsection shall, at a minimum, include a
35 review of the following:

36 (A) Any closure order issued pursuant to subsection (a) of
37 this section;

38 (B) Any closure order issued pursuant to subsection (b) of
39 this section;

40 (C) Any enforcement measures taken pursuant to this
41 chapter, other than those authorized under subsections (a) and
42 (b) of this section;

43 (D) Any evidence of the operator's lack of good faith in
44 abating significant and substantial violations at the mine;

45 (E) Any accident, injury or illness record that demonstrates
46 a serious safety or health management problem at the mine; and

47 (F) Any mitigating circumstances.

48 (2) If, after review of the mine's compliance record, the
49 director determines that the mine has a history of repeated
50 significant and substantial violations of a particular standard
51 caused by unwarrantable failure to comply or a history of
52 repeated significant and substantial violations of standards
53 related to the same hazard caused by unwarrantable failure to
54 comply and the history or histories demonstrate the operator's
55 disregard for the health and safety of miners, the director shall
56 issue a closure order for the entire mine or area throughout

57 which the director determines the dangerous condition exists and
58 shall immediately issue an order requiring the operator of the
59 mine or the operator's agent to cause immediately all persons,
60 except those referred to in subdivisions (1), (2), (3) and (4),
61 subsection (e) of this section, to be withdrawn from and to be
62 prohibited from entering the mine or area throughout which the
63 director determines the dangerous condition until a thorough
64 inspection of the mine or area has been conducted by the office
65 and the director determines that the operator has abated all
66 violations related to the imminent danger and any violations
67 unearthed in the course of the inspection.

68 (d) All employees on the inside and outside of a mine who
69 are idled as a result of the posting of a withdrawal order by a
70 mine inspector shall be compensated by the operator at their
71 regular rates of pay for the period they are idled, but not for
72 more than the balance of the shift. If the order is not terminated
73 prior to the next working shift, all the employees on that shift
74 who are idled by the order are entitled to full compensation by
75 the operator at their regular rates of pay for the period they are
76 idled, but for not more than four hours of the shift.

77 (e) The following persons are not required to be withdrawn
78 from or prohibited from entering any area of the coal mine
79 subject to an order issued under this section:

80 (1) Any person whose presence in the area is necessary, in
81 the judgment of the operator or an authorized representative of
82 the director, to eliminate the condition described in the order;

83 (2) Any public official whose official duties require him or
84 her to enter the area;

85 (3) Any representative of the miners in the mine who is, in
86 the judgment of the operator or an authorized representative of
87 the director, qualified to make coal mine examinations or who is

88 accompanied by such a person and whose presence in the area is
89 necessary for the investigation of the conditions described in the
90 order; and

91 (4) Any consultant to any of the persons set forth in this
92 subsection.

93 (f) Notices and orders issued pursuant to this section shall
94 contain a detailed description of the conditions or practices
95 which cause and constitute an imminent danger or a violation of
96 any mandatory health or safety standard and, where appropriate,
97 a description of the area of the coal mine from which persons
98 must be withdrawn and prohibited from entering.

99 (g) Each notice or order issued under this section shall be
100 given promptly to the operator of the coal mine or the operator's
101 agent by an authorized representative of the director issuing the
102 notice or order and all the notices and orders shall be in writing
103 and shall be signed by the representative and posted on the
104 bulletin board at the mine.

105 (h) A notice or order issued pursuant to this section may be
106 modified or terminated by an authorized representative of the
107 director.

108 (i) Each finding, order and notice made under this section
109 shall promptly be given to the operator of the mine to which it
110 pertains by the person making the finding, order or notice.

111 (j) *Definitions.* — For the purposes of this section only, the
112 following terms have the following meanings:

113 (1) “Unwarrantable failure” means aggravated conduct,
114 constituting more than ordinary negligence, by a mine operator
115 in relation to a violation of this chapter of the code; and

116 (2) “Significant and substantial violation” shall have the
117 same meaning as that established in 6 FMSHRC 1 (1984).

§22A-1-19. Judicial review.

1 (a) Any order or decision issued by the director under this
2 law, is subject to judicial review by the circuit court of the
3 county in which the mine affected is located upon the filing in
4 such court or with the judge thereof in vacation of a petition by
5 any person aggrieved by the order or decision praying that the
6 order or decision be modified or set aside, in whole or in part,
7 except that the court shall not consider such petition unless such
8 person has exhausted the administrative remedies available
9 under this law and files within thirty days from date of such
10 order or decision.

11 (b) The party making such appeal shall forthwith send a
12 copy of such petition for appeal, by registered mail, to the other
13 party. Upon receipt of such petition for appeal, the director shall
14 promptly certify and file in such court a complete transcript of
15 the record upon which the order or decision complained of was
16 issued. The court shall hear such petition on the record made
17 before the director. The findings of the director, if supported by
18 substantial evidence on the record considered as a whole, shall
19 be conclusive. The court may affirm, vacate or modify any order
20 or decision or may remand the proceedings to the director for
21 such further action as it may direct.

22 (c) In the case of a proceeding to review any order or
23 decision issued by the director under this law, except an order or
24 decision pertaining to an order issued under subsection (a),
25 section fifteen of this article or an order or decision pertaining to
26 a notice issued under subsection (b), section fifteen of this
27 article, the court may, under such conditions as it may prescribe,
28 grant such temporary relief as it deems appropriate pending final
29 determination of the proceedings if:

30 (A) All parties to the proceeding have been notified and
31 given an opportunity to be heard on a request for temporary
32 relief;

33 (B) The person requesting such relief shows that there is a
34 substantial likelihood that the person will prevail on the merits
35 of the final determination of the proceeding; and

36 (C) Such relief will not adversely affect the health and safety
37 of miners in the coal mine.

38 (d) The judgment of the court is subject to review only by
39 the Supreme Court of Appeals of West Virginia upon a writ of
40 certiorari filed in such court within sixty days from the entry of
41 the order and decision of the circuit court upon such appeal from
42 the director.

43 (e) The commencement of a proceeding under this section
44 shall not, unless specifically ordered by the court, operate as a
45 stay of the order or decision of the director.

46 (f) Subject to the direction and control of the attorney
47 general, attorneys appointed for the director may appear for and
48 represent the director in any proceeding instituted under this
49 section.

§22A-1-20. Injunctions.

1 The director may institute a civil action for relief, including
2 a permanent or temporary injunction, restraining order, or any
3 other appropriate order in the circuit court of the county in which
4 the mine is located whenever the operator or the operator's
5 agent: (a) Violates or fails or refuses to comply with any order
6 or decision issued under this law; or (b) interferes with, hinders
7 or delays the director or his or her authorized representative in
8 carrying out the provisions of this law; or (c) refuses to admit
9 such representatives to the mine; or (d) refuses to permit the
10 inspection of the mine, or the investigation of an accident or
11 occupational disease occurring in, or connected with, such mine;
12 or (e) refuses to furnish any information or report requested by

13 the director in furtherance of the provisions of this law; or (f)
14 refuses to permit access to, and copying of, such records as the
15 director determines necessary in carrying out the provisions of
16 this law. The court shall have jurisdiction to provide such relief
17 as may be appropriate. Except as otherwise provided herein, any
18 relief granted by the court to enforce an order under clause (a) of
19 this section shall continue in effect until the completion or final
20 termination of all proceedings for review of such order under
21 this law, unless, prior thereto, the circuit court granting such
22 relief sets it aside or modifies it. In any action instituted under
23 this section to enforce an order or decision issued by the director
24 after a public hearing, the findings of the director, if supported
25 by substantial evidence on the record considered as a whole,
26 shall be conclusive.

§22A-1-31. Withdrawal of certification.

1 (a) *Charge of breach of duty.* — A mine inspector or the
2 director may charge a mine foreman, assistant mine foreman,
3 fire boss or any other certified person with neglect or failure to
4 perform any duty mandated pursuant to this article or article two
5 of this chapter. The charge shall state the name of the person
6 charged, the duty or duties he or she is alleged to have violated,
7 the approximate date and place so far as is known of the
8 violation of duty, the capacity of the person making the charge,
9 and shall be verified on the basis of information and belief or
10 personal knowledge. The charge is initiated by filing it with the
11 director or with the board of appeals. A copy of any charge filed
12 with the board of appeals or any member thereof, shall be
13 transmitted promptly to the director. The director shall maintain
14 a file of each charge and of all related documents which shall be
15 open to the public.

16 (b) *Evaluation of charge by board of appeals.* — Within
17 twenty days after receipt of the charge the board shall evaluate
18 the charge and determine whether or not a violation of duty has

19 been stated. In making such a determination the board shall
20 evaluate all documents submitted to it by all persons to
21 determine as nearly as possible the substance of the charge and
22 if the board of appeals is unable to determine the substance of
23 the charge it may request the director to investigate the charge.
24 Upon request, the director shall cause the charge to be
25 investigated and report the results of the investigation to the
26 board of appeals within ten days of the director's receipt of the
27 charge. If the board determines that probable cause exists to
28 support the allegation that the person charged has violated his or
29 her duty, the board by the end of the twenty-day period shall set
30 a date for hearing which date shall be within eighty days of the
31 filing of the charge. Notice of the hearing or notice of denial of
32 the hearing for failure to state a charge and a copy of the charge
33 shall be mailed by certified mail, return receipt requested, to the
34 charging party, the charged party, the director, the representative
35 of the miner or miners affected and to any interested person of
36 record. Thereafter the board shall maintain the file of the charge
37 which shall contain all documents, testimony and other matters
38 filed which shall be open for public inspection.

39 (c) *Hearing.* — The board of appeals shall hold a hearing,
40 may appoint a hearing examiner to take evidence and report to
41 the board of appeals within the time allotted, may direct or
42 authorize taking of oral depositions under oath by any
43 participant, or adopt any other method for the gathering of sworn
44 evidence which affords the charging party, the charged party, the
45 director and any interested party of record due process of law
46 and a fair opportunity to present and make a record of evidence.
47 Any member of the board shall have the power to administer
48 oaths. The board may subpoena witnesses and require production
49 of any books, papers, records or other documents relevant or
50 material to the inquiry. The board shall consider all evidence
51 offered in support of the charge and on behalf of the persons so
52 charged at the time and place designated in the notice. Each
53 witness shall be sworn and a transcript shall be made of all

54 evidence presented in any such hearing. No continuance shall be
55 granted except for good cause shown.

56 The board of appeals may accept as evidence a notarized
57 affidavit of drug testing procedures and results from a Medical
58 Review Officer (MRO) in lieu of live testimony by the MRO. If
59 the Board of Appeals desires testimony in lieu of a notarized
60 affidavit, the MRO may testify under oath telephonically or by
61 an Internet based program in lieu of physically attending the
62 hearing.

63 At the conclusion of the hearing the board shall proceed to
64 determine the case upon consideration of all the evidence offered
65 and shall render a decision containing its findings of fact and
66 conclusions of law. If the board finds by a preponderance of the
67 evidence that the certificate or certificates of the charged person
68 should be suspended or revoked, as hereinafter provided, it shall
69 enter an order to that effect. No renewal of the certificate shall
70 be granted except as herein provided.

71 (d) *Failure to cooperate.* — Any person charged who
72 without just cause refuses or fails to appear before the board or
73 cooperate in the investigation or gathering of evidence shall
74 forfeit his or her certificate or certificates for a period to be
75 determined by the board, not to exceed five years, and such
76 certificate or certificates may not be renewed except upon a
77 successful completion of the examination prescribed by the law
78 for mine foremen, assistant mine foremen, fire bosses or other
79 certified persons.

80 (e) *Penalties.* — The board may suspend or revoke the
81 certificate or certificates of a charged party for a minimum of
82 thirty days or more including an indefinite period or may revoke
83 permanently the certificate or certificates of the charged party,
84 as it sees fit, subject to the prescribed penalties and monetary
85 fines imposed elsewhere in this chapter.

86 (f) *Integrity of penalties imposed.* — No person whose
87 certification is suspended or revoked under this provision can
88 perform any duties under any other certification issued under this
89 chapter, during the period of the suspension imposed herein.

90 (g) Any party adversely affected by a final order or decision
91 issued by the board hereunder is entitled to judicial review
92 thereof pursuant to section four, article five, chapter
93 twenty-nine-a of this code.

§22A-1-35. Mine rescue teams.

1 (a) The operator shall provide mine rescue coverage at each
2 active underground mine.

3 (b) Mine rescue coverage may be provided by:

4 (1) Establishing at least two mine rescue teams which are
5 available at all times when miners are underground; or

6 (2) Entering into an arrangement for mine rescue services
7 which assures that at least two mine rescue teams are available
8 at all times when miners are underground.

9 (3) A West Virginia Office of Miners' Health, Safety and
10 Training Mine Rescue Team may serve as a second or backup
11 team for mines within the state and qualify as one of the two
12 teams required under subdivision (1) of this subsection and in
13 accordance with 30 CFR, Part 49.20(4). The operator shall
14 contact the office and obtain the state's agreement to serve as a
15 backup team in the form of a written notification signed by the
16 director and this notification shall be kept posted at the mine.

17 (c) As used in this section, mine rescue teams shall be
18 considered available where teams are capable of presenting
19 themselves at the mine site(s) within a reasonable time after
20 notification of an occurrence which might require their services.

21 Rescue team members will be considered available even though
22 performing regular work duties or while in an off-duty capacity.
23 The requirement that mine rescue teams be available does not
24 apply when teams are participating in mine rescue contests or
25 providing rescue services to another mine.

26 (d) In the event of a fire, explosion or recovery operations in
27 or about any mine, the director is hereby authorized to assign
28 any mine rescue team to said mine to protect and preserve life
29 and property. The director may also assign mine rescue and
30 recovery work to inspectors, instructors or other qualified
31 employees of the office as he or she deems necessary.

32 (e) The ground travel time between any mine rescue station
33 and any mine served by that station shall not exceed two hours.
34 To ensure adequate rescue coverage for all underground mines,
35 no mine rescue station may provide coverage for more than
36 seventy mines within the two-hour ground travel limit as defined
37 in this subsection.

38 (f) Each mine rescue team shall consist of five members and
39 one alternate, who are fully qualified, trained and equipped for
40 providing emergency mine rescue service. Each mine rescue
41 team shall be trained by a state certified mine rescue instructor.

42 (g) Each member of a mine rescue team must have been
43 employed in an underground mine for a minimum of one year.
44 For the purpose of mine rescue work only, miners who are
45 employed on the surface but work regularly underground meet
46 the experience requirement. The underground experience
47 requirement is waived for those members of a mine rescue team
48 on the effective date of this statute.

49 (h) An applicant for initial mine rescue training shall pass,
50 on at least an annual basis, a physical examination by a licensed
51 physician certifying his or her fitness to perform mine rescue
52 work. A record that such examination was taken, together with

53 pertinent data relating thereto, shall be kept on file by the
54 operator and a copy shall be furnished to the director.

55 (i) Upon completion of the initial training, all mine rescue
56 team members shall receive at least forty hours of refresher
57 training annually. This training shall be given at least four hours
58 each month, or for a period of eight hours every two months, and
59 shall include:

60 (1) Sessions underground at least once every six months;

61 (2) The wearing and use of a breathing apparatus by team
62 members for a period of at least two hours, while under oxygen,
63 once every two months;

64 (3) Where applicable, the use, care, capabilities and
65 limitations of auxiliary mine rescue equipment, or a different
66 breathing apparatus;

67 (4) Mine map training and ventilation procedures.

68 (j) When engaged in rescue work required by an explosion,
69 fire or other emergency at a mine, all members of mine rescue
70 teams assigned to rescue operations shall, during the period of
71 their rescue work, be employees of the operator of the mine
72 where the emergency exists, and shall be compensated by the
73 operator at the rate established in the area for such work. In no
74 case shall this rate be less than the prevailing wage rate in the
75 industry for the most skilled class of inside mine labor. During
76 the period of their emergency employment, members of mine
77 rescue teams shall be protected by the workers' compensation
78 subscription of the mine operator.

79 (k) During the recovery work and prior to entering any mine
80 at the start of each shift, all rescue or recovery teams shall be
81 properly informed of existing conditions and work to be
82 performed by the designated company official in charge.

83 (1) For every two teams performing rescue or recovery work
84 underground, one six-member team shall be stationed at the
85 mine portal.

86 (2) Each rescue or recovery team performing work with a
87 breathing apparatus shall be provided with a backup team of
88 equal number, stationed at each fresh air base.

89 (3) The mine operator shall provide two-way communication
90 and a lifeline or its equivalent at each fresh air base for all mine
91 rescue or recovery teams and no mine rescue team member shall
92 advance more than one thousand feet in by the fresh air base:
93 *Provided*, That if a life may possibly be saved and existing
94 conditions do not create an unreasonable hazard to mine rescue
95 team members, the rescue team may advance a distance agreed
96 upon by those persons directing the mine rescue or recovery
97 operations: *Provided, however*, That the mine operator shall
98 provide a lifeline or its equivalent in each fresh air base for all
99 mine rescue or recovery teams.

100 (4) A rescue or recovery team shall immediately return to the
101 fresh air base when the atmospheric pressure of any member's
102 breathing apparatus depletes to sixty atmospheres, or its
103 equivalent.

104 (1) Mine rescue stations shall provide a centralized storage
105 location for rescue equipment. This storage location may be
106 either at the mine site, affiliated mines or a separate mine rescue
107 structure. All mine rescue teams shall be guided by the mine
108 rescue apparatus and auxiliary equipment manual. Each mine
109 rescue station shall be provided with at least the following
110 equipment:

111 (1) Twelve self-contained oxygen breathing apparatuses,
112 each with a minimum of two hours capacity, and any necessary
113 equipment for testing such breathing apparatuses;

114 (2) A portable supply of liquid air, liquid oxygen,
115 pressurized oxygen, oxygen generating or carbon dioxide
116 absorbent chemicals, as applicable to the supplied breathing
117 apparatuses and sufficient to sustain each team for six hours
118 while using the breathing apparatuses during rescue operations;

119 (3) One extra, fully charged, oxygen bottle for each
120 self-contained compressed oxygen breathing apparatus, as
121 required under subdivision (1) of this subsection;

122 (4) One oxygen pump or a cascading system, compatible
123 with the supplied breathing apparatuses;

124 (5) Twelve permissible cap lamps and a charging rack;

125 (6) Two gas detectors appropriate for each type of gas which
126 may be encountered at the mines served;

127 (7) Two oxygen indicators;

128 (8) One portable mine rescue communication system or a
129 sound-powered communication system. The wires or cable to the
130 communication system shall be of sufficient tensile strength to
131 be used as a manual communication system. The communication
132 system shall be at least one thousand feet in length; and

133 (9) Necessary spare parts and tools for repairing the
134 breathing apparatuses and communication system, as presently
135 prescribed by the manufacturer.

136 (m) Mine rescue apparatuses and equipment shall be
137 maintained in a manner that will ensure readiness for immediate
138 use. A person trained in the use and care of breathing
139 apparatuses shall inspect and test the apparatuses at intervals not
140 exceeding thirty days and shall certify by signature and date that
141 the inspections and tests were done. When the inspection
142 indicates that a corrective action is necessary, the corrective

143 action shall be made and recorded by said person. The
144 certification and corrective action records shall be maintained at
145 the mine rescue station for a period of one year and made
146 available on request to an authorized representative of the
147 director.

148 (n) Authorized representatives of the director have the right
149 of entry to inspect any designated mine rescue station.

150 (o) When an authorized representative finds a violation of
151 any of the mine rescue requirements, the representative shall
152 take appropriate corrective action in accordance with section
153 fifteen of this article.

154 (p) Operators affiliated with a station issued an order by an
155 authorized representative will be notified of that order and that
156 their mine rescue program is invalid. The operators shall have
157 twenty-four hours to submit to the director a revised mine rescue
158 program.

159 (q) Every operator of an underground mine shall develop and
160 adopt a mine rescue program for submission to the director
161 within thirty days of the effective date of this statute: *Provided*,
162 That a new program need only be submitted when conditions
163 exist as defined in subsection (p) of this section, or when
164 information contained within the program has changed.

165 (r) A copy of the mine rescue program shall be posted at the
166 mine and kept on file at the operator's mine rescue station or
167 rescue station affiliate and the state regional office where the
168 mine is located. A copy of the mine emergency notification plan
169 filed pursuant to 30 CFR §49.9(a) will satisfy the requirements
170 of subsection (q) of this section if submitted to the director.

171 (s) The operator shall immediately notify the director of any
172 changed conditions materially affecting the information
173 submitted in the mine rescue program.

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

§22A-1A-2. Board of Appeals hearing procedures.

1 (a) Any hearing conducted after the temporary suspension of
2 a certified person's certificate pursuant to this article, shall be
3 conducted within sixty days of the temporary suspension. The
4 Board of Appeals shall make every effort to hold the hearing
5 within forty days of the temporary suspension.

6 (b) All hearings of the Board of Appeals pursuant to this
7 section shall be conducted in accordance with the provisions of
8 subsection (c), section thirty-one, article one of this chapter. In
9 addition to the rules and procedures in section thirty-one, article
10 one of this chapter in hearings under this section, the Board of
11 Appeals may accept as evidence a notarized affidavit of drug
12 testing procedures and results from a Medical Review Officer
13 (MRO) in lieu of live testimony by the MRO. If the Board of
14 Appeals desires testimony in lieu of a notarized affidavit, the
15 MRO may testify under oath telephonically or by an Internet
16 based program in lieu of physically attending the hearing. The
17 Board of Appeals may suspend the certificate or certificates of
18 a certified person for violation of this article or for any other
19 violation of this chapter pertaining to substance abuse. The
20 Board of Appeals may impose further disciplinary actions for
21 repeat violations. The director shall have the authority to propose
22 legislative rules for promulgation in accordance with article
23 three, chapter twenty-nine-a of this code to establish the
24 disciplinary actions referenced in this section following the
25 receipt of recommendations from the Board of Coal Mine Health
26 and Safety following completion of the study required pursuant
27 to section fourteen, article six of this chapter. The legislative
28 rules authorized by this subsection shall not, however, include
29 any provisions requiring an employer to take or refrain from

30 taking any specific personnel action or mandating any employer
31 to establish or maintain an employer-funded substance abuse
32 rehabilitation program.

33 (c) No person whose certification is suspended or revoked
34 under this section may perform any duties under any other
35 certification issued under this chapter, during the period of the
36 suspension imposed by the Board of Appeals.

37 (d) Any party adversely affected by a final order or decision
38 issued by the Board of Appeals hereunder is entitled to judicial
39 review thereof pursuant to section four, article five, chapter
40 twenty-nine-a of this code.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-3. Fans.

1 (a) The ventilation of mines, the systems for which extend
2 for more than two hundred feet underground and which are
3 opened after the effective date of this article, shall be produced
4 by a mechanically operated fan or mechanically operated fans.
5 Ventilation by means of a furnace is prohibited in any mine. The
6 fan or fans shall be kept in continuous operation, unless written
7 permission to do otherwise be granted by the director. In case of
8 interruption to a ventilating fan or its machinery whereby the
9 ventilation of the mine is interrupted, immediate action shall be
10 taken by the mine operator or the operator's management
11 personnel, in all mines, to cut off the power and withdraw the
12 men from the face regions or other areas of the mine affected. If
13 ventilation is restored in fifteen minutes, the face regions and
14 other places in the affected areas where gas (methane) is likely
15 to accumulate, shall be reexamined by a certified person; and if
16 found free of explosive gas, power may be restored and work
17 resumed. If ventilation is not restored in fifteen minutes, all
18 underground employees shall be removed from the mine, all
19 power shall be cut off in a timely manner, and the underground

20 employees shall not return until ventilation is restored and the
21 mine examined by certified persons, mine examiners or other
22 persons holding a certificate to make preshift examination. If
23 ventilation is restored to the mine before miners reach the
24 surface, the miners may return to underground working areas
25 only after an examination of the areas is made by a certified
26 person and the areas are determined to be safe.

27 (b) All main fans installed after the effective date of this
28 article shall be located on the surface in fireproof housings offset
29 not less than fifteen feet from the nearest side of the mine
30 opening, equipped with fireproof air ducts, provided with
31 explosion doors or a weak wall, and operated from an
32 independent power circuit. In lieu of the requirements for the
33 location of fans and pressure-relief facilities, a fan may be
34 directly in front of, or over a mine opening: *Provided*, That such
35 opening is not in direct line with possible forces coming out of
36 the mine if an explosion occurs: *Provided, however*, That there
37 is another opening having a weak wall stopping or explosion
38 doors that would be in direct line with forces coming out of the
39 mine. All main fans shall be provided with pressure-recording
40 gauges or water gauges. A daily inspection shall be made of all
41 main fans and machinery connected therewith by a certified
42 electrician and a record kept of the same in a book prescribed for
43 this purpose or by adequate facilities provided to permanently
44 record the performance of the main fans and to give warning of
45 an interruption to a fan.

46 (c) Auxiliary fans and tubing shall be permitted to be used
47 in lieu of or in conjunction with line brattice to provide adequate
48 ventilation to the working faces: *Provided*, That auxiliary fans be
49 so located and operated to avoid recirculation of air at any time.
50 Auxiliary fans shall be approved and maintained as permissible.

51 (d) If the auxiliary fan is stopped or fails, the electrical
52 equipment in the place shall be stopped and the power
53 disconnected at the power source until ventilation in the working

54 place is restored. During such stoppage, the ventilation shall be
55 by means of the primary air current conducted into the place in
56 a manner to prevent accumulation of methane.

57 (e) In places where auxiliary fans and tubing are used, the
58 ventilation between shifts, weekends and idle shifts shall be
59 provided to face areas with line brattice or the equivalent to
60 prevent accumulation of methane.

61 (f) The director may require that when continuous mine
62 equipment is being used, all face ventilating systems using
63 auxiliary fans and tubing shall be provided with
64 machine-mounted diffuser fans, and such fans shall be
65 continuously operated during mining operations.

66 (g) In the event of a fire or explosion in any coal mine, the
67 ventilating fan or fans shall not intentionally be started, stopped,
68 speed increased or decreased or the direction of the air current
69 changed without the approval of the general mine foreman, and,
70 if he or she is not immediately available, a representative of the
71 Office of Miners' Health, Safety and Training. A duly authorized
72 representative of the employees should be consulted if practical
73 under the circumstances.

**§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props;
drainage of water; man doors; instruction of
apprentice miners.**

1 (a) The duties of the mine foreman shall be to keep a careful
2 watch over the ventilating apparatus, the airways, traveling
3 ways, pumps and drainage. He or she shall see that, as the miners
4 advance their excavations, proper breakthroughs are made so as
5 to ventilate properly the mine; that all loose coal, slate and rock
6 overhead in the working places and along the haulways are
7 removed or carefully secured so as to prevent danger to persons
8 employed in such mines, and that sufficient suitable props, caps,

9 timbers, roof bolts or other approved methods of roof supports
10 are furnished for the places where they are to be used and
11 delivered at suitable points. The mine foreman shall have all
12 water drained or hauled out of the working places where
13 practicable, before the miners enter, and such working places
14 shall be kept dry as far as practicable while the miners are at
15 work. It shall be the duty of the mine foreman to see that proper
16 crosscuts are made, and that the ventilation is conducted by
17 means of such crosscuts through the rooms by means of checks
18 or doors placed on the entries or other suitable places, and he or
19 she shall not permit any room to be opened in advance of the
20 ventilation current. The mine foreman, or other certified persons
21 designated by him or her, shall measure the air current with an
22 anemometer or other approved device at least weekly at the inlet
23 and outlet at or near the faces of the advanced headings, and
24 shall keep a record of such measurements in a book or upon a
25 form prescribed by the director. Signs directing the way to
26 outlets or escapeways shall be conspicuously placed throughout
27 the mine.

28 (b) After July 1, 1971, hinged man doors, at least thirty
29 inches square or the height of the coal seam, shall be installed
30 between the intake and return at intervals of three hundred feet
31 when the height of the coal is below forty-eight inches and at
32 intervals of six hundred feet when the height of the coal is above
33 forty-eight inches.

34 (c) The duties of the mine foreman and assistant mine
35 foreman shall include the instruction of apprentice miners in the
36 hazards incident to any new work assignments; to assure that any
37 individual given a work assignment in the working face without
38 prior experience on the face is instructed in the hazards incident
39 thereto and supervised by a miner with experience in the tasks to
40 be performed.

§22A-2-14. Safety inspections; removal of gases.

1 It shall be the duty of the mine foreman, assistant mine
2 foreman or fire boss to examine all working places under his or
3 her supervision for hazards at least once every two hours during
4 each coal-producing shift, or more often if necessary for safety.
5 In all mines such examinations shall include tests with an
6 approved detector for methane and oxygen deficiency. It shall
7 also be his or her duty to remove as soon as possible after its
8 discovery any accumulations of explosive or noxious gases in
9 active workings, and where practicable, any accumulations of
10 explosive or noxious gases in the worked out and abandoned
11 portions of the mine. It shall be the duty of the mine foreman,
12 assistant mine foreman or fire boss to examine each mine within
13 three hours prior to the beginning of a shift and before any miner
14 in such shift enters the active workings of the mine.

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

1 (a) It is the duty of the fire boss, or a certified person acting
2 as such, to prepare a danger signal (a separate signal for each
3 shift) with red color at the mine entrance at the beginning of his
4 or her shift or prior to his or her entering the mine to make his or
5 her examination and, except for those persons already on
6 assigned duty, no person except the mine owner, operator or
7 agent, and only then in the case of necessity, shall pass beyond
8 this danger signal until the mine has been examined by the fire
9 boss or other certified person and the mine or certain parts
10 thereof reported by him or her to be safe. When reported by him
11 or her to be safe, the danger sign or color thereof shall be
12 changed to indicate that the mine is safe in order that employees
13 going on shift may begin work. Each person designated to make
14 the fire boss examinations shall be assigned a definite
15 underground area of the mine, and, in making his or her

16 examination shall examine all active working places in the
17 assigned area and make tests with an approved device for
18 accumulations of methane and oxygen deficiency; examine seals
19 and doors; examine and test the roof, face and ribs in the
20 working places and on active roadways and travelways,
21 approaches to abandoned workings, accessible falls in active
22 sections and areas where any person is scheduled to work or
23 travel underground. He or she shall place his or her initials and
24 the date at or near the face of each place he or she examines.
25 Should he or she find a condition which he or she considers
26 dangerous to persons entering the areas, he or she shall place a
27 conspicuous danger sign at all entrances to the place or places.
28 Only persons authorized by the mine management may enter the
29 places while the sign is posted and only for the purpose of
30 eliminating the dangerous condition. Upon completing his or her
31 examination he or she shall report by suitable communication
32 system or in person the results of this examination to a certified
33 person trained as a certified miner with at least two years mining
34 experience designated by mine management to receive and
35 record the report, at a designated station on the surface of the
36 premises of the mine or underground, before other persons enter
37 the mine to work in coal-producing shifts. He or she shall also
38 record the results of his or her examination with ink or indelible
39 pencil in a book prescribed by the director, kept for the purpose
40 at a place on the surface of the mine designated by mine
41 management. All records of daily and weekly reports, as
42 prescribed herein, shall be open for inspection by interested
43 persons.

44 (b) Supplemental examination. - When it becomes necessary
45 to have workers enter areas of the mine not covered during the
46 preshift examination, a supplemental examination shall be
47 performed by a fire boss or certified person acting as such within
48 three hours before any person enters the area. The fire boss or
49 certified person acting as such shall examine the area for

50 hazardous conditions, determine if air is traveling in its proper
51 direction and test for oxygen deficiency and methane.

52 (c) Each examined area shall be certified by date, time and
53 the initials of the examiner.

54 (d) The results of the examination shall be recorded with ink
55 or indelible pencil by the examiner in the book referenced in
56 subsection (a) of this section before he or she leaves the mine on
57 that shift.

ROOF-FACE-RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

1 (a) Each operator shall undertake to carry out on a
2 continuing basis a program to improve the roof control system
3 of each coal mine and the means and measures to accomplish
4 such system. The roof and ribs of all active underground
5 roadways, travelways and working places shall be supported or
6 otherwise controlled adequately to protect persons from falls of
7 the roof or ribs. A roof control plan and revisions thereof
8 suitable to the roof conditions and mining systems of each coal
9 mine and approved by the director shall be adopted and set out
10 in printed form before new operations. The safety committee of
11 the miners of each mine where such committee exists shall be
12 afforded the opportunity to review and submit comments and
13 recommendations to the director and operator concerning the
14 development, modification or revision of such roof control plans.
15 The plan shall show the type of support and spacing approved by
16 the director. Such plan shall be reviewed periodically, at least
17 every six months by the director, taking into consideration any
18 falls of roof or rib or inadequacy of support of roof or ribs. A
19 copy of the plan shall be furnished to the director or his or her
20 authorized representative and shall be available to the miners and
21 their representatives.

22 (b) The operator, in accordance with the approved plan, shall
23 provide at or near each working face and at such other locations
24 in the coal mine, as the director may prescribe, an ample supply
25 of suitable materials of proper size with which to secure the roof
26 thereof of all working places in a safe manner. Safety posts,
27 jacks, or other approved devices shall be used to protect the
28 workmen when roof material is being taken down, crossbars are
29 being installed, roof bolt holes are being drilled, roof bolts are
30 being installed and in such other circumstances as may be
31 appropriate. Loose roof and overhanging or loose faces and ribs
32 shall be taken down or supported. When overhangs or brows
33 occur along rib lines they shall be promptly removed. All
34 sections shall be maintained as near as possible on center. Except
35 in the case of recovery work, supports knocked out shall be
36 replaced promptly. Apprentice miners shall not be permitted to
37 set temporary supports on a working section without the direct
38 immediate supervision of a certified miner.

39 (c) The operator of a mine has primary responsibility to
40 prevent injuries and deaths resulting from working under
41 unsupported roof. Every operator shall require that no person
42 may proceed beyond the last permanent support unless adequate
43 temporary support is provided or temporary support is not
44 required under an approved roof control plan and absence of
45 such support will not pose a hazard to the miners.

46 (d) The immediate supervisor of any area in which
47 unsupported roof is located shall not direct or knowingly permit
48 any person to proceed beyond the last permanent support unless
49 adequate temporary support is provided or temporary support is
50 not required under an approved roof control plan and absence of
51 such support will not pose a hazard to the miners.

52 (e) No miner shall proceed beyond the last permanent
53 support in violation of a direct or standing order of an operator,
54 a foreman or an assistant foreman, unless adequate temporary
55 support is provided or temporary support is not required under

56 an approved roof control plan and absence of such support will
57 not pose a hazard to the miner.

58 (f) The immediate supervisor of each miner who will be
59 engaged in any activity involving the securing of roof or rib
60 during a shift shall, at the onset of any such shift, orally review
61 those parts of the roof control plan relevant to the type of mining
62 and roof control to be pursued by such miner.

63 (g) Any action taken against a miner due, in whole or in part,
64 to his or her refusal to work under unsupported roof, where such
65 work would constitute a violation of this section, is prohibited as
66 an act of discrimination pursuant to section twenty-two, article
67 one of this chapter. Upon a finding of discrimination by the
68 appeals board pursuant to subsection (b), section twenty-two,
69 article one of this chapter, the miner shall be awarded by the
70 appeals board all reliefs available pursuant to subsections (b) and
71 (c), section twenty-two, article one of this chapter.

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

1 (a) The operator of every coal mine worked by shaft shall
2 provide and maintain a metal tube, telephone or other approved
3 means of communication from the top to the bottom and
4 intermediate landings of such shafts, suitably adapted to the free
5 passage of sound, through which conversation may be held
6 between persons at the top and at the bottom of the shaft; a
7 standard means of signaling; an approved safety catch, bridle
8 chains, automatic stopping device, or automatic overwind; a
9 sufficient cover overhead on every cage used for lowering or
10 hoisting persons; an approved safety gate at the top of the shaft;
11 and an adequate brake on the drum of every machine used to
12 lower or hoist persons in such shaft. Such operator shall have the
13 machinery used for lowering and hoisting persons into or out of

14 the mine kept in safe condition, equipped with a reliable
15 indicator, and inspected once in each twenty-four hours by a
16 qualified electrician. Where a hoisting engineer is required, he
17 or she shall be readily available at all times when men are in the
18 mine. He or she shall operate the empty cage up and down the
19 shaft at least one round trip at the beginning of each shift there
20 shall be cut out around the side of the hoisting shaft or driven
21 through the solid strata at the bottom thereof, a traveling way,
22 not less than five feet high and three feet wide to enable a person
23 to pass the shaft in going from one side of it to the other without
24 passing over or under the cage or other hoisting apparatus.
25 Positive stop blocks or derails shall be placed near the top and at
26 all intermediate landings of slopes and surface inclines and at
27 approaches to all shaft landings. A waiting station with sufficient
28 room, ample clearance from moving equipment, and adequate
29 seating facilities shall be provided where men are required to
30 wait for man trips or man cages, and the miners shall remain in
31 such station until the man trip or man cage is available.

32 (b) No operator of any coal mine worked by shaft, slope or
33 incline, shall place in charge of any engine or drum used for
34 lowering or hoisting persons employed in such mine any but
35 competent and sober engineers or drum runners; and no engineer
36 or drum runner in charge of such machinery shall allow any
37 person, except such as may be designated for this purpose by the
38 operator, to interfere with any part of the machinery; and no
39 person shall interfere with any part of the machinery; and no
40 person shall interfere with or intimidate the engineer or drum
41 runner in the discharge of his or her duties. Where the mine is
42 operated or worked by shaft or slope, a minimum space of two
43 and one-half square feet per person shall be available for each
44 person on any cage or car where men are transported. In no
45 instance shall more than twenty miners be transported on a cage
46 or car without the approval of the director. No person shall ride
47 on a loaded cage or car in any shaft, slope, or incline: *Provided,*

48 That this does not prevent any trip rider from riding in the
49 performance of his or her authorized duties. No engineer is
50 required for automatically operated cages, elevators, or
51 platforms. Cages and elevators shall have an emergency power
52 source unless provided with other escapeway facilities.

53 (c) Each automatic elevator shall be provided with a
54 telephone or other effective communication system by which aid
55 or assistance can be obtained promptly.

56 (d) A stop switch shall be provided in the automatic elevator
57 compartment that will permit the elevator to be stopped at any
58 location in the shaft.

§22A-2-55. Protective equipment and clothing.

1 (a) Welders and helpers shall use proper shields or goggles
2 to protect their eyes. All employees shall have approved goggles
3 or shields and use the same where there is a hazard from flying
4 particles or other eye hazards.

5 (b) Employees engaged in haulage operations and all other
6 persons employed around moving equipment on the surface and
7 underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which may
9 injure hands is handled, but gloves with gauntleted cuffs shall
10 not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by all
12 persons while in or around a mine: *Provided*, That metatarsal
13 guards are not required to be worn by persons when working in
14 those areas of underground mine workings which average less
15 than forty-eight inches in height as measured from the floor to
16 the roof of the underground mine workings.

17 (e) Approved eye protection shall be worn by all persons
18 while being transported in open-type man trips.

19 (f)(1) A self-contained self-rescue device approved by the
20 director shall be worn by each person underground or kept
21 within his or her immediate reach and the device shall be
22 provided by the operator. The self-contained self-rescue device
23 shall be adequate to protect a miner for one hour or longer. Each
24 operator shall train each miner in the use of the device and
25 refresher training courses for all underground employees shall be
26 held once each quarter. Quarters shall be based on a calendar
27 year.

28 (2) In addition to the requirements of subdivision (1) of this
29 subsection, the operator shall also provide caches of additional
30 self-contained self-rescue devices throughout the mine in
31 accordance with a plan approved by the director. Each additional
32 self-contained self-rescue device shall be adequate to protect a
33 miner for one hour or longer. The total number of additional
34 self-contained self-rescue devices, the total number of storage
35 caches and the placement of each cache throughout the mine
36 shall be established by rule pursuant to subsection (i) of this
37 section. A luminescent sign with the words
38 "SELF-CONTAINED SELF-RESCUER" or
39 "SELF-CONTAINED SELF-RESCUERS" shall be
40 conspicuously posted at each cache and luminescent direction
41 signs shall be posted leading to each cache. Lifeline cords or
42 other similar device, with reflective material at twenty-five foot
43 intervals, shall be attached to each cache from the last open
44 crosscut to the surface. The operator shall conduct weekly
45 inspections of each cache and each lifeline cord or other similar
46 device to ensure operability.

47 (3) Any person that, without the authorization of the operator
48 or the director, knowingly removes or attempts to remove any
49 self-contained self-rescue device or lifeline cord from the mine

50 or mine site with the intent to permanently deprive the operator
51 of the device or lifeline cord or knowingly tampers with or
52 attempts to tamper with the device or lifeline cord shall be guilty
53 of a felony and, upon conviction thereof, shall be imprisoned in
54 a state correctional facility for not less than one year nor more
55 than ten years or fined not less than \$10,000 nor more than
56 \$100,000, or both.

57 (g) (1) A wireless emergency communication device
58 approved by the director and provided by the operator shall be
59 worn by each person underground: *Provided*, That if a miner's
60 wireless emergency communications device shall malfunction or
61 cease to operate then such miner shall be assigned to be in sight
62 or sound of a certified miner until such time an operating device
63 shall be delivered. The wireless emergency communication
64 device shall, at a minimum, be capable of receiving emergency
65 communications from the surface at any location throughout the
66 mine. Each operator shall train each miner in the use of the
67 device and provide refresher training courses for all underground
68 employees during each calendar year. The operator shall install
69 in or around the mine any and all equipment necessary to
70 transmit emergency communications from the surface to each
71 wireless emergency communication device at any location
72 throughout the mine.

73 (2) Any person that, without the authorization of the operator
74 or the director, knowingly removes or attempts to remove any
75 wireless emergency communication device or related equipment,
76 from the mine or mine site with the intent to permanently
77 deprive the operator of the device or equipment or knowingly
78 tampers with or attempts to tamper with the device or equipment
79 shall be guilty of a felony and, upon conviction shall be
80 imprisoned in a state correctional facility for not less than one
81 year nor more than ten years or fined not less than \$10,000 nor
82 more than \$100,000, or both fined and confined.

83 (h) (1) A wireless tracking device approved by the director
84 and provided by the operator shall be worn by each person
85 underground. In the event of an accident or other emergency, the
86 tracking device shall, at a minimum, be capable of providing
87 real-time monitoring of the physical location of each person
88 underground: *Provided*, That no person shall discharge or
89 discriminate against any miner based on information gathered by
90 a wireless tracking device during nonemergency monitoring.
91 Each operator shall train each miner in the use of the device and
92 provide refresher training courses for all underground employees
93 during each calendar year. The operator shall install in or around
94 the mine all equipment necessary to provide real-time
95 emergency monitoring of the physical location of each person
96 underground.

97 (2) Any person that, without the authorization of the operator
98 or the director, knowingly removes or attempts to remove any
99 wireless tracking device or related equipment, approved by the
100 director, from a mine or mine site with the intent to permanently
101 deprive the operator of the device or equipment or knowingly
102 tampers with or attempts to tamper with the device or equipment
103 shall be guilty of a felony and, upon conviction shall be
104 imprisoned in a state correctional facility for not less than one
105 year nor more than ten years or fined not less than \$10,000 nor
106 more than \$100,000, or both fined and confined.

107 (i) The director may promulgate emergency and legislative
108 rules to implement and enforce this section pursuant to the
109 provisions of article three, chapter twenty-nine-a of this code.

**§22A-2-66. Accident; notice; investigation by Office of Miners'
Health, Safety and Training.**

1 (a) For the purposes of this section, the term accident means:

2 (1) The death of an individual at a mine;

- 3 (2) An injury to an individual at a mine which has a
4 reasonable potential to cause death;
- 5 (3) The entrapment of an individual;
- 6 (4) The unplanned inundation of a mine by a liquid or gas;
- 7 (5) The unplanned ignition or explosion of gas or dust;
- 8 (6) The unplanned ignition or explosion of a blasting agent
9 or an explosive;
- 10 (7) An unplanned fire in or about a mine not extinguished
11 within five minutes of ignition;
- 12 (8) An unplanned roof fall at or above the anchorage zone in
13 active workings where roof bolts are in use or an unplanned roof
14 or rib fall in active workings that impairs ventilation or impedes
15 passage;
- 16 (9) A coal or rock outburst that causes withdrawal of miners
17 or which disrupts regular mining activity for more than one hour;
- 18 (10) An unstable condition at an impoundment, refuse pile
19 or culm bank which requires emergency action in order to
20 prevent failure, or which causes individuals to evacuate an area,
21 or the failure of an impoundment, refuse pile or culm bank;
- 22 (11) Damage to hoisting equipment in a shaft or slope which
23 endangers an individual or which interferes with use of the
24 equipment for more than thirty minutes; and
- 25 (12) An event at a mine which causes death or bodily injury
26 to an individual not at the mine at the time the event occurs.
- 27 (b) Whenever any accident occurs in or about any coal mine
28 or the machinery connected therewith, it is the duty of the

29 operator or the mine foreman in charge of the mine to give
30 notice, within fifteen minutes of ascertaining the occurrence of
31 an accident, to the Mine and Industrial Accident Emergency
32 Operations Center at the statewide telephone number established
33 by the Director of the Division of Homeland Security and
34 Emergency Management pursuant to the provisions of article
35 five-b, chapter fifteen of this code stating the particulars of the
36 accident: *Provided*, That the operator or the mine foreman in
37 charge of the mine may comply with this notice requirement by
38 immediately providing notice to the appropriate local
39 organization for emergency services as defined in section eight,
40 article five of said chapter, or the appropriate local emergency
41 telephone system operator as defined in article six, chapter
42 twenty-four of this code: *Provided, however*, That if,
43 immediately upon ascertaining the occurrence of an accident, the
44 operator or the mine foreman in charge of the mine provides
45 notice to the local organization for emergency services as
46 defined in section eight, article five, chapter fifteen of this code,
47 or the appropriate local emergency telephone system operator as
48 defined in article six, chapter twenty-four of this code, then, in
49 order to comply with this subsection, the operator or mine
50 foreman in charge of the mine shall also give notice to the Mine
51 and Industrial Accident Emergency Operations Center at the
52 statewide number identified in this subsection within fifteen
53 minutes of completing the telephone call to the local
54 organization for emergency services or the appropriate local
55 emergency telephone system operator, as applicable: *Provided*
56 *further*, That nothing in this subsection shall be construed to
57 relieve the operator from any reporting or notification
58 requirement under federal law.

59 (c) The Director of the Office of Miners' Health, Safety and
60 Training shall impose, pursuant to rules authorized in this
61 section, a civil administrative penalty of up to \$100,000 on the
62 operator if it is determined that the operator or the mine foremen

63 in charge of the mine failed to give immediate notice as required
64 in this section. The director may later amend the assessment of
65 a penalty under this section if so warranted: *Provided*, That the
66 director may waive imposition of the civil administrative penalty
67 at any time if he or she finds that the failure to give immediate
68 notice was caused by circumstances wholly outside the control
69 of the operator: *Provided, however*, That the assessment of the
70 civil administrative penalty set forth in this subsection may be
71 appealed to the Board of Appeals, and the Board of Appeals
72 may, by a vote of two Board of Appeals Members, reduce the
73 amount of the civil administrative penalty upon a finding of
74 mitigating circumstances warranting the imposition of a lesser
75 amount.

76 (d) If anyone is fatally injured, the inspector shall
77 immediately go to the scene of the accident and make
78 recommendations and render assistance as he or she may deem
79 necessary for the future safety of the men and investigate the
80 cause of the explosion or accident and make a record. He or she
81 shall preserve the record with the other records in his or her
82 office. The cost of the investigation records shall be paid by the
83 Office of Miners' Health, Safety and Training. A copy shall be
84 furnished to the operator and other interested parties. To enable
85 him or her to make an investigation, he or she has the power to
86 compel the attendance of witnesses and to administer oaths or
87 affirmations. The director has the right to appear and testify and
88 to offer any testimony that may be relevant to the questions and
89 to cross-examine witnesses.

**§22A-2-77. Quarterly report by operator of mine; exception as to
certain inactive mines.**

1 On or before the end of each quarter, the operator of each
2 mine, regulated under the provisions of this chapter or article
3 three or four, chapter twenty-two of this code, shall file with the
4 director a report with respect thereto covering the next preceding

5 quarter which shall reflect the number of accidents which have
6 occurred at each such mine, the number of persons employed,
7 the days worked and the actual raw tonnage mined. Quarters are
8 based on a calendar year. Such report shall be made upon forms
9 furnished by the director. Other provisions of this section to the
10 contrary notwithstanding, no such report shall be required with
11 respect to any mine on approved inactive status if no employees
12 were present at such mine at any time during the next preceding
13 calendar month.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION

§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.

1 (a) An underground mine foreman-fire boss certified
2 pursuant to this article on or after the effective date of this
3 section shall complete the continuing education requirements in
4 this section within two years of their certification and every two
5 years thereafter. The continuing education requirements of this
6 section may not be satisfied by the completion of other training
7 requirements mandated by the provisions of this chapter.

8 (b) In order to receive continuing education credit pursuant
9 to this section, a mine foreman-fire boss shall satisfactorily
10 complete a mine foreman-fire boss continuing education course
11 approved by the board and taught by a qualified instructor
12 approved by the director. The mine foreman-fire boss shall not
13 suffer a loss in pay while attending a continuing education
14 course. The mine foreman-fire boss shall submit documentation
15 to the office certified by the instructor that indicates the required
16 continuing education has been completed prior to the deadlines
17 set forth in this subsection: *Provided*, That a mine foreman-fire
18 boss may submit documentation of continuing education

19 completed in another state for approval and acceptance by the
20 board.

21 (c) The mine foreman-fire boss shall complete at least eight
22 hours of continuing education every two years.

23 (d) The content of the continuing education course shall
24 include, but not be limited to:

25 (1) Selected provisions of this chapter and 30 U. S. C. § 801,
26 et seq.;

27 (2) Selected provisions of the West Virginia and federal
28 underground coal mine health and safety rules and regulations;

29 (3) The responsibilities of a mine foreman-fire boss;

30 (4) Selected policies and memoranda of the Office of
31 Miners' Health, Safety and Training, the Board of Coal Mine
32 Health and Safety, the Board of Miner Training, Education and
33 Certification, and from any safety analysis performed by the
34 company.

35 (5) A review of fatality and accident trends in underground
36 coal mines; and

37 (6) Other subjects as determined by the Board of Miner
38 Training, Education and Certification. The board shall solicit
39 input from mining companies on the substance of the training
40 and discuss how the training shall be scheduled during the year.

41 (e) The board may approve alternative training programs
42 tailored to specific mines.

43 (f) A mine foreman-fire boss who fails to complete the
44 requirements of this section shall have his or her certification

45 suspended pending completion of the continuing education
46 requirements. During the pendency of the suspension, the
47 individual may not perform statutory duties assigned to a mine
48 foreman-fire boss under West Virginia law. The office shall send
49 notice of any suspension to the last address the certified mine
50 foreman-fire boss reported to the director. If the requirements are
51 not met within two years of the suspension date, the director may
52 file a petition with the board of appeals pursuant to the
53 procedures set forth in section thirty-one, article one of this
54 chapter and, upon determining that the requirements have not
55 been met, the board of appeals may revoke the mine
56 foreman-fire boss' certification, which shall not be renewed
57 except upon successful completion of the examination prescribed
58 by law for mine foremen-fire bosses or upon completion of other
59 training requirements established by the board: *Provided*, That
60 an individual having his or her mine foreman-fire boss
61 certification suspended pursuant to this section who also holds
62 a valid mine foreman-fire boss certification from another state
63 may have the suspension lifted by completing training
64 requirements established by the board.

65 (g) The office shall make a program of instruction that meets
66 the requirements for continuing education set forth in this
67 section regularly available in regions of the State, based on
68 demand, for individuals possessing mine foreman-fire boss
69 certifications who are not serving in a mine foreman-fire boss
70 capacity: *Provided*, That the office may collect a fee from
71 program participants to offset the cost of the program.

72 (h) The office shall make available to operators and other
73 interested parties a list of individuals whose mine foreman-fire
74 boss certification is in suspension or has been revoked.

CHAPTER 107

(Com. Sub. for S. B. 691 - By Senator Boso)

[Passed March 11, 2016; in effect from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to modifying certain air pollution standards; changing certain mandatory requirements to permissive ones; and changing a meter-based standard to a mass-based standard.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AIR POLLUTION CONTROL.

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

1 (a) *Legislative findings.* —

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

6 (2) The rule is expected to go into effect on or about June 30,
7 2015, and will require each state to submit a state plan pursuant
8 to Section 111(d) that sets forth laws, policies and regulations

9 that will be enacted by the state to meet the federal guidelines in
10 the rule.

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

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

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

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

26 (b) *Submission of a state plan.* — Absent specific legislative
27 enactment granting such powers or rule-making authority, the
28 Department of Environmental Protection or any other agency or
29 officer of state government is not authorized to submit to the
30 Environmental Protection Agency a state plan under this section,
31 or otherwise pursuant to Section 111(d) of the Clean Air Act:
32 *Provided,* That the Department of Environmental Protection, in
33 consultation with the Department of Environmental Protection
34 Advisory Council and other necessary and appropriate agencies
35 and entities, may develop a proposed state plan in accordance
36 with this section.

37 (c) *Development of a Proposed State Plan.* — (1) The
38 Department of Environmental Protection shall, no later than one

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

63 (2) If the department determines that the creation of a state
64 plan is feasible, it shall develop and submit the proposed state
65 plan to the Legislature sitting in regular session, or in an
66 extraordinary session convened for the purpose of consideration
67 of the state plan, in sufficient time to allow for the consideration
68 of the state plan prior to the deadline for submission to the
69 Environmental Protection Agency.

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

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

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

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

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

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

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

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

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

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

123 (g) *Flexibility in establishing standards of performance.* —
124 In developing a flexible state plan to achieve targeted reductions
125 in greenhouse gas emissions, the department shall endeavor to
126 establish an achievable standard of performance for any existing
127 fossil fuel-fired electric generating unit, and examine whether
128 less stringent performance standards or longer compliance
129 schedules may be implemented or adopted for existing fossil
130 fuel-fired electric generating units in comparison to the
131 performance standards established for new, modified or
132 reconstructed generating units, based on the following:

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

135 (2) Nonair quality health and environmental impacts;

- 136 (3) Projected energy requirements;
- 137 (4) Market-based considerations in achieving performance
138 standards;
- 139 (5) The costs of achieving emission reductions due to factors
140 such as plant age, location or basic process design;
- 141 (6) Physical difficulties with or any apparent inability to
142 feasibly implement certain emission reduction measures;
- 143 (7) The absolute cost of applying the performance standard
144 to the unit;
- 145 (8) The expected remaining useful life of the unit;
- 146 (9) The impacts of closing the unit, including economic
147 consequences such as expected job losses at the unit and
148 throughout the state in fossil fuel production areas including
149 areas of coal production and natural gas production and the
150 associated losses to the economy of those areas and the state, if
151 the unit is unable to comply with the performance standard;
- 152 (10) Impacts on the reliability of the system; and
- 153 (11) Any other factors specific to the unit that make
154 application of a modified or less stringent standard or a longer
155 compliance schedule more reasonable.
- 156 (h) *Legislative consideration of proposed state plan under*
157 *Section III(d) of the Clean Air Act.* — (1) If the department
158 submits a proposed state plan to the Legislature under this
159 section, the Legislature may by act, including presentment to the
160 Governor: (i) Authorize the department to submit the proposed
161 state plan to the Environmental Protection Agency; (ii) authorize
162 the department to submit the state plan with amendment; or (iii)
163 not grant such rulemaking or other authority to the department
164 for submission and implementation of the state plan.

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

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

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

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

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

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

CHAPTER 108

**(Com. Sub. for H. B. 4540 - By Delegates A. Evans,
Hamilton, Kelly, Zatezalo, Romine, Wagner and Boggs)
[By Request of the Department of
Environmental Protection]**

[Passed March 7, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 10, 2016.]

AN ACT to amend and reenact §22-15A-22 of the Code of West Virginia, 1931, as amended, relating to removing prohibition of disposal of certain electronics in landfills; and permitting county or regional solid waste authorities to prohibit disposal of covered electronics in landfills where they have determined that a cost effective recycling alternative for handling covered electronic devices exists.

Be it enacted by the Legislature of West Virginia:

That §22-15A-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-22. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

- 1 (a) It is unlawful to dispose of lead-acid batteries in a solid
2 waste landfill in West Virginia.

- 3 (b) It is unlawful to dispose of tires in a solid waste landfill
4 in West Virginia except for waste tires collected as part of the
5 departments waste tire remediation projects or other collection

6 efforts in accordance with the provisions of this article or the
7 pollution prevention and open dump program or other
8 state-authorized remediation or clean up programs: *Provided*,
9 That waste tires may be disposed of in solid waste landfills only
10 when the state agency authorizing the remediation or clean up
11 program has determined there is no reasonable alternative
12 available.

13 (c) It is unlawful to dispose of yard waste in a solid waste
14 facility in West Virginia: *Provided*, That the prohibitions do not
15 apply to a facility designed specifically to compost yard waste or
16 otherwise recycle or reuse yard waste: *Provided, however*, That
17 reasonable and necessary exceptions to the prohibitions may be
18 included as part of the rules promulgated pursuant to subsection
19 (f) of this section.

20 (d) Effective July 1, 2016, covered electronic devices, as
21 defined in section two of this article, may not be disposed of in
22 a solid waste landfill in West Virginia, if a county or regional
23 solid waste authority determines there is a cost effective
24 recycling alternative for handling covered electronic devices.

25 (e) The Solid Waste Management Board shall design a
26 comprehensive program to provide for the proper handling of
27 yard waste, lead-acid batteries and tires.

28 (f) The secretary shall promulgate rules, in accordance with
29 chapter twenty-nine-a of this code, to implement and enforce the
30 program for yard waste, lead-acid batteries and tires.

31 (g) The secretary's rule shall provide for the disposal of yard
32 waste in a manner consistent with one or any combination of the
33 following:

34 (1) Disposal in a publicly or privately operated commercial
35 or noncommercial composting facility;

36 (2) Disposal by composting on the property from which
37 domestic yard waste is generated or on adjoining property or
38 neighborhood property if consent is obtained from the owner of
39 the adjoining or neighborhood property;

40 (3) Disposal by open burning, where not prohibited; or

41 (4) Disposal in a publicly or privately operated landfill, only
42 where none of the foregoing options are available. The manner
43 of disposal shall only involve small quantities of domestic yard
44 waste generated only from the property of the participating
45 resident or tenant.

CHAPTER 109

(H. B. 4235 - By Delegate Shott)

[Passed March 5, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 9, 2016.]

AN ACT to amend and reenact §44-3A-4, §44-3A-4a and §44-3A-32 of the Code of West Virginia, 1931, as amended, all relating to notice requirements for claims against an estate; requiring claims against estates to be filed within sixty days of publication of Class II legal advertisement; modifying language of advertisement to reflect sixty-day deadline for exhibiting claims against estate of decedent; authorizing fiduciary supervisor to proceed with supervision of estates following expiration of sixty-day deadline; permitting closure after sixty days following publication by short form settlements of estates; and barring recovery for claims against an estate not presented within specified time period except under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §44-3A-4, §44-3A-4a and §44-3A-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3A. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.

§44-3A-4. Notice of claim; settlement in certain cases.

1 (a) The fiduciary supervisor shall at least once a month as a
2 Class II legal advertisement in compliance with the provisions
3 of article three, chapter fifty-nine of this code, cause to be
4 published in a newspaper of general circulation within the
5 county wherein letters of administration have been granted, a
6 notice substantially as follows:

7 NOTICE OF FILING OF ESTATE ACCOUNTS

8 To the Creditors and Beneficiaries of the within named
9 deceased persons:

10 I have before me the estates of the following deceased
11 persons and the accounts of the fiduciaries of their respective
12 estates:

13 Name of Decedent:

14 Name of Fiduciary:.....

15 Address:.....

16 Name of Decedent:.....

17 Name of Fiduciary:.....

18 Address:.....

19 Name of Decedent:

20 Name of Fiduciary:

21 Address:

22 All persons having claims against the estate(s) of any of the
 23 above-named deceased persons whether due or not, are notified
 24 to exhibit their claims with vouchers thereof, legally verified, to
 25 the fiduciary of such deceased person as shown herein within
 26 sixty days of the first publication hereof; or, if not so exhibited
 27 to such fiduciary by that date, to exhibit the same at the office of
 28 the undersigned fiduciary supervisor at the address shown below
 29 within sixty days of the first publication of this notice;
 30 otherwise any or all such claims may by law be excluded from
 31 all benefits of said estate(s). No claims against the estate shall be
 32 accepted by the fiduciary supervisor after the last date shown
 33 above. All beneficiaries of said estate(s) may appear either
 34 before the above-named fiduciary by the date first shown above,
 35 or thereafter before the undersigned fiduciary supervisor by the
 36 date last shown above to examine said claims and otherwise
 37 protect their respective interests.

38 Given under my hand this day of
 39, 20.....

40

41 Fiduciary Supervisor

42 County, W.Va.

43 (b) All such claims are to be filed with the appropriate
 44 fiduciary at the address shown in such notice within sixty days
 45 of the date of the first publication of such notice or with the
 46 fiduciary supervisor within sixty days of such date. No claims

47 against the estate shall be accepted by the fiduciary supervisor
48 after the last date shown above.

49 (c) Subject to the provisions of this section, at the end of the
50 sixty-day period set forth in such notice, the fiduciary supervisor
51 may proceed with supervision of all estates referred to him or her
52 for proof and determination of debts and claims, establishment
53 of their priority, determination of the amount of the respective
54 shares of the legatees and distributees and any and all other
55 matter or matters necessary and proper for the settlement of the
56 estate, including, but not limited to, his or her recommendations
57 concerning the approval of the fees of any fiduciary
58 commissioner to whom the estate may have been referred,
59 determination that inheritance taxes, if any, occasioned by the
60 death of the decedent or returnable by reason thereof have been
61 returned upon such estate and such taxes have been paid or such
62 payment provided for and whether a release therefor has been
63 issued by the proper authority, all matters required by section
64 nineteen of this article and all other matters deemed proper by
65 him or her.

§44-3A-4a. Short form settlement.

1 (a) In all estates of decedents administered under the
2 provisions of this article where more than sixty days has elapsed
3 since the filing of any notice required by section four, an estate
4 may be closed by a short form settlement filed in compliance
5 with this section: *Provided*, That any lien for payment of estate
6 taxes under article eleven, chapter eleven of this code is released
7 and that the release is filed with the clerk.

8 (b) The fiduciary may file with the fiduciary supervisor a
9 proposed short form settlement which shall contain an affidavit
10 made by the fiduciary that the time for filing claims has expired,
11 that no known and unpaid claims exist against the estate and
12 showing the allocation to which each distributee and beneficiary

13 is entitled in the distribution of the estate and contain a
14 representation that the property to which each distributee or
15 beneficiary is entitled has been or upon approval of the
16 settlement will be delivered thereto, or that each distributee and
17 beneficiary has agreed to a different allocation. The application
18 shall contain a waiver signed by each distributee and beneficiary:
19 *Provided*, That a beneficiary receiving a bequest of tangible
20 personal property or a bequest of cash may not be required to
21 sign the waiver.

22 (c) Such waiver may be signed in the case of a distributee or
23 beneficiary under a disability by the duly qualified personal
24 representative of such distributee or beneficiary. A personal
25 representative signing such waiver shall be responsible to his or
26 her cestui que trust for any loss resulting from such waiver.

27 (d) The fiduciary supervisor shall examine the affidavit and
28 waiver and determine that the allocation to the distributees and
29 beneficiaries set forth in the affidavit is correct and all proper
30 parties signed the waiver, both shall be recorded as in the case of
31 and in lieu of settlement. If the fiduciary supervisor identifies
32 any error the fiduciary supervisor shall within five days of the
33 filing of such settlement give the fiduciary notice as in the case
34 of any other incorrect settlement.

35 (e) If the short form settlement is proper the fiduciary
36 supervisor shall proceed as in the case of any other settlement.

**§44-3A-32. When claims not presented and proved barred of
recovery from personal representative.**

1 Every person having a claim against a deceased person,
2 whether due or not, who shall not, when notice to creditors has
3 been published as prescribed in this article, have presented his or
4 her claim on or before the sixty-day time period fixed in such
5 notice, or before that time have instituted an action thereon,

6 shall, notwithstanding the same be not barred by some other
7 statute of limitations that is applicable thereto, be barred from
8 recovering such claim of or from the personal representative, or
9 from thereafter setting off the same by way of counterclaim or
10 otherwise against the personal representative in any action
11 whatever; except that if a surplus remain after providing for all
12 claims presented in due time, or on which action shall have been
13 commenced in due time, and such surplus shall not have been
14 distributed by the personal representative to the beneficiaries of
15 the estate, and the claimant prove that he or she had no actual
16 notice of the publication to creditors nor knowledge of the
17 proceedings before the fiduciary supervisor or fiduciary
18 commissioner, such creditor may prove his or her claim by
19 action or suit and have the same allowed out of such surplus;
20 and, in order that such late claims if proved may be provided for,
21 the fiduciary supervisor or fiduciary commissioner shall reopen
22 his or her report if the same has not been returned to the county
23 commission, or if returned shall make and return a supplemental
24 report.

CHAPTER 110

**(S. B. 702 - By Senators Trump, Ferns, Gaunch, Kirkendoll,
Beach, Ashley, Karnes, Leonhardt, Romano,
Palumbo, Williams, Cline, Snyder, Maynard and Carmichael)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §44-8-1 of the Code of West Virginia, 1931, as amended, relating to providing that, in instances where real estate, or an interest therein, is devised to be sold and the proceeds thereof distributed, title to said real estate passes to those

individuals entitled to receive the proceeds of sale if the personal representative of the estate does not do so upon the closing of the estate or if the estate is not closed five years after the death of the testator.

Be it enacted by the Legislature of West Virginia:

That §44-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REAL ESTATE OF DECEDENTS.

§44-8-1. Sale, conveyance and management of decedent's real estate; powers of executor and administrator with will annexed.

1 Real estate devised to be sold shall, if no person other than
2 the executor be appointed for the purpose, be sold and conveyed
3 by the executor and the proceeds of sale, or the rents and profits
4 of any real estate which the executor is authorized by the will to
5 receive, shall be received by the executor who qualifies, or by
6 his or her successor. If none qualify, or the one qualifying shall
7 die, resign or be removed before the trust is executed or
8 completed, the administrator with the will annexed shall sell or
9 convey the lands so devised to be sold, and receive the proceeds
10 of sale, or the rents and profits aforesaid, as an executor might
11 have done: *Provided*, That title to real estate which is devised to
12 be sold shall pass to the individuals entitled to receive the
13 proceeds thereof in such proportions as they are entitled to
14 receive said proceeds absent any contrary testamentary intent
15 upon the closing of the testator's estate or, if the estate is not
16 closed, five years after the death of the testator.

17 When any will heretofore or hereafter executed gives to the
18 executor named therein the power to sell the testator's real
19 estate, which has not been theretofore specifically devised

20 therein, the executor may sell any such real estate unless
21 otherwise provided in said will. If such will directs the sale of
22 testator's real estate but names no executor, or names an
23 executor and the executor dies, resigns or becomes incapable of
24 acting, and an administrator with the will annexed is appointed,
25 the administrator with the will annexed may sell such real estate
26 as aforesaid.

27 Nothing in this section shall be deemed or construed so as to
28 invalidate any conveyance made prior to the effective date of the
29 amendments thereto adopted by the Legislature at its regular
30 session held in the year 1987.

CHAPTER 111

(Com. Sub. for S. B. 493 - By Senator Trump)

[Passed March 10, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto three new sections, designated §44D-5-503a, §44D-5-503b and §44D-5-503c; and to amend and reenact §44D-5-505 of said code, all relating to allowing the creation of self-settled spendthrift trusts; permitting a grantor to transfer assets into a qualified self-settled spendthrift trust and retain an interest in that trust; excluding applicability of certain provisions of code to that qualified interest; clarifying applicability of self-settled spendthrift trust provisions when certain interests are not qualified interests; prohibiting inference of intent to delay, hinder or defraud creditors solely based on grantor's establishment of or transfer to a self-settled spendthrift trust; permitting transfer to trust to be set aside under certain circumstances; providing for the payment of expenses associated with defending the trust to be paid from

transfer; permitting creditors to bring actions against transfer of trust assets within four years after date of grantor's transfer; limiting creditor rights to grantor's transfer; prohibiting credit claims or causes of action against certain other persons or entities; providing applicability of provisions governing creditor's actions to avoid transfers to situations involving multiple transfers; setting statute of limitations for self-settled spendthrift trust moved to this state for four years from date assets moved to the state; defining terms; providing for filling of vacancies in office of qualified trustee or independent qualified trustee; permitting certain terms to be included in self-settled spendthrift trust without deeming trust irrevocable; requiring treatment of beneficiary with right to withdraw entire beneficial interest be treated as grantor once right to withdraw has lapsed, been released or otherwise expired; and exempting self-settled spendthrift trusts from being subject to claims of the grantor's creditors.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto three new sections, designated §44D-5-503a, §44D-5-503b and §44D-5-503c; and that §44D-5-505 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

§44D-5-503a. Self-settled spendthrift trusts.

1 (a) A grantor may transfer assets to a qualified self-settled
 2 spendthrift trust and retain in that trust a qualified interest, and,
 3 except as otherwise provided in this article, the provisions of
 4 section five hundred five of this article do not apply to such
 5 qualified interest.

6 (b) The provisions of section five hundred five of this article
 7 shall continue to apply with respect to any interest held by a

8 grantor in a qualified self-settled spendthrift trust, other than a
9 qualified interest.

10 (c) A grantor's transfer to a qualified self-settled spendthrift
11 trust shall not, to the extent of the grantor's qualified interest, be
12 deemed to have been made with intent to delay, hinder or
13 defraud creditors, for purposes of article one-a, chapter forty of
14 this code, merely because it is made to a trust with respect to
15 which the grantor retains a qualified interest and merely because
16 it is made without consideration. A grantor's transfer to a
17 qualified self-settled spendthrift trust may, however, be set aside
18 under article one-a, chapter forty of this code or if the qualified
19 affidavit contains a material misstatement of fact: *Provided*, That
20 any transfer made to a qualified self-settled spendthrift trust
21 which may be set aside under article one-a, chapter forty of this
22 code shall be chargeable first with the entire costs and expenses,
23 including attorney's fees, properly incurred by the trustee in the
24 defense of the action or proceeding to set aside the transfer.

25 (d) A grantor's creditor may bring an action under article
26 one-a, chapter forty of this code to avoid a transfer to a qualified
27 self-settled spendthrift trust or otherwise to enforce a claim that
28 existed on the date of the grantor's transfer to such trust within
29 four years after the date of the grantor's transfer to such trust to
30 which such claim relates.

31 (e) A creditor shall have only such rights with respect to a
32 grantor's transfer to a qualified self-settled spendthrift trust as
33 are provided in this section. No creditor and no other person has
34 any claim or cause of action against any trustee, trust adviser,
35 trust director or any person involved in the counseling, drafting,
36 preparation or execution of, or transfers to, a qualified
37 self-settled spendthrift trust.

38 (f) If a grantor makes more than one transfer to the same
39 qualified self-settled spendthrift trust, the following rules apply:

40 (1) The grantor's making of a subsequent transfer shall be
41 disregarded in determining a creditor's claim with respect to
42 whether a prior transfer is valid under this section;

43 (2) With respect to each subsequent transfer by the grantor,
44 the four-year limitations period provided in subsection (d) of this
45 section, with respect to actions brought under article one-a of
46 chapter forty of this code with respect to the subsequent transfer,
47 commences on the date of such subsequent transfer; and

48 (3) Any distribution to a beneficiary is deemed to have been
49 made from the latest such transfer.

50 (g) The movement to this state of the administration of an
51 existing trust, which, after such movement to the state, meets for
52 the first time all of the requirements of a qualified self-settled
53 spendthrift trust, shall be treated, for purposes of this section, as
54 a transfer to this trust by the grantor on the date of such
55 movement of all of the assets previously transferred to the trust
56 by the grantor.

§44D-5-503b. Definitions.

1 As used in this article, unless the context requires a different
2 meaning:

3 (a) "Qualified trustee" means any person who is a natural
4 person residing within the state or a legal entity authorized to
5 engage in trust business within the state and who maintains or
6 arranges for custody within the state of some or all of the
7 property that has been transferred to the trust by the grantor,
8 maintains records within the state for the trust on an exclusive or
9 nonexclusive basis, prepares or arranges for the preparation
10 within the state of fiduciary income tax returns for the trust or
11 otherwise materially participates within the state in the
12 administration of the trust. A trustee is not a qualified trustee if

13 such trustee's authority to make distributions of income or
14 principal or both are subject to the direction of someone who,
15 were that person a trustee of the trust, would not meet the
16 requirements to be a qualified trustee.

17 (b) "Independent qualified trustee" means a qualified trustee
18 who is not, and whose actions are not, subject to direction by:

19 (1) The grantor;

20 (2) Any natural person who is not a resident of the state;

21 (3) Any entity that is not authorized to engage in trust
22 business within the state;

23 (4) The grantor's spouse;

24 (5) A parent of the grantor;

25 (6) Any descendant of the grantor; or

26 (7) A sibling of the grantor.

27 (c) "Qualified interest" means a grantor's interest in a
28 qualified self-settled spendthrift trust, to the extent that such
29 interest entitles the grantor to receive distributions of income,
30 principal or both in the sole discretion of a qualified trustee. A
31 grantor may have a qualified interest in a qualified self-settled
32 spendthrift trust and also have an interest in the same trust that
33 is not a qualified interest, and the rules of section five hundred
34 five of this article shall apply to each interest of the grantor in
35 the same trust other than the grantor's qualified interest.

36 (d) "Qualified self-settled spendthrift trust" means a trust if:

37 (1) The trust is irrevocable;

38 (2) The trust is created during the grantor's lifetime;

39 (3) There is, at all times when distributions could be made
40 to the grantor pursuant to the grantor's qualified interest, at least
41 one beneficiary other than the grantor: (i) To whom income may
42 be distributed if the grantor's qualified interest relates to trust
43 income; (ii) to whom principal may be distributed if the
44 grantor's qualified interest relates to trust principal; or (iii) to
45 whom both income and principal may be distributed if the
46 grantor's qualified interest relates to both trust income and
47 principal;

48 (4) The trust has at all times at least one qualified trustee
49 who may be, but need not be, an independent qualified trustee;

50 (5) The trust instrument expressly incorporates the laws of
51 this state to govern the validity, construction and administration
52 of the trust;

53 (6) The trust instrument includes a spendthrift provision, as
54 defined in section five hundred two of this article, that restrains
55 both voluntary and involuntary transfer of the grantor's qualified
56 interest;

57 (7) The grantor does not have the right to disapprove
58 distributions from the trust; and

59 (8) The grantor duly executes a qualified affidavit before or
60 substantially contemporaneously with the making of the transfer
61 of the asset or assets into the trust.

62 (e) "Qualified affidavit" means a duly executed affidavit of
63 the grantor which contains under oath all of the following
64 statements, or statements substantially to the effect:

65 (1) The property being transferred to the trust was not
66 derived from unlawful activities;

67 (2) The grantor has full right, title and authority to transfer
68 the property to the trust;

69 (3) The grantor will not be rendered insolvent immediately
70 after the transfer of the property to the trust;

71 (4) The grantor does not intend to defraud any creditor by
72 transferring the property to the trust;

73 (5) There are no pending or threatened court actions against
74 the grantor except for any court action expressly identified in the
75 affidavit or an attachment to the affidavit;

76 (6) The grantor is not involved in any administrative
77 proceeding except for any proceeding expressly identified in the
78 affidavit or an attachment to the affidavit;

79 (7) The grantor is not indebted on account of an agreement
80 or order of court for the payment of support or alimony in favor
81 of such transferor's spouse, former spouse or children, or for a
82 division or distribution of property incident to a judicial
83 proceeding with respect to a divorce or annulment in favor of
84 such transferor's spouse or former spouse, except for any such
85 indebtedness expressly identified in the affidavit or an
86 attachment to the affidavit; and

87 (8) The grantor does not contemplate at the time of the
88 transfer the filing for relief under the Bankruptcy Code of the
89 United States.

90 An affidavit is defective and is not a qualified affidavit if it
91 materially fails to meet the requirements set forth in this
92 subsection. An affidavit is not considered defective and is a
93 qualified affidavit if it contains any nonsubstantive variances
94 from the language set forth in this subsection, it contains
95 statements or representations in addition to those required in this
96 subsection which do not materially contradict the required
97 statements or representations or there are any technical errors in
98 the form, substance or method of preparation or execution of the
99 affidavit if those errors were not the fault of the affiant and the

100 affiant reasonably relied upon another person to prepare or
101 notarize the affidavit.

§44D-5-503c. Vacancies; revocability of trust; right to withdraw.

1 (a) A vacancy in the position of qualified trustee that occurs
2 for any reason, whether or not there is then serving another
3 trustee, shall be filled in the following order of priority:

4 (1) By a person eligible to be a qualified trustee and who is
5 designated pursuant to the terms of the trust instrument to act as
6 successor trustee;

7 (2) By a person eligible to be a qualified trustee and who is
8 designated by unanimous agreement of the qualified
9 beneficiaries; or

10 (3) By a person eligible to be a qualified trustee and who is
11 appointed by the court pursuant to any of the provisions of
12 article seven of this chapter.

13 (b) A vacancy in the position of independent qualified
14 trustee that occurs for any reason, whether or not there is then
15 serving another trustee, shall be filled in the following order of
16 priority:

17 (1) By a person eligible to be an independent qualified
18 trustee and who is designated pursuant to the terms of the trust
19 instrument to act as successor trustee; or

20 (2) By a person eligible to be an independent qualified
21 trustee and who is designated by unanimous agreement of the
22 qualified beneficiaries; or

23 (3) By a person eligible to be an independent qualified
24 trustee and who is appointed by the court pursuant to any of the
25 provisions of article seven of this chapter.

26 (c) A trust instrument shall not be deemed revocable on
27 account of the inclusion of any one or more of the following
28 rights, powers, and interests:

29 (1) A power of appointment, exercisable by the grantor by
30 will or other written instrument effective only upon the grantor's
31 death, other than a power to appoint to the grantor's estate or the
32 creditors of the grantor's estate;

33 (2) The grantor's qualified interest in the trust;

34 (3) The grantor's right to receive income or principal
35 pursuant to an ascertainable standard;

36 (4) The grantor's potential or actual receipt of income or
37 principal from a charitable remainder unitrust or charitable
38 remainder annuity trust (each within the meaning of Section
39 664(d) of the Internal Revenue Code) and the grantor's right, at
40 any time, and from time to time, to release, in writing delivered
41 to the qualified trustee, all or any part of the grantor's retained
42 interest in such trust;

43 (5) The grantor's receipt each year of a percentage, not to
44 exceed five percent, specified in the trust instrument of the initial
45 value of the trust assets or their value determined from time to
46 time pursuant to the trust instrument;

47 (6) The grantor's right to remove a qualified trustee or
48 independent qualified trustee and to appoint a new trustee who
49 meets the same criteria;

50 (7) The grantor's potential or actual use of real property held
51 under a personal residence trust (within the meaning of Section
52 2702(c) of the Internal Revenue Code);

53 (8) The grantor's potential or actual receipt or use of a
54 qualified annuity interest (within the meaning of Section 2702 of
55 the Internal Revenue Code);

56 (9) The ability of a qualified trustee, whether pursuant to
57 discretion or direction, to pay, after the grantor's death, all or
58 any part of the grantor's debts outstanding at the time of the
59 grantor's death, the expenses of administering the grantor's
60 estate, or any federal or state estate, inheritance, or death tax
61 imposed on or with respect to the grantor's estate; and

62 (10) A grantor's potential or actual receipt of income or
63 principal to pay, in whole or in part, income taxes due on trust
64 income, or the direct payment of such taxes to the applicable tax
65 authorities, pursuant to a provision in the trust instrument that
66 expressly provides for the direct payment of such taxes or the
67 reimbursement of the grantor for such tax payments.

68 (d) A beneficiary who has the right to withdraw his or her
69 entire beneficial interest in a trust shall be treated as its grantor
70 to the extent of such withdrawal right, when such right to
71 withdraw has lapsed, been released, or otherwise expired,
72 without regard to the limitations otherwise imposed by
73 subsection (b), section five hundred five of this article.

§44D-5-505. Creditor's claim against grantor.

1 (a) Whether or not the terms of a trust instrument contain a
2 spendthrift provision, the following rules apply:

3 (1) During the lifetime of the grantor, the property of a
4 revocable trust is subject to claims of the grantor's creditors,
5 except to the extent otherwise provided in sections five hundred
6 three-a, five hundred three-b and five hundred three-c of this
7 article.

8 (2) During the lifetime of the grantor, with respect to an
9 irrevocable trust, a creditor or assignee of the grantor may reach
10 the maximum amount that can be distributed to or for the
11 grantor's benefit. If a trust has more than one grantor, the

12 amount the creditor or assignee of a particular grantor may reach
13 may not exceed the grantor's interest in the portion of the trust
14 attributable to that grantor's contribution.

15 (3) After the death of a grantor, and subject to the grantor's
16 right to direct the source from which liabilities will be paid, the
17 property of a trust that was revocable at the grantor's death is
18 subject to claims of the creditors of the deceased grantor, to the
19 extent the grantor's probate estate is inadequate to satisfy them,
20 and with such claims payable in order of priority of the
21 following classes:

22 (A) The costs and expenses of administration of the grantor's
23 estate;

24 (B) Reasonable funeral expenses;

25 (C) Debts and taxes with preference under federal law;

26 (D) Unpaid child support which is due and owing at the time
27 of the decedent's death;

28 (E) Debts and taxes with preference under other laws of the
29 State of West Virginia;

30 (F) Reasonable and necessary medical and hospital expenses
31 of the last illness of the decedent, including compensation for
32 persons attending the decedent during his or her last illness; and

33 (G) All other claims.

34 (b) For purposes of this section:

35 (1) During the period the power may be exercised, the holder
36 of a power of withdrawal is treated in the same manner as the
37 grantor of a revocable trust to the extent of the property subject
38 to the power; and

39 (2) Upon the lapse, release or waiver of the power, the
40 holder is treated as the grantor of the trust only to the extent the
41 value of the property affected by the lapse, release or waiver
42 exceeds the greater of the amount specified in Section
43 2041(b)(2), Section 2503(b) or Section 2514(e) of the Internal
44 Revenue Code.

CHAPTER 112

**(Com. Sub. for H. B. 4604 - By Delegates Householder,
Mr. Speaker (Mr. Armstead), Kessinger, Upson,
Shott, Folk and Lane)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §6B-2-4 of the Code of West Virginia, 1931, as amended, relating to violations of the Ethics Act; establishing a deadline of eighteen months for the Ethics Commission to investigate and make a probable cause determination on a complaint; allowing extension past one year if consented by both respondent and complainant or unless Ethics Commission finds good cause in writing; changing the burden of proof needed to show a violation of the Ethics Act to a clear and convincing evidence standard; and extending the statute of limitations for filing complaints alleging violations of the Ethics Act from two years to five years.

Be it enacted by the Legislature of West Virginia:

That §6B-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION;
POWERS AND DUTIES; DISCLOSURE OF
FINANCIAL INTEREST BY PUBLIC
OFFICIALS AND EMPLOYEES;
APPEARANCES BEFORE PUBLIC
AGENCIES; CODE OF CONDUCT FOR
ADMINISTRATIVE LAW JUDGES.**

**§6B-2-4. Processing complaints; dismissals; hearings; disposition;
judicial review.**

1 (a) Upon the filing of a complaint, the executive director of
2 the commission or his or her designee shall, within three
3 working days, acknowledge the receipt of the complaint by
4 first-class mail unless the complaint was initiated by the
5 commission or the complainant or his or her representative
6 personally filed the complaint with the commission and was
7 given a receipt or other acknowledgment evidencing the filing of
8 the complaint. No political party or officer, employee or agent of
9 a political party acting in his or her official capacity may file a
10 complaint for a violation of this chapter with the commission.
11 Nothing in this section prohibits a private citizen, acting in that
12 capacity, from filing a verified complaint with the commission
13 under this section. Within fourteen days after the receipt of a
14 complaint, the executive director shall refer the complaint to the
15 review board created pursuant to section two-a of this article.

16 (b) Upon the referral of a complaint by the executive director
17 pursuant to subsection (a) of this section, the review board shall
18 determine whether the allegations of the complaint, if taken as
19 true, would constitute a violation of law upon which the
20 commission could properly act under the provisions of this
21 chapter. If the complaint is determined by a majority vote of the
22 review board to be insufficient in this regard, the review board
23 shall dismiss the complaint.

24 (c) Upon a finding by the review board that the complaint is
25 sufficient, the executive director shall give notice of a pending
26 investigation to the complainant, if any, and to the respondent.
27 The notice of investigation shall be mailed to the parties and, in
28 the case of the respondent, shall be mailed as certified mail,
29 return receipt requested, marked "Addressee only, personal and
30 confidential". The notice shall describe the conduct of the
31 respondent which is alleged to violate the law and a copy of the
32 complaint shall be appended to the notice mailed to the
33 respondent. Each notice of investigation shall inform the
34 respondent that the purpose of the investigation is to determine
35 whether probable cause exists to believe that a violation of law
36 has occurred which may subject the respondent to administrative
37 sanctions by the commission, criminal prosecution by the state,
38 or civil liability. The notice shall further inform the respondent
39 that he or she has a right to appear before the review board and
40 that he or she may respond in writing to the commission within
41 thirty days after the receipt of the notice, but that no fact or
42 allegation shall be taken as admitted by a failure or refusal to
43 timely respond.

44 (d) Within the forty-five day period following the mailing of
45 a notice of investigation, the review board shall proceed to
46 consider: (1) The allegations raised in the complaint; (2) any
47 timely received written response of the respondent; and (3) any
48 other competent evidence gathered by or submitted to the
49 commission which has a proper bearing on the issue of probable
50 cause. A respondent may appear before the review board and
51 make an oral response to the complaint. The commission shall
52 promulgate rules prescribing the manner in which a respondent
53 may present his or her oral response. The commission may ask
54 a respondent to disclose specific amounts received from a source
55 and request other detailed information not otherwise required to
56 be set forth in a statement or report filed under the provisions of
57 this chapter if the information sought is considered to be

58 probative as to the issues raised by a complaint or an
59 investigation initiated by the commission. Any information thus
60 received shall be confidential except as provided by subsection
61 (f) of this section. If a person asked to provide information fails
62 or refuses to furnish the information to the commission, the
63 commission may exercise its subpoena power as provided in this
64 chapter and any subpoena issued by the commission shall have
65 the same force and effect as a subpoena issued by a circuit court
66 of this state. Enforcement of any subpoena may be had upon
67 application to a circuit court of the county in which the review
68 board is conducting an investigation through the issuance of a
69 rule or an attachment against the respondent as in cases of
70 contempt.

71 (e) Unless consented to by both the respondent and
72 complainant, or unless the commission makes a good cause
73 determination in writing the investigation and a determination as
74 to probable cause shall not exceed eighteen months.

75 (f) All investigations, complaints, reports, records,
76 proceedings and other information received by the commission
77 and related to complaints made to the commission or
78 investigations conducted by the commission pursuant to this
79 section, including the identity of the complainant or respondent,
80 are confidential and may not be knowingly and improperly
81 disclosed by any current or former member or employee of the
82 commission or the review board except as follows:

83 (A) Once there has been a finding that probable cause exists
84 to believe that a respondent has violated the provisions of this
85 chapter and the respondent has been served by the commission
86 with a copy of the review board's order and the statement of
87 charges prepared pursuant to the provisions of subsection (h) of
88 this section, the complaint and all reports, records, nonprivileged
89 and nondeliberative material introduced at any probable cause
90 hearing held pursuant to the complaint cease to be confidential.

91 (B) After a finding of probable cause, any subsequent
92 hearing held in the matter for the purpose of receiving evidence
93 or the arguments of the parties or their representatives shall be
94 open to the public and all reports, records and nondeliberative
95 materials introduced into evidence at the hearing, as well as the
96 commission's orders, are not confidential.

97 (C) The commission may release any information relating to
98 an investigation at any time if the release has been agreed to in
99 writing by the respondent.

100 (D) The complaint and the identity of the complainant shall
101 be disclosed to a person named as respondent immediately upon
102 the respondent's request.

103 (E) Where the commission is otherwise required by the
104 provisions of this chapter to disclose information or to proceed
105 in such a manner that disclosure is necessary and required to
106 fulfill those requirements.

107 (1) If, in a specific case, the commission finds that there is
108 a reasonable likelihood that the dissemination of information or
109 opinion in connection with a pending or imminent proceeding
110 will interfere with a fair hearing or otherwise prejudice the due
111 administration of justice, the commission shall order that all or
112 a portion of the information communicated to the commission to
113 cause an investigation and all allegations of ethical misconduct
114 or criminal acts contained in a complaint shall be confidential
115 and the person providing the information or filing a complaint
116 shall be bound to confidentiality until further order of the
117 commission.

118 (g) If the members of the review board fail to find probable
119 cause, the proceedings shall be dismissed by the commission in
120 an order signed by the members of the review board. Copies of
121 the order of dismissal shall be sent to the complainant and served

122 upon the respondent forthwith. If the review board decides by a
123 unanimous vote that there is probable cause to believe that a
124 violation under this chapter has occurred, the members of the
125 review board shall sign an order directing the commission staff
126 to prepare a statement of charges and assign the matter for
127 hearing to the commission or a hearing examiner as the
128 commission may subsequently direct. The commission shall then
129 schedule a hearing, to be held within ninety days after the date
130 of the order, to determine the truth or falsity of the charges. The
131 commission's review of the evidence presented shall be de novo.
132 For the purpose of this section, service of process upon the
133 respondent is obtained at the time the respondent or the
134 respondent's agent physically receives the process, regardless of
135 whether the service of process is in person or by certified mail.

136 (h) At least eighty days prior to the date of the hearing, the
137 commission shall serve the respondent by certified mail, return
138 receipt requested, with the statement of charges and a notice of
139 hearing setting forth the date, time and place for the hearing. The
140 scheduled hearing may be continued only upon a showing of
141 good cause by the respondent or under other circumstances as
142 the commission, by legislative rule, directs.

143 (i) The commission may sit as a hearing board to adjudicate
144 the case or may permit an assigned hearing examiner employed
145 by the commission to preside at the taking of evidence. The
146 commission shall, by legislative rule, establish the general
147 qualifications for hearing examiners. The legislative rule shall
148 also contain provisions which ensure that the functions of a
149 hearing examiner will be conducted in an impartial manner and
150 describe the circumstances and procedures for disqualification
151 of hearing examiners.

152 (j) A member of the commission or a hearing examiner
153 presiding at a hearing may:

154 (1) Administer oaths and affirmations, compel the
155 attendance of witnesses and the production of documents,
156 examine witnesses and parties and otherwise take testimony and
157 establish a record;

158 (2) Rule on offers of proof and receive relevant evidence;

159 (3) Take depositions or have depositions taken when the
160 ends of justice will be served;

161 (4) Regulate the course of the hearing;

162 (5) Hold conferences for the settlement or simplification of
163 issues by consent of the parties;

164 (6) Dispose of procedural requests or similar matters;

165 (7) Accept stipulated agreements;

166 (8) Take other action authorized by the ethics commission
167 consistent with the provisions of this chapter.

168 (k) With respect to allegations of a violation under this
169 chapter, the complainant has the burden of proof. The West
170 Virginia Rules of Evidence governing proceedings in the courts
171 of this state shall be given like effect in hearings held before the
172 commission or a hearing examiner. The commission shall, by
173 rule, regulate the conduct of hearings so as to provide full
174 procedural due process to a respondent. Hearings before a
175 hearing examiner shall be recorded electronically. When
176 requested by either of the parties, the presiding officer shall
177 order a transcript, verified by oath or affirmation, of each
178 hearing held and so recorded. In the discretion of the
179 commission, a record of the proceedings may be made by a
180 certified court reporter. Unless otherwise ordered by the
181 commission, the cost of preparing a transcript shall be paid by
182 the party requesting the transcript. Upon a showing of indigency,

183 the commission may provide a transcript without charge. Within
184 fifteen days following the hearing, either party may submit to the
185 hearing examiner that party's proposed findings of fact. The
186 hearing examiner shall thereafter prepare his or her own
187 proposed findings of fact and make copies of the findings
188 available to the parties. The hearing examiner shall then submit
189 the entire record to the commission for final decision.

190 (l) The recording of the hearing or the transcript of
191 testimony, as the case may be, and the exhibits, together with all
192 papers and requests filed in the proceeding, and the proposed
193 findings of fact of the hearing examiner and the parties,
194 constitute the exclusive record for decision by the commission,
195 unless by leave of the commission a party is permitted to submit
196 additional documentary evidence or take and file depositions or
197 otherwise exercise discovery.

198 (m) The commission shall set a time and place for the
199 hearing of arguments by the complainant and respondent, or
200 their respective representatives, and shall notify the parties
201 thereof. Briefs may be filed by the parties in accordance with
202 procedural rules promulgated by the commission. The
203 commission shall issue a final decision in writing within
204 forty-five days of the receipt of the entire record of a hearing
205 held before a hearing examiner or, in the case of an evidentiary
206 hearing held by the commission acting as a hearing board in lieu
207 of a hearing examiner, within twenty-one days following the
208 close of the evidence.

209 (n) A decision on the truth or falsity of the charges against
210 the respondent and a decision to impose sanctions must be
211 approved by at least seven members of the commission.

212 (o) Members of the commission shall recuse themselves
213 from a particular case upon their own motion with the approval
214 of the commission or for good cause shown upon motion of a

215 party. The remaining members of the commission may, by
216 majority vote, select a temporary member to replace a recused
217 member: *Provided*, That the temporary member selected to
218 replace a recused member shall be a person of the same status or
219 category, provided by subsection (b), section one of this article,
220 as the recused member.

221 (p) Except for statements made in the course of official
222 duties to explain commission procedures, no member or
223 employee or former member or employee of the commission
224 may make any public or nonpublic comment about any
225 proceeding previously or currently before the commission. Any
226 member or employee or former member or employee of the
227 commission who violates this subsection is subject to the
228 penalties contained in subsection (e), section ten of this article.
229 In addition, violation of this subsection by a current member or
230 employee of the commission is grounds for immediate removal
231 from office or termination of employment.

232 (q) A complainant may be assisted by a member of the
233 commission staff assigned by the commission after a
234 determination of probable cause.

235 (r) No employee of the commission assigned to prosecute a
236 complaint may participate in the commission deliberations or
237 communicate with commission members or the public
238 concerning the merits of a complaint.

239 (s) (1) If the commission finds by clear and convincing
240 evidence that the facts alleged in the complaint are true and
241 constitute a material violation of this article, it may impose one
242 or more of the following sanctions:

243 (A) Public reprimand;

244 (B) Cease and desist orders;

245 (C) Orders of restitution for money, things of value, or
246 services taken or received in violation of this chapter;

247 (D) Fines not to exceed \$5,000 per violation; or

248 (E) Reimbursement to the commission for the actual costs of
249 investigating and prosecuting a violation. Any reimbursement
250 ordered by the commission for its costs under this paragraph
251 shall be collected by the commission and deposited into the
252 special revenue account created pursuant to section six, article
253 one of this chapter.

254 (2) In addition to imposing the above-specified sanctions,
255 the commission may recommend to the appropriate
256 governmental body that a respondent be terminated from
257 employment or removed from office.

258 (3) The commission may institute civil proceedings in the
259 circuit court of the county in which a violation occurred for the
260 enforcement of sanctions.

261 (t) At any stage of the proceedings under this section, the
262 commission may enter into a conciliation agreement with a
263 respondent if the agreement is deemed by a majority of the
264 members of the commission to be in the best interest of the state
265 and the respondent. Any conciliation agreement must be
266 disclosed to the public: *Provided*, That negotiations leading to a
267 conciliation agreement, as well as information obtained by the
268 commission during the negotiations, shall remain confidential
269 except as may be otherwise set forth in the agreement.

270 (u) Decisions of the commission involving the issuance of
271 sanctions may be appealed to the circuit court of Kanawha
272 County, only by the respondent and only upon the grounds set
273 forth in section four, article five, chapter twenty- nine-a of this
274 code.

275 (v) (1) Any person who in good faith files a verified
276 complaint or any person, official or agency who gives credible
277 information resulting in a formal complaint filed by commission
278 staff is immune from any civil liability that otherwise might
279 result by reason of such actions.

280 (2) If the commission determines, by clear and convincing
281 evidence, that a person filed a complaint or provided information
282 which resulted in an investigation knowing that the material
283 statements in the complaint or the investigation request or the
284 information provided were not true; filed an unsubstantiated
285 complaint or request for an investigation in reckless disregard of
286 the truth or falsity of the statements contained therein; or filed
287 one or more unsubstantiated complaints which constituted abuse
288 of process, the commission shall:

289 (A) Order the complainant or informant to reimburse the
290 respondent for his or her reasonable costs;

291 (B) Order the complainant or informant to reimburse the
292 respondent for his or her reasonable attorney fees; and

293 (C) Order the complainant or informant to reimburse the
294 commission for the actual costs of its investigation. In addition,
295 the commission may decline to process any further complaints
296 brought by the complainant, the initiator of the investigation or
297 the informant.

298 (3) The sanctions authorized in this subsection are not
299 exclusive and do not preclude any other remedies or rights of
300 action the respondent may have against the complainant or
301 informant under the law.

302 (w) (1) If at any stage in the proceedings under this section
303 it appears to a Review board, a hearing examiner or the
304 commission that there is credible information or evidence that

305 the respondent may have committed a criminal violation, the
306 matter shall be referred to the full commission for its
307 consideration. If, by a vote of two-thirds of the members of the
308 full commission, it is determined that probable cause exists to
309 believe a criminal violation has occurred, the commission shall
310 refer the matter to the appropriate county prosecuting attorney
311 having jurisdiction for a criminal investigation and possible
312 prosecution. Deliberations of the commission with regard to
313 referring a matter for criminal investigation by a prosecuting
314 attorney shall be private and confidential. Notwithstanding any
315 other provision of this article, once a referral for criminal
316 investigation is made under the provisions of this subsection, the
317 ethics proceedings shall be held in abeyance until action on the
318 referred matter is concluded. If the referral of the matter to the
319 prosecuting attorney results in a criminal conviction of the
320 respondent, the commission may resume its investigation or
321 prosecution of the ethics violation, but may not impose a fine as
322 a sanction if a violation is found to have occurred.

323 (2) If fewer than two-thirds of the full commission determine
324 that a criminal violation has occurred, the commission shall
325 remand the matter to the review board, the hearing examiner or
326 the commission itself as a hearing board, as the case may be, for
327 further proceedings under this article.

328 (x) The provisions of this section shall apply to violations of
329 this chapter occurring after September 30, 1989, and within one
330 year before the filing of a complaint: *Provided*, That the
331 applicable statute of limitations for violations which occur on or
332 after July 1, 2005, is two years after the date on which the
333 alleged violation occurred: *Provided, however*, That the
334 applicable statute of limitations for violations which occur on or
335 after July 1, 2016, is five years after the date on which the
336 alleged violation occurred.

CHAPTER 113

**(H. B. 4618 - By Delegates Sobonya, Ireland, Foster,
Zatezalo, Fast, Rowe, Deem, Skinner, Folk,
Manchin and Marcum)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to repeal §6B-2-5c of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §6B-2B-1, §6B-2B-2, §6B-2B-3, §6B-2B-4, §6B-2B-5 and §6B-2B-6, all relating to limitations on use of a public official's name or likeness; repealing current provisions; defining terms; prohibiting public officials, their agents and public employees from placing the public official's name or likeness on trinkets; prohibiting public officials, their agents and public employees from using public funds, public employees, or public resources to distribute, disseminate, publish, or display the public official's name or likeness for the purpose of advertising to the public; prohibiting public officials, their agents or public employees from placing the public official's name or likeness on publicly-owned vehicles; prohibiting a public official's name or likeness from being placed on any educational material that is paid for with public funds; placing restrictions on a public official's name or likeness on a public agency's website and social media; providing exceptions; providing for alternative uses for prohibited material after the effective date; and providing an opportunity to obtain an exemption from the Ethics Commission.

Be it enacted by the Legislature of West Virginia:

That §6B-2-5c of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new

article, designated §6B-2B-1, §6B-2B-2, §6B-2B-3, §6B-2B-4, §6B-2B-5 and §6B-2B-6, all to read as follows:

**ARTICLE 2B. LIMITATIONS ON A PUBLIC OFFICIAL FROM
USING HIS OR HER NAME OR LIKENESS.**

§6B-2B-1. Definitions.

1 As used in this article:

2 (a) “Advertising” means publishing, distributing,
3 disseminating, communicating or displaying information to the
4 general public through audio, visual or other media tools. It
5 includes, but is not limited to, billboard, radio, television, mail,
6 electronic mail, publications, banners, table skirts, magazines,
7 social media, websites and other forms of publication,
8 dissemination, display or communication.

9 (b) “Agent” means any volunteer or employee, contractual
10 or permanent, serving at the discretion of a public official or
11 public employee.

12 (c) “Educational materials” means publications, guides,
13 calendars, handouts, pamphlets, reports or booklets intended to
14 provide information about the public official or governmental
15 office. It includes information or details about the office,
16 services the office provides to the public, updates on laws and
17 services and other informational items that are intended to
18 educate the public.

19 (d) “Instructional material” means written instructions
20 explaining or detailing steps for completion of a governmental
21 agency document or form.

22 (e) “Likeness” means a photograph, drawing or other
23 depiction of an individual.

24 (f) “Mass media communication” means communication
25 through audio, visual, or other media tools, including U.S. mail,
26 electronic mail, and social media, intended for general
27 dissemination to the public. Examples include mass mailing by
28 U.S. mail, list-serve emails and streaming clips on websites. It
29 does not include: (i) Regular responses to constituent requests or
30 questions during the normal course of business; or (ii)
31 communications that are authorized or required by law to be
32 publicly disseminated, such as legal notices.

33 (g) “Public employee” means any full-time or part-time
34 employee of any state, or political subdivision of the state, and
35 their respective boards, agencies, departments and commissions,
36 or in any other regional or local governmental agency.

37 (h) “Public official” means any person who is elected or
38 appointed to any state, county or municipal office or position,
39 including boards, agencies, departments and commissions, or in
40 any other regional or local governmental agency.

41 (i) “Public payroll” means payment of public monies as a
42 wage or salary from the state, or political subdivision of the
43 state, or any other regional or local governmental agency,
44 whether accepted or not.

45 (j) “Social media” means forms of electronic communication
46 through which users create online communities to share
47 information, ideas, personal messages and other content. It
48 includes web and mobile-based technologies which are used to
49 turn communication to interactive dialogue among organizations,
50 communities and individuals. Examples include, but are not
51 limited to, Facebook, MySpace, Twitter and YouTube.

52 (k) “Trinkets” means items of tangible personal property that
53 are not vital or necessary to the duties of the public official’s or
54 public employee’s office, including, but not limited to, the

55 following: magnets, mugs, cups, key chains, pill holders,
56 band-aid dispensers, fans, nail files, matches and bags.

§6B-2B-2. Limitations on a public official from using his or her name or likeness.

1 (a) *Trinkets*. — Public officials, their agents, or anyone on
2 public payroll may not place the public official's name or
3 likeness on trinkets paid for with public funds: *Provided*, That
4 when appropriate and reasonable, public officials may expend a
5 minimal amount of public funds for the purchase of pens, pencils
6 or other markers to be used during ceremonial signings.

7 (b) *Advertising*. — (1) Public officials, their agents, or
8 anyone on public payroll may not use public funds, including
9 funds of the office held by the public official, public employees,
10 or public resources to distribute, disseminate, publish or display
11 the public official's name or likeness for the purpose of
12 advertising to the general public.

13 (2) Notwithstanding the prohibitions in subdivision (1) of
14 this subsection, the following conduct is not prohibited:

15 (A) A public official's name and likeness may be used in a
16 public announcement or mass media communication when
17 necessary, reasonable and appropriate to relay specific public
18 safety, health or emergency information.

19 (B) A public official's name and likeness may appear on an
20 agency's social media and website provided it complies with
21 section three of this article.

22 (C) Dissemination of office press releases or agency
23 information via email, social media or other public media tools
24 for official purposes is not considered advertising or prohibited
25 under this subsection, if it: (i) Is intended for a legitimate news
26 or informational purpose; (ii) is not intended as a means of

27 promotion of the public official; and (iii) is not being used as
28 educational material.

29 (3) Banners and table skirts are considered advertising and
30 may not include the public official's name or likeness.

31 (4) Nothing in this article shall be interpreted as prohibiting
32 public officials from using public funds to communicate with
33 constituents in the normal course of their duties as public
34 officials if the communications do not include any reference to
35 voting in favor of the public official in an election.

36 (c) *Vehicles.* — Public officials, their agents, or any person
37 on public payroll may not use or place the public official's name
38 or likeness on any publicly owned vehicles.

39 (d) *Educational Materials.* — A public official's name or
40 likeness may not be placed on any educational material that is
41 paid for with public funds: *Provided,* That this prohibition does
42 not apply to the submission of a report required to be issued by
43 law.

§6B-2B-3. Limitations on promotion through social media.

1 (a) A public official's name and likeness may appear on a
2 public agency's website and social media subject to the
3 following restrictions:

4 (1) The public official's name may appear throughout the
5 website if it is reasonable, incidental, appropriate and has a
6 primary purpose to promote the agency's mission and services
7 rather than to promote the public official.

8 (2) The public official's likeness may only appear on the
9 agency's website home page and on any pages or sections
10 devoted to biographical information regarding the public official.

11 (3) The public official's name and likeness may appear on
12 the agency's social media if it is reasonable, incidental,
13 appropriate and has a primary purpose to promote the agency's
14 mission and services rather than to promote the public official.

15 (b) This section does not apply to personal or non-public
16 agency social media accounts.

17 (c) A public agency's website or social media may not
18 provide links or reference to a public official's or public
19 employee's personal or campaign social media or website.

§6B-2B-4. Exceptions to use of name or likeness.

1 (a) A public official may use his or her name or likeness on
2 any official record or report, letterhead, document or certificate
3 or instructional material issued in the course of his or her duties
4 as a public official: *Provided*, That other official documents used
5 in the normal course of the agency, including, but not limited to,
6 facsimile cover sheets, press release headers, office signage and
7 envelopes may include the public official's name: *Provided*,
8 *however*, That if the official documents are reproduced for
9 distribution or dissemination to the public as educational
10 material, the items are subject to the prohibitions in subsection
11 (d), section two of this article.

12 (b) When appropriate and reasonable, the West Virginia
13 Division of Tourism may use a public official's name and
14 likeness on material used for tourism promotion.

15 (c) The prohibitions contained in this article do not apply to
16 any person who is employed as a member of the faculty, staff,
17 administration, or president of a public institution of higher
18 education and who is engaged in teaching, research, consulting,
19 coaching, recruiting or publication activities: *Provided*, That the
20 activity is approved as a part of an employment contract with the

21 governing board of the institution of higher education or has
22 been approved by the employee's department supervisor or the
23 president of the institution by which the faculty or staff member
24 is employed.

25 (d) The prohibitions contained in section two of this article
26 do not apply to a public official's campaign-related expenditures
27 or materials.

28 (e) The prohibitions contained in section two of this article
29 do not apply to items paid for with the public official's personal
30 money.

31 (f) The prohibitions contained in section two of this article
32 do not apply to items or materials required by law to contain the
33 public official's name or likeness.

§6B-2B-5. Existing items as of the effective date.

1 (a) If a public official, public employee or public agency
2 possesses items or materials in contravention of this rule or
3 section five-c, article two of this chapter that were purchased
4 prior to the effective date, the public official, public employee or
5 public agency may not continue to distribute, disseminate,
6 communicate or display publicly these items or materials.

7 (b) Notwithstanding the prohibition in subsection (a) of this
8 section,

9 (1) Materials may be used publicly if the public official's
10 name or likeness are permanently removed or covered: *Provided*,
11 That a public official's name or likeness may be covered with a
12 sticker, be marked out or obliterated in any other manner;

13 (2) The public agency may use the items or materials for
14 internal use if they are not publicly distributed, disseminated,
15 communicated or displayed; and

16 (3) When appropriate and in compliance with law, a public
17 agency may donate the items to surplus, charity or an
18 organization serving the poor and needy.

§6B-2B-6. Allowance for exemption.

1 If any of the prohibitions contained in this article create an
2 undue hardship or will cause significant financial impact upon
3 the public agency to bring existing material, vehicles or items
4 into compliance with this article, the public agency may seek a
5 written exemption from the West Virginia Ethics Commission.
6 In any request, the Ethics Commission shall make public the
7 name of public agency seeking the exemption, along with the
8 affected public official, if any.

CHAPTER 114

**(Com. Sub. S. B. 474 - By Senators Boso, Ashley,
Facemire, Miller, Snyder, Takubo, Trump and Plymale)**

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended, relating to exempting Department of Environmental Protection's construction or reclamation contracts from review and approval requirements of the Division of Purchasing.

Be it enacted by the Legislature of West Virginia:

That §5A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.**§5A-3-3. Powers and duties of Director of Purchasing.**

1 The director, under the direction and supervision of the
2 secretary, is the executive officer of the Purchasing Division and
3 has 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 are based, whenever possible, on competitive bid;

8 (3) Purchase or contract for, in the name of the state, the
9 commodities, services and printing required by the spending
10 units of the state government;

11 (4) Apply and enforce standard specifications established in
12 accordance with section five of this article as hereinafter
13 provided;

14 (5) Transfer to or between spending units or sell
15 commodities that are surplus, obsolete or unused as hereinafter
16 provided;

17 (6) Have charge of central storerooms for the supply of
18 spending units as the director considers advisable;

19 (7) Establish and maintain a laboratory for the testing of
20 commodities and make use of existing facilities in state
21 institutions for that purpose as hereinafter provided as the
22 director considers advisable;

23 (8) Suspend the right and privilege of a vendor to bid on
24 state purchases when the director has evidence that the vendor
25 has violated any of the provisions of the purchasing law or the
26 rules and regulations of the director;

27 (9) Examine the provisions and terms of every contract
28 entered into for and on behalf of the State of West Virginia that
29 impose any obligation upon the state to pay any sums of money
30 for commodities or services and approve the contract as to such
31 provisions and terms; and the duty of examination and approval
32 herein set forth does not supersede the responsibility and duty of
33 the Attorney General to approve the contracts as to form:
34 *Provided*, That the provisions of this subdivision do not apply in
35 any respect whatever to construction or repair contracts entered
36 into by the Division of Highways of the Department of
37 Transportation or to construction or reclamation contracts
38 entered into by the Department of Environmental Protection:
39 *Provided, however*, That the provisions of this subdivision do
40 not apply in any respect whatsoever to contracts entered into by
41 the University of West Virginia Board of Trustees or by the
42 Board of Directors of the State College System, except to the
43 extent that such boards request the facilities and services of the
44 director under the provisions of this subdivision: *Provided*
45 *further*, That the provisions of this subdivision do not apply to
46 the West Virginia State Police Forensic Laboratory and the West
47 Virginia Office of Laboratory Services;

48 (10) Assure that the specifications and descriptions in all
49 solicitations are prepared so as to provide all potential
50 suppliers-vendors who can meet the requirements of the state an
51 opportunity to bid and to assure that the specifications and
52 descriptions do not favor a particular brand or vendor. If the
53 director determines that any such specifications or descriptions
54 as written favor a particular brand or vendor or if it is decided,
55 either before or after the bids are opened, that a commodity or
56 service having different specifications or quality or in different
57 quantity can be bought, the director may rewrite the solicitation
58 and the matter shall be rebid; and

59 (11) Issue a notice to cease and desist to a spending unit
60 when the director has credible evidence that a spending unit has

61 violated competitive bidding or other requirements established
62 by this article and the rules promulgated hereunder. Failure to
63 abide by the notice may result in penalties set forth in section
64 seventeen of this article.

CHAPTER 115

(S. B. 346 - By Senators Hall and Prezioso)

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2016.]

AN ACT to amend and reenact §5A-6-2 of the Code of West Virginia, 1931, as amended, relating to information technology projects under Office of Technology; and raising minimum dollar value for information technology project to qualify as major information technology project.

Be it enacted by the Legislature of West Virginia:

That §5A-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-2. Definitions.

- 1 As used in this article:
- 2 (a) “Information systems” means computer-based
- 3 information equipment and related services designed for the
- 4 automated transmission, storage, manipulation and retrieval of
- 5 data by electronic or mechanical means;

6 (b) "Information technology" means data processing and
7 telecommunications hardware, software, services, supplies,
8 personnel, maintenance, training and includes the programs and
9 routines used to employ and control the capabilities of data
10 processing hardware;

11 (c) "Information equipment" includes central processing
12 units, front-end processing units, miniprocessors,
13 microprocessors and related peripheral equipment, including
14 data storage devices, networking equipment, services, routers,
15 document scanners, data entry equipment, terminal controllers,
16 data terminal equipment and computer-based word processing
17 systems other than memory typewriters;

18 (d) "Related services" includes feasibility studies, systems
19 design, software development and time-sharing services whether
20 provided by state employees or others;

21 (e) "Telecommunications" means any transmission, emission
22 or reception of signs, signals, writings, images or sounds of
23 intelligence of any nature by wire, radio or other electromagnetic
24 or optical systems. The term includes all facilities and equipment
25 performing those functions that are owned, leased or used by the
26 executive agencies of state government;

27 (f) "Chief Technology Officer" means the person holding the
28 position created in section three of this article and vested with
29 authority to oversee state spending units in planning and
30 coordinating information systems that serve the effectiveness
31 and efficiency of the state and individual state spending units
32 and further the overall management goals and purposes of
33 government;

34 (g) "Technical infrastructure" means all information
35 systems, information technology, information equipment,
36 telecommunications and related services as defined in this
37 section;

38 (h) “Information technology project” means the process by
39 which telecommunications, automated data processing,
40 databases, the Internet, management information systems and
41 related information, equipment, goods and services are planned,
42 procured and implemented;

43 (i) “Major information technology project” means any
44 information technology project estimated to cost more than
45 \$250,000. Major information technology projects do not include
46 equipment-only or software-only purchases in which labor is not
47 necessary; and

48 (j) “Steering committee” means an internal agency oversight
49 committee established jointly by the Chief Technology Officer
50 and the agency requesting the project, which shall include
51 representatives from the Office of Technology and at least one
52 representative from the agency requesting the project.

CHAPTER 116

(S. B. 345 - By Senator Hall)

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to repeal §5A-4-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5A-10-3a, relating to parking on state-owned or leased property; creating parking fees fund; authorizing Real Estate Division to collect parking fees; providing rule-making authority; and continuing Parking Garage Fund.

Be it enacted by the Legislature of West Virginia:

That §5A-4-5 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §5A-10-3a, to read as follows:

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-3a. Regulation of parking on state-owned or leased property in Charleston; creation of fund.

1 (a) The Real Estate Division may regulate the parking of
2 motor vehicles in accordance with the provisions of this section
3 with regard to the following state-owned property in the city of
4 Charleston, Kanawha County:

5 (1) The east side of Greenbrier Street between Kanawha
6 Boulevard and Washington Street, East;

7 (2) The west side of California Avenue between Kanawha
8 Boulevard and Washington Street, East;

9 (3) The state-owned or leased grounds upon which state
10 office buildings number one through twenty and the Laidley
11 Field Complex are located; and

12 (4) Any other property now or hereafter owned or leased by
13 the state or any of its agencies and used for parking purposes in
14 conjunction with the State Capitol or any state office buildings.

15 (b) The Real Estate Division is authorized to collect fees for
16 parking pursuant to subsection (a) of this section. The fees shall
17 be deposited into a special revenue fund to be known as the
18 Parking Lots Operating Fund within the State Treasury.
19 Expenditures from the fund are authorized from collections. The
20 fund may only be used in a manner consistent with this article
21 and in accordance with the provisions of article three, chapter
22 twelve and article two, chapter eleven-b of this code. Any
23 balance remaining in the Special Revenue Fund at the end of any
24 fiscal year does not revert to the General Revenue Fund, but

25 remains in the Special Revenue Fund. All costs and expenses
26 incurred pursuant to this section, including administrative, shall
27 be paid from those funds.

28 (c) The secretary shall propose legislative rules pursuant to
29 article three, chapter twenty-nine-a of this code relating to
30 parking and to allocate parking spaces to public officers and
31 employees of the state upon all of the property set forth in
32 subsection (a) of this section: *Provided*, That notwithstanding
33 this or any other provision of law to the contrary, during sessions
34 of the Legislature, including regular, extended, extraordinary and
35 interim sessions, and any other times designated by the Speaker
36 of the House of Delegates and the President of the Senate,
37 parking on the east side of Greenbrier Street between Kanawha
38 Boulevard and Washington Street, East, in the Culture Center
39 parking lot, on the north side of Kanawha Boulevard between
40 Greenbrier Street and California Avenue, on the west side of
41 California Avenue between Kanawha Boulevard and
42 Washington Street, East, in the parking lot on the east side of
43 California Avenue across from the loading dock entrance and
44 any other areas designated by a joint policy of the Speaker of the
45 House of Delegates and the President of the Senate shall be
46 managed and controlled by the Legislature. Any person parking
47 any vehicle contrary to this section or the rules promulgated
48 under authority of this subsection is subject to a fine as
49 established by rule of the secretary. In addition, a designee of the
50 secretary or the Legislature, as the case may be, may cause the
51 removal, immobilization or other remedy considered necessary,
52 at owner expense, of any vehicle that is parked in violation of the
53 rules or the joint policy between the Speaker of the House of
54 Delegates and the President of the Senate. Magistrates in
55 Kanawha County have jurisdiction over all the offenses under
56 this section.

57 (d) The secretary, the Speaker of the House of Delegates and
58 the President of the Senate may employ persons as may be

59 necessary to enforce the parking rules as provided for under the
60 provisions of this section.

61 (e) The Parking Garage Fund, created in the former section
62 five, article four of this chapter, is continued in the Department
63 of Administration as a special fund consisting of funds that are
64 appropriated and funds from other sources to be used for the
65 construction and maintenance of a parking garage on the State
66 Capitol Complex.

CHAPTER 117

(Com. Sub. for S. B. 575 - By Senator Blair)

[Passed March 9, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §5A-10-5 of the Code of West Virginia, 1931, as amended, relating to the Real Estate Division; and providing that any contract or lease in the name of the state for office space which requires the landlord or owner of the premises to provide for or contract for cleaning or janitorial services shall not also require the owner or landlord of the premises to use any particular person, firm or company to provide the cleaning or janitorial services.

Be it enacted by the Legislature of West Virginia:

That §5A-10-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.

1 (a) The executive director has sole authority to select and to
2 acquire by contract or lease, in the name of the state, all grounds,
3 buildings, office space or other space, the rental of which is
4 necessarily required by any spending unit, upon a certificate
5 from the chief executive officer or his or her designee of said
6 spending unit that the grounds, buildings, office space or other
7 space requested is necessarily required for the proper function of
8 said spending unit, that the spending unit will be responsible for
9 all rent and other necessary payments in connection with the
10 contract or lease and that satisfactory grounds, buildings, office
11 space or other space is not available on grounds and in buildings
12 now owned or leased by the state: *Provided*, That any such
13 contract or lease of office space which provides that the landlord
14 or owner of the office space be responsible for providing for, or
15 the contracting for, cleaning or janitorial services shall not also
16 require the owner or landlord of the premises to use any
17 particular person, firm or company to provide the cleaning or
18 janitorial services.

19 (b) The executive director shall, before executing any rental
20 contract or lease, determine the fair rental value for the rental of
21 the requested grounds, buildings, office space or other space, in
22 the condition in which they exist and shall contract for or lease
23 said premises at a price not to exceed the fair rental value
24 thereof.

25 (c) The executive director may enter into long-term
26 agreements for buildings, land and space for periods longer than
27 one fiscal year: *Provided*, That such long-term lease agreements
28 are not for periods in excess of forty years, except that the
29 secretary may, in the case of the Adjutant General's department,
30 enter into lease agreements for a term of fifty years or a specific
31 term of more than fifty years so as to comply with federal

32 regulatory requirements and shall contain, in substance, all the
33 following provisions:

34 (1) That the Department of Administration, as lessee, has the
35 right to cancel the lease without further obligation on the part of
36 the lessee upon giving thirty days' written notice to the lessor,
37 such notice being given at least thirty days prior to the last day
38 of the succeeding month;

39 (2) That the lease shall be considered canceled without
40 further obligation on the part of the lessee if the State Legislature
41 or the federal government should fail to appropriate sufficient
42 funds therefor or should otherwise act to impair the lease or
43 cause it to be canceled; and

44 (3) That the lease shall be considered renewed for each
45 ensuing fiscal year during the term of the lease unless it is
46 canceled by the Department of Administration before the end of
47 the then current fiscal year.

CHAPTER 118

(S. B. 439 - By Senators Hall and Plymale)

[Passed March 8, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2016.]

AN ACT to amend and reenact §11B-2-27 of the Code of West Virginia, 1931, as amended, relating to approval of requisitions for payment of personal services by budget director; and exceptions.

Be it enacted by the Legislature of West Virginia:

That §11B-2-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BUDGET OFFICE.**§11B-2-27. Expenditure of appropriations — Payment of personal services.**

1 A requisition for the payment of personal services shall,
 2 upon receipt by the director of the budget, be checked against the
 3 personnel schedule of the spending unit making the requisition.
 4 The director shall approve a requisition for personal services
 5 only if the amounts requested are in accordance with the
 6 personnel schedule of the spending unit: *Provided*, That the
 7 director of the budget is not required to verify or approve
 8 requisitions for the payment of personal services for any
 9 spending unit that does not participate in the human resource
 10 payroll module of the West Virginia Enterprise Resource
 11 Planning System as set forth in section one, article six-d, chapter
 12 twelve of this code.

CHAPTER 119

**(Com. Sub. for S. B. 594 - By Senators Prezioso, Plymale and
 Gaunch)**

[Passed March 3, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 8, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-3-10g, relating to requiring the State Auditor to consider for payment a claim submitted by an electronically generated invoice.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §12-3-10g, to read as follows:

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**§12-3-10g. Acceptance by Auditor for payment of a claim submitted by electronically generated invoices.**

1 The State Auditor may consider an agency-generated
2 electronic invoice as an original invoice pursuant to section ten
3 of this article and any applicable rules approved thereto if the
4 invoice contains the vendor name, vendor address, invoice
5 number, invoice date, invoice amount, description of the items
6 purchased or services provided, purchase order number and
7 contract number, where applicable, and date of service provided
8 or goods received: *Provided*, That agency-generated computer
9 invoices may be considered for payment only if the agency has
10 an established financial system which has been subjected to a
11 financial audit by the Legislative Auditor or by an independent
12 certified public accountant, duly licensed and in good standing.

CHAPTER 120

**(H. B. 4351 - By Delegates Westfall, Atkinson, Butler, Ihle,
Cadle, B. White, Hamrick and McCuskey)**

[Passed March 10, 2016; in effect July 1, 2016.]
[Approved by the Governor on March 24, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-16b, relating to transferring the Cedar Lakes Camp and Conference Center from the West Virginia Board of Education to the Department of Agriculture.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-16b, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-16b. State camp and conference center; property transferred; powers and duties of Commissioner of Agriculture.

1 (a) Effective July 1, 2016, the state camp and conference
2 center, known as the Cedar Lakes Camp and Conference Center
3 and its facilities, authorized to be owned and operated by the
4 West Virginia Board of Education under sections sixteen and
5 sixteen-a, article two, chapter eighteen of this code is transferred
6 to the Department of Agriculture. All real and personal property
7 held by the West Virginia Board of Education, including all
8 operating funds for the operations of the camp and conference
9 center, and all employees of the West Virginia Board of
10 Education primarily dedicated to those operations, are
11 transferred to the Department of Agriculture, at their existing
12 hourly rate and with all accrued benefits. All employees shall
13 become will and pleasure employees in accordance with section
14 four, article six, chapter twenty-nine of the code of West
15 Virginia, and are exempt from coverage by classified service.
16 The Commissioner of the Department of Agriculture is given all
17 those powers, duties and responsibilities relating to the state
18 camp and conference center previously vested in the West
19 Virginia Board of Education and its Division of Vocational
20 Education.

21 (b) All active full-time, permanent employees transferred to
22 the Department of Agriculture pursuant to subsection (a) shall
23 participate in the Public Employees Retirement System
24 beginning July 1, 2016. Notwithstanding the provisions of article
25 ten, chapter five of this code, employees transferred pursuant to

26 this section shall be considered a member of the Public
27 Employees Retirement System as of their original date of hire
28 with the Cedar Lake Camp and Conference Center.

29 (c) The Consolidated Public Retirement Board shall transfer
30 assets and service credit from the Teachers Retirement System
31 Trust Fund into the Public Employees Retirement System Trust
32 Fund for those employees who were members in the Teachers
33 Retirement System no later than December 30, 2016. The
34 amount of service credit recognized by the Teachers Retirement
35 System as of June 30, 2016 for the transferring employees shall
36 be the service credit transferred and recognized by the Public
37 Employees Retirement System.

38 The amount of assets to be transferred for each employee
39 who is a member of the Teachers Retirement System shall be
40 computed as of July 1, 2016, using the July 1, 2015, actuarial
41 valuation of the Teachers Retirement System, and updated with
42 seven and one-half percent annual interest to the date of the
43 actual asset transfer. The market value of the assets of the
44 transferring employees in the Teachers Retirement System shall
45 be determined as of the end of the month preceding the actual
46 transfer. To determine the computation of the asset share to be
47 transferred, the Consolidated Public Retirement Board shall:

48 (1) Compute the market value of the Teachers Retirement
49 System assets as of the July 1, 2015, actuarial valuation date
50 under the actuarial valuation approved by the Consolidated
51 Public Retirement Board;

52 (2) Compute the actuarial accrued liabilities for all Teachers
53 Retirement System retirees, beneficiaries, disabled retirees and
54 terminated inactive members as of the July 1, 2015, actuarial
55 valuation date;

56 (3) Compute the market value of active member assets in the
57 Teachers Retirement System as of July 1, 2015, by reducing the

58 assets value under subdivision (1) of this subsection by the
59 inactive liabilities under subdivision (2) of this subsection;

60 (4) Compute the actuarial accrued liability for all active
61 Teachers Retirement System members as of the July 1, 2015,
62 actuarial valuation date approved by the Consolidated Public
63 Retirement Board;

64 (5) Compute the funded percentage of the active members'
65 actuarial accrued liabilities under the Teachers Retirement
66 System as of July 1, 2015, by dividing the active members'
67 market value of assets under subdivision (3) of this subsection
68 by the active members' actuarial accrued liabilities under
69 subdivision (4) of this subsection;

70 (6) Compute the actuarial accrued liabilities under the
71 Teachers Retirement System as of July 1, 2015, for active
72 employees transferring to the Public Employees Retirement
73 System; and

74 (7) Determine the assets to be transferred from the Teachers
75 Retirement System to the Public Employees Retirement System
76 by multiplying the active members' funded percentage
77 determined under subdivision (5) of this subsection by the
78 transferring active members' actuarial accrued liabilities under
79 the Teachers Retirement System under subdivision (6) of this
80 subsection and adjusting the asset transfer amount by interest at
81 seven and five-tenths percent for the period from the calculation
82 date of July 1, 2015, through the first day of the month in which
83 the asset transfer is to be completed.

84 (d) Once an employee transfers from the Teachers
85 Retirement System to the Public Employees Retirement System,
86 the Teachers Retirement System shall bar any further liability
87 and the transfer is an agreement whereby the transferring
88 employee forever indemnifies and holds harmless the Teachers

89 Retirement System from providing him or her any form of
90 retirement benefit whatsoever until that employee obtains other
91 employment which would make him or her eligible to reenter the
92 Teachers Retirement System with no credit whatsoever for the
93 amounts transferred to the Public Employees Retirement System.

94 (e) Assets for employees who are members in the Teachers
95 Defined Contribution System pursuant to article seven-b, chapter
96 eighteen, shall remain invested in his or her Teachers Defined
97 Contribution retirement account until termination of employment
98 with the Department of Agriculture.

CHAPTER 121

**(Com. Sub. for H. B. 2852 - (By Delegates Hamrick,
Trecost, Zatezalo, Waxman and E. Nelson))**

[Passed March 8, 2016; in effect from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12, §29-3E-13 and §29-3E-14; and to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating to the regulation of fireworks generally; relocating certain existing provisions relating to sparkling devices, novelties and toy guns, including penalties for certain violations; raising funds for veterans' assistance and volunteer fire departments; authorizing sale of consumer fireworks on and after June 1, 2016; defining "consumer fireworks"; establishing regulatory framework for sale of fireworks; defining terms;

requiring certificate; establishing fees; requiring permit; dedicating certain fees to Veterans Facility Support Fund and Fire Protection Fund; establishing rule-making authority; creating criminal violations related to fireworks; penalties; enforcement; defining terms; exemptions; reporting requirements; and establishing internal effective dates for certain provisions.

Be it enacted by the Legislature of West Virginia:

That §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12, §29-3E-13 and §29-3E-14; and that §61-3E-1 and §61-3E-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3E. FIREWORKS SAFETY.

§29-3E-1. Unlawful acts.

- 1 It is unlawful for a person to manufacture, wholesale,
- 2 distribute, import, sell or store for the purpose of resale,
- 3 consumer fireworks, sparkling devices, novelties or toy caps
- 4 without a license, registration, certificate or permit from the
- 5 State Fire Marshal.

§29-3E-2. Definitions.

- 1 As used in this article:
- 2 (1) "Agricultural and wildlife fireworks" means fireworks
- 3 devices distributed to farmers, ranchers and growers through a
- 4 wildlife management program administered by the United States
- 5 Department of the Interior or the Division of Natural Resources
- 6 of this state;

7 (2) “Amusement park” means any person or organization
8 which holds a permit for the operation of an amusement ride or
9 amusement attraction under article ten, chapter twenty-one of
10 this code;

11 (3) “APA Standard 87-1” means the APA Standard 87-1
12 published by the American Pyrotechnics Association, as
13 amended, and incorporated by reference into Title 49 of the
14 Code of Federal Regulations;

15 (4) “Articles pyrotechnic” means pyrotechnic devices for
16 professional use that are similar to consumer fireworks in
17 chemical composition and construction but not intended for
18 consumer use, that meet the weight limits for consumer
19 fireworks but are not labeled as such, and that are classified as
20 UN0431 or UN0432 under 49 C.F.R. §172.101 (2014);

21 (5) “Consumer fireworks” means small fireworks devices
22 that are designed to produce visible effects by combustion that
23 are required to comply with the construction, chemical
24 composition and labeling regulations promulgated by the United
25 States Consumer Product Safety Commission under 16 C.F.R.
26 Parts 1500 and 1507 (2014), and that are listed in APA Standard
27 87-1. Consumer fireworks do not include sparkling devices,
28 novelties, toy caps or model rockets;

29 (6) “Consumer fireworks certificate” means a certificate
30 issued under section five of this article;

31 (7) “Display fireworks” means large fireworks to be used
32 solely by professional pyro-technicians licensed by the State Fire
33 Marshal and designed primarily to produce visible or audible
34 effects by combustion, deflagration or detonation and includes,
35 but is not limited to, salutes containing more than two grains
36 (one hundred thirty milligrams) of explosive materials, aerial
37 shells containing more than forty grams of pyrotechnic

38 compositions and other display pieces that exceed the limits of
39 explosive materials for classification as consumer fireworks and
40 are classified as fireworks UN0333, UN0334, or UN0335 under
41 49 C.F.R. §172.101 (2014);

42 (8) “Distributor” means a person who sells fireworks to
43 wholesalers and retailers for resale;

44 (9) “Division 1.3 explosive” means that term as defined in
45 49 C.F.R. §173.50 (2014);

46 (10) “Division 1.4 explosive” means that term as defined in
47 49 C.F.R. §173.50 (2014);

48 (11) “Explosive composition” means a chemical or mixture
49 of chemicals that produces an audible effect by deflagration or
50 detonation when ignited;

51 (12) “Fire Marshal” means the State Fire Marshal;

52 (13) “Firework” or “fireworks” means any composition or
53 device designed for the purpose of producing a visible or audible
54 effect by combustion, deflagration or detonation. Fireworks
55 include consumer fireworks, display fireworks and special
56 effects. Fireworks does not include sparkling devices, novelties,
57 toy caps or model rockets;

58 (14) “Interstate wholesaler” means a person who is engaged
59 in interstate commerce selling fireworks;

60 (15) “Model rocket” means that term as defined in National
61 Fire Protection Association Standard 1122, “Code for Model
62 Rocketry”;

63 (16) “New explosive” means that term as defined in 49
64 C.F.R. §173.56 (2014);

65 (17) “NFPA 1123” means National Fire Protection
66 Association Standard 1123, “Code for Fireworks Display;”

67 (18) "NFPA 1124" means National Fire Protection
68 Association Standard 1124, "Code for the Manufacture,
69 Transportation, Storage, and Retail Sales of Fireworks and
70 Pyrotechnic Articles," 2006 Edition;

71 (19) "NFPA 1126" means National Fire Protection
72 Association Standard 1126, "Standard for the Use of
73 Pyrotechnics Before a Proximate Audience;"

74 (20) "Novelties" means that term as defined under APA
75 standard 87-1, section 3.2; but shall not include toy pistols, toy
76 caps, toy canes, toy guns or other similar devices;

77 (21) "Permanent" means that term as defined in NFPA 1124;

78 (22) "Person" means an individual or the responsible person
79 for an association, an organization, a partnership, a limited
80 partnership, a limited liability company, a corporation or any
81 other group or combination acting as a unit;

82 (23) "Public display of fireworks" means a public
83 entertainment feature that is advertised to the general public or
84 is on public property that includes the display or discharge of
85 fireworks;

86 (24) "Pyrotechnic composition" means a mixture of
87 chemicals that produces a visible or audible effect by
88 combustion rather than deflagration or detonation. A pyrotechnic
89 composition will not explode upon ignition unless severely
90 confined;

91 (25) "Retailer" means a person who purchases consumer
92 fireworks for resale to consumers;

93 (26) "Sparkling devices" means "ground or handheld
94 sparkling devices" as that phrase is defined under APA 87-1,
95 sections 3.1.1 and 3.5;

96 (27) “Special effects” means a combination of chemical
97 elements or chemical compounds capable of burning
98 independently of the oxygen of the atmosphere and designed and
99 intended to produce an audible, visual, mechanical or thermal
100 effect as an integral part of a motion picture, radio, television,
101 theatrical or opera production or live entertainment;

102 (28) “Temporary” means that term as defined in NFPA
103 1124;

104 (29) “Toy caps” means that term as defined under APA 87-1,
105 section 3.3; and

106 (30) “Wholesaler” means any person who sells consumer
107 fireworks to a retailer or any other person for resale and any
108 person who sells articles of pyrotechnics, display fireworks, and
109 special effects to a person licensed to possess and use those
110 devices.

§29-3E-3. Production or transportation of fireworks.

1 A person may produce or transport a firework that is a new
2 explosive and that is either a division 1.3 explosive or division
3 1.4 explosive if the person first meets the requirements of 49
4 C.F.R. §173.56(2)(j) (2014).

§29-3E-4. Sparkling devices and novelties registration required.

1 (a) A person may not sell sparkling devices or novelties
2 without being registered with the State Fire Marshal.

3 (b) To be registered with the State Fire Marshal, the person
4 shall:

5 (1) Submit an application to the State Fire Marshal;

6 (2) Provide a copy of his or her current business registration
7 certificate or his or her certificate to sell sparklers and novelties
8 issued by the State Tax Commissioner;

- 9 (3) Pay the required fee; and
- 10 (4) Provide other information as the State Fire Marshal may
11 require by legislative rule.
- 12 (c) A registration is valid for the calendar year or any
13 fraction thereof and expires on December 31 of each year.
- 14 (d) A registration is not transferable.
- 15 (e) A person shall post the registration in a conspicuous
16 place at the location of the business.
- 17 (f) A separate registration is required for each location.
- 18 (g) The fee required in subdivision (3), subsection (b) of this
19 section shall be \$15.00 per retail location.
- 20 (h) The fee assessed by this section shall be retained by the
21 State Fire Marshal and expended to offset costs incurred in
22 performing the duties imposed by the provisions of this code.

§29-3E-5. Consumer fireworks certificate required.

- 1 (a) A retailer may not sell consumer fireworks unless the
2 retailer is certified under this article.
- 3 (b) To be certified to sell consumer fireworks a retailer shall:
- 4 (1) Submit an application to the State Fire Marshal;
- 5 (2) Submit with the application a copy of his or her current
6 business registration certificate;
- 7 (3) Pay a fee of \$500.00 for each temporary retail sales
8 location and \$1000.00 for each permanent retail sales location to
9 the State Fire Marshal;

10 (4) Provide the State Fire Marshal proof that the retailer
11 maintains at all times public liability and product liability
12 insurance with minimum coverage limits of \$1 million dollars to
13 cover losses, damages or injuries that might result from selling
14 consumer fireworks; and

15 (5) Provide other information as the State Fire Marshal may
16 require by legislative rule.

17 (c) A consumer fireworks certificate is valid from April 1
18 through March 31 of the next calendar year.

19 (d) A consumer fireworks certificate is not transferable.

20 (e) A retailer shall post the certificate in a conspicuous place
21 at the location of the business.

22 (f) A separate certificate is required for each location of the
23 business.

24 (g) A certificate holder may also sell sparkling devices and
25 novelties at the same location without additionally obtaining a
26 sparkling devices and novelties registration.

27 (h) A retailer who sells consumer fireworks shall comply
28 with the regulations provided in NFPA 1124.

29 (i) A retailer who sells consumer fireworks shall comply
30 with all regulations provided in NFPA 1124. The State Fire
31 Marshal may by legislative rule, promulgate rules to supplement
32 those rules established in NFPA 1124.

33 (j) A retailer shall sell the consumer fireworks only from a
34 permanent building or structure that meets the specifications in
35 NFPA 1124 or a temporary facility or structure that meets the
36 specifications of NFPA 1124.7.3.5.

37 (k) Any fees collected pursuant to this section shall be
38 deposited in the State Fire Marshal Fees Fund established by the

39 provisions of section twelve-b, article three, chapter twenty-nine
40 of this code.

41 (l) Notwithstanding any provision of this article to the
42 contrary, no retailer may offer consumer fireworks for sale
43 before June 1, 2016.

§29-3E-6. Required permit for public fireworks display.

1 (a) Any municipality, county, fair association, amusement
2 park or other organization shall have a permit to present a public
3 display of fireworks from the State Fire Marshal.

4 (b) To receive a permit, a municipality, fair association,
5 amusement park, or other organization shall:

6 (1) Submit an application to the State Fire Marshal;

7 (2) Pay the required fee not to exceed \$50.00;

8 (3) Furnish proof of financial responsibility to satisfy claims
9 for damages to property or personal injuries arising out of any
10 act or omission on the part of the person or an employee thereof,
11 in the amount, character and form as the State Fire Marshal
12 determines to be necessary for the protection of the public; and

13 (4) Provide any other information as the State Fire Marshal
14 may require by legislative rule.

15 (c) The State Fire Marshal shall require the municipality,
16 county, fair association, amusement park and other organizations
17 to give written notice to the local police and fire authorities at
18 least five days prior to the display for which the permit is sought.

19 (d) A permit is not transferable.

20 (e) The display shall be operated by a competent operator
21 licensed or certified as to competency by the State Fire Marshal
22 and shall be of such composition, character, and so located,

23 discharged or fired so as to be safe in the opinion of the chief of
24 the fire department serving the community or area where such
25 display is being held.

26 (f) The permittee shall require a bond from the licensee in a
27 sum not less than \$1,000 conditioned on compliance with the
28 provisions of this article and the rules of the State Fire Marshal
29 except where the licensee is an insured government entity.

30 (g) Any fees collected pursuant to this section shall be
31 deposited in the State Fire Marshal Fees Fund established by the
32 provisions of section twelve-b, article three, chapter twenty-nine
33 of this code.

**§29-3E-7. Fireworks safety fee; administration; tax crimes;
collections; remittances; deposits; distributions;
rules.**

1 (a) In addition to the sales tax, a fireworks safety fee of
2 twelve percent of all sales is levied on retail sales of consumer
3 fireworks in this state. The fee shall be distributed pursuant to
4 the provisions of this subsection. The fee computation under this
5 subsection shall be carried to the third decimal place, and the fee
6 rounded up to the next whole cent whenever the third decimal
7 place is greater than four, and rounded down to the lower whole
8 cent whenever the third decimal place is four or less.

9 The State Tax Commissioner shall disburse all proceeds of
10 the fireworks safety fee into the state treasury each month in the
11 following manner:

12 (1) Seventy-five percent shall be deposited into a special
13 account in the State Treasury, designated the Veterans' Facility
14 Support Fund established by the provisions of section eleven,
15 article one, chapter nine-a for expenditure on veterans'
16 programs.

17 (2) Twenty-five percent shall be deposited into a special
18 account in the State Treasury, designated the Fire Protection
19 Fund established in section thirty-three, article three, chapter
20 thirty-three of this code and distributed in accordance with that
21 section to each volunteer fire company or department on an
22 equal share basis by the State Treasurer.

23 (b) A person who purchases consumer fireworks in a retail
24 transaction shall pay to the retailer the amount of the fee levied
25 by this section, which fee is added to and constitutes a part of the
26 sale price, and is collectible by the retailer who shall account to
27 the state for all fees paid by a purchaser. If the retailer fails to
28 collect the fee, or fails to account to the state for the fees paid by
29 a purchaser, then the retailer is liable for the payment of the fee
30 to the state.

31 (c) A retailer shall remit to the State Tax Commissioner no
32 later than thirty days after the end of each preceding month all
33 moneys collected for such preceding month, pursuant to the
34 requirements of this section, and shall report such collections on
35 forms and in the manner prescribed by the State Tax
36 Commissioner.

37 (d) All moneys so remitted, net of refunds and adjustments,
38 shall be paid by the State Tax Commissioner into the funds
39 specified in this section.

40 (e) Each and every provision of the West Virginia Tax
41 Crimes and Penalties Act set forth in article nine, chapter eleven
42 of this code applies to the fees imposed pursuant to this article,
43 with like effect as if that act were applicable only to the fees
44 imposed by this article and were set forth in extenso in this
45 article.

46 (f) The State Tax Commissioner shall propose legislative
47 rules and may promulgate such emergency rules as are necessary
48 to implement the provisions of this article.

§29-3E-8. State Fire Marshal's Rule-making Authority.

1 (a) The State Fire Marshal may promulgate emergency rules
2 and shall propose legislative rules for promulgation, in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code, to implement the provisions of this
5 article, including:

6 (1) Adopting by reference the most recent edition of APA
7 Standard 87-1;

8 (2) Adopting by reference the most recent edition of NFPA
9 1123, Code for Fireworks Display;

10 (3) Adopting by reference NFPA 1124, code for the
11 manufacture, transportation, storage and retail sales of fireworks
12 and pyrotechnic articles;

13 (4) Adopting by reference the most recent edition of NFPA
14 1126, standard for the use of pyrotechnics before a proximate
15 audience;

16 (5) Procedures for the issuance and renewal of a registration,
17 certificate and permit;

18 (6) A fee schedule;

19 (7) Establishing insurance or bond requirements;

20 (8) Establishing additional criteria for the granting of a
21 registration, certificate, or permit under this article; and

22 (9) Registration of manufacturers, wholesalers and
23 distributors.

§29-3E-9. Exemptions.

1 This article does not prohibit any of the following:

- 2 (1) The use of fireworks by railroads or other transportation
3 agencies for signaling purposes or illumination;
- 4 (2) The use of agricultural and wildlife fireworks;
- 5 (3) The sale or use of blank cartridges for a theatrical
6 performance, use by military organizations or signal or
7 ceremonial purposes in athletics or sports; or
- 8 (4) The possession, sale or disposal of fireworks incidental
9 to the public display of fireworks by wholesalers or other
10 persons who have a permit to possess, store and sell explosives
11 from the Bureau of Alcohol, Tobacco, Firearms, and Explosives
12 of the United States Department of Justice and the State Fire
13 Marshal.

§29-3E-10. Local municipalities' regulation of consumer fireworks.

- 1 This article does not affect the authority of the governing
2 body of a municipality to prohibit or regulate the use of
3 consumer fireworks within its boundaries.

§29-3E-11. Violations of this article; penalties.

- 1 (a) A person may not intentionally ignite, discharge or use
2 consumer fireworks on public or private property without the
3 express permission of the owner to do so.
- 4 (b) A person may not intentionally ignite or discharge any
5 consumer fireworks or sparkling devices within or throw the
6 same from a motor vehicle or building.
- 7 (c) A person may not intentionally ignite or discharge any
8 consumer fireworks or sparkling devices into or at a motor
9 vehicle or building, or at any person or group of people.
- 10 (d) A person may not intentionally ignite or discharge any
11 consumer fireworks or sparkling device while the person:

- 12 (1) Is under the influence of alcohol;
- 13 (2) Is under the influence of any controlled substance;
- 14 (3) Is under the influence of any other drug; or
- 15 (4) Is under the combined influence of alcohol and any
16 controlled substance or any other drug.
- 17 (e) A person who is less than eighteen years of age may not
18 purchase, nor offer for sale, consumer fireworks.
- 19 (f) The provisions of this section shall be effective June 1,
20 2016.

§29-3E-12. Miscellaneous offenses; penalties.

1 Any person who violates a provision of this article for which
2 a penalty is not expressly set forth is guilty of a misdemeanor
3 and, upon conviction thereof, shall be fined not less than \$100.00
4 nor more than \$500.00. The provisions of this section shall be
5 effective June 1, 2016.

§29-3E-13. Seizures by the State Fire Marshal; enforcement of law.

- 1 (a) The State Fire Marshal shall seize, take, remove and
2 dispose of at public auction or destroy, or cause to be seized,
3 taken or removed and disposed of at public auction, or destroyed
4 at the expense of the owner, all stocks of fireworks or
5 combustibles offered for sale, stored or held in violation of this
6 article or an emergency or legislative rule promulgated
7 hereunder.
- 8 (b) The West Virginia State Police, deputy sheriffs,
9 municipal police officers and other law-enforcement officers
10 shall assist in the enforcement of this article.

§29-3E-14. Reporting requirements; duration of reporting requirements.

1 Annually, on or before January 15, 2017, 2018 and 2019:

2 (1) The State Treasurer shall submit to the President of the
3 Senate and the Speaker of the House of Delegates a report
4 detailing the amount of revenue received and deposited from the
5 Fireworks Safety Fee into the Fire Safety Fund authorized by
6 section seven of this article and the distribution of said funds;

7 (2) The Secretary of Veterans' Assistance shall supply the
8 President of the Senate and Speaker of the House of Delegates
9 with a report detailing the revenue received from the Fireworks
10 Safety Fee and deposited in the Veterans' Facility Support Fund
11 and the purposes for which the money was expended;

12 (3) The State Tax Commissioner shall provide to the
13 President of the Senate and Speaker of the House of Delegates
14 a report detailing the revenue received from the sales tax
15 received from the sale of fireworks authorized by the provisions
16 of the article and revenue received from the Fireworks Safety
17 Fee authorized by section seven of this article; and

18 (4) The State Fire Marshal shall submit to the President of
19 the Senate and Speaker of the House of Delegates a report
20 detailing the amounts of revenue received from the registration
21 fees imposed pursuant to the provisions of section five of this
22 article, the purposes for which the fees were expended and the
23 adequacy of the fees received in relation to the duties required of
24 the office.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-1. Definitions.

1 As used in this article, unless the context otherwise requires:

2 (a) “Destructive device” means any bomb, grenade, mine,
3 rocket, missile, pipebomb or similar device containing an
4 explosive, incendiary, explosive gas or expanding gas which is
5 designed or so constructed as to explode by such filler and is
6 capable of causing bodily harm or property damage; any
7 combination of parts, either designed or intended for use in
8 converting any device into a destructive device and from which
9 a destructive device may be readily assembled.

10 “Destructive device” does not include a firearm as such is
11 defined in section two, article seven of this chapter, or sparkling
12 devices, novelties, toy caps, model rockets and their components
13 or fireworks as these terms are defined in section two, article
14 three-e, chapter twenty-nine of this code, or high power rockets
15 and their components, as defined in this section.

16 (b) “Explosive material” means any chemical compound,
17 mechanical mixture or device that is commonly used or can be
18 used for the purpose of producing an explosion and which
19 contains any oxidizing and combustive units or other ingredients
20 in such proportions, quantities or packaging that an ignition by
21 fire, by friction, by concussion, by percussion, by detonator or by
22 any part of the compound or mixture may cause a sudden
23 generation of highly heated gases. These materials include, but
24 are not limited to, powders for blasting, high or low explosives,
25 blasting materials, blasting agents, blasting emulsions, blasting
26 fuses other than electric circuit breakers, detonators, blasting
27 caps and other detonating agents and black or smokeless
28 powders not manufactured or used for lawful sporting purposes.
29 Also included are all explosive materials listed annually by the
30 office of the State Fire Marshal and published in the State
31 Register, said publication being hereby mandated.

32 (c) “High power rocket” means the term as defined in
33 National Fire Protection Association Standard 1127, “Code for
34 High Power Rocketry.”

35 (d) “Hoax bomb” means any device or object that by its
36 design, construction, content or characteristics appears to be, or
37 is represented to be or to contain a destructive device, explosive
38 material or incendiary device as defined in this section, but is, in
39 fact, an inoperative facsimile or imitation of such a destructive
40 device, explosive material or incendiary device.

41 (e) “Incendiary device” means a container containing
42 gasoline, kerosene, fuel oil, or derivative thereof, or other
43 flammable or combustible material, having a wick or other
44 substance or device which, if set or ignited, is capable of igniting
45 such gasoline, kerosene, fuel oil, or derivative thereof, or other
46 flammable or combustible material: *Provided*, That no similar
47 device commercially manufactured and used solely for the
48 purpose of illumination shall be deemed to be an incendiary
49 device.

50 (f) “Legal authority” means that right as expressly stated by
51 statute or law.

52 (g) “Model rocket” means the term as defined in National
53 Fire Protection Association Standard 1122, “Code for Model
54 Rocketry.”

55 (h) “Person” means an individual, corporation, company,
56 association, firm, partnership, society or joint stock company.

57 (i) “Storage magazine” is defined to mean any building or
58 structure, other than an explosives manufacturing building,
59 approved by the legal authority for the storage of explosive
60 materials.

§61-3E-11. Exemptions.

1 (a) Unless specifically prohibited by any provision of this
2 code or the laws of the United States, nothing in this article

3 prohibits the authorized manufacture, sale, transportation,
4 distribution, use or possession of any explosive material by any
5 person holding a permit for such issued by the office of the State
6 Fire Marshal. Any person performing a lawful activity pursuant
7 to or regulated by the terms of a permit issued by the Division of
8 Environmental Protection, or any office thereof, is exempt from
9 the provisions of this article.

10 (b) Unless specifically prohibited by any other provision of
11 this code or the laws of the United States, nothing in this section
12 prohibits the authorized manufacture, transportation,
13 distribution, use or possession of any explosive, destructive
14 device or incendiary device by a member of the armed forces or
15 law-enforcement officers whenever such persons are acting
16 lawfully and in the line of duty; nor shall it prohibit the
17 manufacture, transportation, distribution, use or possession of
18 any explosive material, destructive device or incendiary device
19 to be used solely for lawful scientific research or lawful
20 educational purposes. Any person engaged in otherwise lawful
21 blasting activities failing to obtain a permit or in possession of
22 an expired permit issued by the office of the State Fire Marshal
23 is not in violation of the article.

24 (c) Nothing contained in this article applies to sparkling
25 devices or novelties or to the sale, purchase, possession, use,
26 transportation or storage of fireworks as regulated in article
27 three-e, chapter twenty-nine of this code.

CHAPTER 122

**(Com. Sub. for H. B. 2800 - By Delegates Miller, Ferro,
Sobonya, Border, Rohrbach, Folk and Eldridge)**

[Passed March 3, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2016.]

AN ACT to amend and reenact §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, all relating to law-enforcement officers' personal information; defining terms; and adding personal information of law-enforcement officers and certain family members of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship to the list of exemptions from public records requests.

Be it enacted by the Legislature of West Virginia:

That §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-2. Definitions.

1 As used in this article:

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

4 (2) "Law-enforcement officer" shall have the same
5 definition as this term is defined in W.Va. Code §30-29-1:
6 *Provided*, That for purposes of this article, "law-enforcement
7 officer" shall additionally include those individuals defined as
8 "chief executive" in W.Va. Code §30-29-1.

9 (3) "Person" includes any natural person, corporation,
10 partnership, firm or association.

11 (4) "Public body" means every state officer, agency,
12 department, including the executive, legislative and judicial
13 departments, division, bureau, board and commission; every
14 county and city governing body, school district, special district,
15 municipal corporation, and any board, department, commission
16 council or agency thereof; and any other body which is created
17 by state or local authority or which is primarily funded by the
18 state or local authority.

19 (5) "Public record" includes any writing containing
20 information prepared or received by a public body, the content
21 or context of which, judged either by content or context, relates
22 to the conduct of the public's business.

23 (6) "Writing" includes any books, papers, maps,
24 photographs, cards, tapes, recordings or other documentary
25 materials regardless of physical form or characteristics.

§29B-1-4. Exemptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71 (15) Architectural or infrastructure designs, maps or other
72 records that show the location or layout of the facilities where
73 computing, telecommunications or network infrastructure used

74 to plan against or respond to terrorism are located or planned to
75 be located;

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

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

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

84 (19) Records of the Division of Corrections, Regional Jail
85 and Correctional Facility Authority and the Division of Juvenile
86 Services relating to design of corrections, jail and detention
87 facilities owned or operated by the agency, and the policy
88 directives and operational procedures of personnel relating to the
89 safe and secure management of inmates or residents, that if
90 released, could be used by an inmate or resident to escape a
91 facility, or to cause injury to another inmate, resident or to
92 facility personnel;

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

105 (21) Personal information of law-enforcement officers
106 maintained by the public body in the ordinary course of the
107 employer-employee relationship. As used in this paragraph,
108 “personal information” means a law-enforcement officer’s social
109 security number, health information, home address, personal
110 address, personal telephone numbers and personal email
111 addresses and those of his or her spouse, parents and children as
112 well as the names of the law-enforcement officer’s spouse,
113 parents and children.

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

118 (1) Intimidate or coerce the civilian population;

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

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

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

125 (c) The provisions of subdivisions (9) through (16),
126 inclusive, subsection (a) of this section do not make subject to
127 the provisions of this chapter any evidence of an immediate
128 threat to public health or safety unrelated to a terrorist act or the
129 threat of a terrorist act which comes to the attention of a public
130 entity in the course of conducting a vulnerability assessment
131 response or similar activity.

CHAPTER 123

**(Com. Sub. for H. B. 4310 - By Delegates O’Neal,
Anderson, Espinosa, E. Nelson, Arvon, Bates, Fleischauer,
Frich, Statler, Kurcaba and Miley)**

[Passed March 11, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to repeal §18B-1E-1, §18B-1E-2, §18B-1E-3 and §18B-1E-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-1C-1 and §18B-1C-2 of said code, all relating to the West Virginia University Institute of Technology; finding that there is a need to maintain the valuable educational services provided by the West Virginia University Institute of Technology; finding that there are continued enrollment and facilities issues facing the West Virginia University Institute of Technology in Montgomery, West Virginia; finding that the West Virginia University Institute of Technology, West Virginia University, Marshall University, Concord University, Bluefield State College, and other public and private partners should collaborate; requiring collaboration and encouraging agreements with local governments near Montgomery; clarifying provisions relating to the West Virginia University Institute of Technology Board of Visitors; eliminating the requirement that the headquarters of the West Virginia Institute of Technology remain in Montgomery, West Virginia; providing for a program review and approval process; requiring meetings between West Virginia University, West Virginia Institute of Technology, Concord University, and Bluefield State College; eliminating outdated provisions; and repealing provisions relating to the West Virginia University Institute of Technology Revitalization Project.

Be it enacted by the Legislature of West Virginia:

That §18B-1E-1, §18B-1E-2, §18B-1E-3 and §18B-1E-4 of the Code of West Virginia, 1931, as amended, be repealed; and that §18B-1C-1 and §18B-1C-2 of said code be amended and reenacted, to read as follows:

ARTICLE 1C. WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY.

§18B-1C-1. Legislative findings and intent.

1 (a) The Legislature recognizes that:

2 (1) West Virginia University Institute of Technology is a
3 vital part of higher education in West Virginia and has a rich and
4 distinguished history of more than one hundred and twenty years
5 of providing important educational opportunities that needs to
6 continue;

7 (2) The engineering program at West Virginia University
8 Institute of Technology plays a significant role in the continued
9 success of the students at the institution and of the state as a
10 whole;

11 (3) Facilities at West Virginia University Institute of
12 Technology in Montgomery are in greater disrepair and in
13 greater need of overall capital investment than are facilities at
14 West Virginia University;

15 (4) In 2009, the Legislative Auditor completed a report
16 stating that the facilities in Montgomery included a number of
17 aging buildings with significant structural, heating, and cooling
18 problems, and that the location of the West Virginia University
19 Institute of Technology offered few enhancements to the quality
20 of student life;

21 (5) In 2011, the Legislature commissioned a study and report
22 seeking to revitalize the West Virginia University Institute of
23 Technology, and the report concluded that the West Virginia
24 Institute of Technology needed to increase its enrollment from
25 1,100 to 1,800 and concluded that unless the State of West
26 Virginia, West Virginia University, or other sources could
27 commit to “a \$5 million to \$7 million investment for each of the
28 next five years, the revitalization legislation of 2011 will be seen
29 merely as an exercise in futility”;

30 (6) West Virginia University has for many years deployed
31 revenues generated from its campus in Morgantown to subsidize
32 the operations and capital improvements needed for its campus
33 in Montgomery;

34 (7) Although the state, the Higher Education Policy
35 Commission, and West Virginia University have made
36 investments in the operations and facilities of the West Virginia
37 University Institute of Technology in Montgomery, the facilities
38 in Montgomery need significant additional capital investment to
39 be suitable to attract a sufficient number of students seeking a
40 world-class, four-year higher education;

41 (8) The state lacks sufficient resources to address the issues
42 facing the facilities and enrollment issues in Montgomery, and
43 in recent years has reduced appropriations for all institutions of
44 higher education;

45 (9) In 2014, Mountain State University decided to sell its
46 assets, including its campus in Beckley, West Virginia and West
47 Virginia University was offered the opportunity to negotiate for
48 and ultimately purchased the campus in Beckley, West Virginia
49 in the summer of 2015;

50 (10) To help ensure the continued viability and vitality of
51 West Virginia University Institute of Technology, West Virginia

52 University has proposed relocating the institution to the
53 newly-acquired campus in Beckley, West Virginia;

54 (11) The Higher Education Policy Commission has approved
55 a proposal by West Virginia University and the West Virginia
56 University Institute of Technology to offer courses on the
57 Beckley Campus;

58 (12) West Virginia University, the West Virginia University
59 Institute of Technology, Bluefield State College, and Concord
60 University have entered into an agreement to collaborate as
61 equal partners to maximize course offerings, reduce program
62 duplication, and better serve the students of southeastern West
63 Virginia.

64 (13) West Virginia University has offered economic,
65 community development, and related assistance to the City of
66 Montgomery, City of Smithers, the County Commission of
67 Kanawha County, and the County Commission of Fayette
68 County.

69 (14) Collaboration between the engineering and engineering
70 technology programs of West Virginia University Institute of
71 Technology, West Virginia University, Marshall University,
72 Bluefield State College and other private partners as appropriate
73 would:

74 (A) Lead to a greater understanding and knowledge of
75 engineering research;

76 (B) Lead to greater opportunities for students to engage in
77 research; and

78 (C) Result in greater opportunities for participating students
79 to find gainful employment in future research or to continue
80 graduate level research and study.

81 (b) It is the intent of the Legislature that collaboration: (1)
82 occur among West Virginia University Institute of Technology,
83 West Virginia University, Marshall University, Concord
84 University, Bluefield State College, and appropriate public and
85 private entities to provide significant education opportunities to
86 students in a manner that optimizes courses and program
87 offerings, reduces and minimizes program duplication, and
88 creates efficiencies in program delivery and expenses while at
89 the same time respecting the value and independence and
90 accreditation requirements separately of Concord University,
91 Bluefield State College, West Virginia Institute of Technology,
92 and West Virginia University; and (2) among West Virginia
93 University Institute of Technology, West Virginia University,
94 the County Commission of Kanawha County, the County
95 Commission of Fayette County, the City of Smithers, and the
96 City of Montgomery, should it elect to do so.

97 (c) It is specifically the intent of the Legislature that:

98 (1) The baccalaureate engineering program offered at the
99 West Virginia University Institute of Technology be and remain
100 a permanent component of its curriculum;

101 (2) Collaboration in engineering and other appropriate
102 programs shall occur among West Virginia University Institute
103 of Technology, West Virginia University, Marshall University,
104 Concord University, Bluefield State College and the West
105 Virginia School of Osteopathic Medicine and appropriate private
106 entities; and

107 (3) The West Virginia University Board of Governors
108 continue to monitor and take appropriate steps necessary to
109 address faculty salary levels. In considering the issue of faculty
110 salary levels, the board may consider the unique mission of the
111 division and the performance expectations for faculty in meeting
112 the goals of the institution.

**§18B-1C-2. West Virginia University Institute of Technology;
division of West Virginia University.**

1 (a) West Virginia University Institute of Technology is a
2 fully integrated division of West Virginia University. All
3 administrative and academic units are consolidated with primary
4 responsibility for direction and support assigned to West
5 Virginia University. The campus president of the West Virginia
6 University Institute of Technology shall appoint a board of
7 visitors and the board of visitors shall provide guidance to the
8 division in fulfilling its mission. The chairperson of the board of
9 visitors serves as an ex-officio, voting member of the West
10 Virginia University Board of Governors.

11 (b) The fully integrated division is named West Virginia
12 University Institute of Technology.

13 (c) The provisions of this section do not affect the
14 independent accreditation or continued operation of The
15 BridgeValley Community and Technical College. The
16 BridgeValley Community and Technical College is an
17 independent community and technical college administered by
18 its own governing board under the jurisdiction and authority of
19 the council and is subject to all applicable provisions of this
20 chapter and chapter eighteen-c of this code.

21 (d) Auxiliary enterprises shall be incorporated into the West
22 Virginia University auxiliary enterprise system. The West
23 Virginia University Board of Governors shall determine if
24 operations at West Virginia University Institute of Technology
25 can be operated on a self-sufficient basis when establishing rates
26 for auxiliary services and products.

27 (e) West Virginia University Institute of Technology has a
28 strong reputation in engineering and other scientific disciplines.
29 These programs shall be maintained, cultivated and emphasized
30 further as its sustaining mission over the next decade.

31 (f) By November 1, 2006, and annually thereafter for a
32 period of four years, the West Virginia University Board of
33 Governors shall prepare and submit a report to the commission
34 and Legislative Oversight Commission on Education
35 Accountability on progress being made to implement the
36 provisions of this article.

37 (g) West Virginia University Institute of Technology shall
38 develop or maintain baccalaureate degree programs as a
39 permanent component of its curriculum.

40 (h) Until such time as West Virginia University no longer
41 owns assets, other than assets of de minimis value, in
42 Montgomery and the Upper Kanawha Valley, the university
43 shall continue to collaborate with the County Commission of
44 Kanawha County, the County Commission of Fayette County,
45 the City of Smithers and the City of Montgomery, should it elect
46 to do so, and each entity is authorized and encouraged to enter
47 into agreements designed to foster economic and community
48 redevelopment for Montgomery and the Upper Kanawha Valley.

49 (i) Notwithstanding the provisions of paragraph a,
50 subdivision four, subsection b, section four, article one-b of this
51 chapter, West Virginia University and West Virginia University
52 Institute of Technology, as it relates to providing academic
53 programming at the Beckley campus, shall be subject to
54 academic program review and approval of the commission
55 pursuant to subdivision four, subsection b, section four, article
56 one-b of this chapter, including complying with series eleven of
57 title one hundred thirty-three of the rules of the Higher
58 Education Policy Commission, relating to academic program
59 review and approval, including, but not limited to, the provisions
60 relating to offering new programming in Beckley or offering
61 existing programming in Beckley that is already offered by West
62 Virginia University at a location other than Beckley: *Provided,*
63 That the provisions of this subsection do not apply to the

64 programs that the Higher Education Policy Commission
65 approved on or before December 31, 2015, for offerings by West
66 Virginia University at the West Virginia University Institute of
67 Technology at the Beckley campus.

68 (j) Prior to seeking approval with the Chancellor or
69 Commission as required by the provisions of subsection (i) of
70 this section, West Virginia University or the West Virginia
71 University Institute of Technology, as appropriate, shall offer to
72 meet with representatives of Bluefield State College and
73 Concord University to determine whether collaborative
74 opportunities exist relating to the proposed offering requiring
75 approval.

76 (k) The presidents of Concord University, Bluefield State
77 College, and West Virginia Institute of Technology shall meet at
78 least quarterly to discuss the collaborative efforts contemplated
79 by this article and the collaborative agreement, including
80 assessing and reviewing the progress made on collaborative
81 efforts, or at such other times as agreed to by all of the presidents
82 of the referenced institutions.

CHAPTER 124

**(Com. Sub. for H. B. 4322 - By Mr. Speaker (Mr. Armstead),
and Delegate Miley)
[By Request of the Executive]**

[Passed March 8, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2016.]

AN ACT to amend and reenact §18B-3D-1 and §18B-3D-4 of the Code
of West Virginia, 1931, as amended, all relating to the Workforce

Development Initiative Program; revising the purposes for which certain funding is provided under program; removing condition upon which certain equipment may be sold, disposed of or used; and eliminating exception to dollar-for-dollar grant funding match from private sector partners.

Be it enacted by the Legislature of West Virginia:

That §18B-3D-1 and §18B-3D-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-1. Legislative findings and intent.

1 (a) The Legislature finds that a recent statewide study of the
2 workforce training needs of employers throughout the state
3 provided a clear message from the business community:

4 (1) The needs of employers are rapidly changing and training
5 providers must be more responsive or the state economy will
6 suffer;

7 (2) Information specific to West Virginia, once again
8 emphasizes the critical link between education and economic
9 development that empowering youth and adults with the
10 knowledge and skills they need to succeed in the competitive
11 work world also results in a workforce which enables businesses
12 and communities to prosper;

13 (3) Although employers are generally satisfied with the
14 quality of the West Virginia workforce and the study provides
15 additional support that the measures adopted in the Jobs Through
16 Education Act will bring continued improvement, workforce
17 needs are not static, critical skill shortages currently exist, and
18 the establishment of a workforce development system that
19 responds more quickly to the evolving skill requirements of
20 employers is needed.

21 (b) The Legislature further finds that a study of community
22 and technical education in West Virginia performed by the
23 national center for higher education management systems called
24 attention to problems in providing needed workforce education
25 and found that there is a need to:

26 (1) Jump-start development of community and technical
27 college and post-secondary workforce development initiatives;

28 (2) Provide incentives for existing public post-secondary
29 providers to respond jointly to both short and long-term needs of
30 employers and other clients;

31 (3) Provide funding for explicit incentives for partnerships
32 between employers and public post-secondary institutions to
33 develop comprehensive community and technical college and
34 workforce development services; and

35 (4) Allocate funds competitively on the basis of proposals
36 submitted by providers.

37 (c) It is further the intent of the Legislature that the granting
38 of funds under this article will promote the development of
39 comprehensive community and technical colleges as set forth in
40 article three-c of this chapter.

41 (d) It is the intent of the Legislature through the grant of
42 funds under this article to provide limited seed money to address
43 some of the specific areas where improvement is needed,
44 including, but not limited to:

45 (1) Improving employer awareness and access to services
46 available through the state's education institutions;

47 (2) Providing designated professionals and resources to
48 support workforce education through the state's education
49 institutions;

50 (3) Increasing the capacity of the state's education
51 institutions to respond rapidly to employer needs for workforce
52 education and training on an on-going basis through the
53 development of a client-focused, visible point of contact for
54 program development and delivery, service referral and needs
55 assessment, such as a workforce development center; and

56 (4) Maximizing the use of available resources for workforce
57 education and training through partnerships with public
58 vocational, technical and adult education centers and private
59 training providers.

60 (e) It is further the intent of the Legislature that
61 consideration and partnering opportunities be given to small
62 businesses on an equal basis with larger businesses for the
63 purposes of this article and that the seed money will assist
64 providers in becoming self-sustaining through partnerships with
65 business and industry which will include cost-sharing initiatives
66 and fees charged for the use of services.

67 (f) The Legislature intends that grants of funds made under
68 the provisions of this article will be competitive among
69 applicants who meet all of the criteria established in this article
70 and such other criteria as may be specified by the Development
71 Office. Subject to the availability of funds, more than one
72 competition may be held during the same fiscal year and the
73 dollar range of awards granted in successive competitions shall
74 be prorated based on the number of months remaining in the
75 fiscal year. Subject to annual review and justification, it is the
76 intent of the Legislature to renew grant awards made under this
77 article each year for not more than five years following the
78 initial grant award.

§18B-3D-4. Grant application procedures.

1 (a) In order to participate in the workforce development
2 initiative grant program, a community and technical college shall
3 meet the following conditions:

4 (1) Participate in a community and technical college
5 consortia planning district as required by article three-c of this
6 chapter. Consortia representatives participate in the development
7 of and approve applications for funding grants under the
8 provisions of this article and approve the workforce development
9 initiative budget;

10 (2) Develop, as a component of its institutional compact, a
11 plan to achieve measurable improvements in the quality of the
12 workforce within its service area over the period covered by the
13 compact. The plan is developed in partnership with employers,
14 local vocational schools and other workforce education
15 providers; and

16 (3) Establish a special revolving fund under the jurisdiction
17 of the community and technical college dedicated solely to
18 workforce development initiatives for the purposes provided in
19 this article. Any fees or revenues generated from workforce
20 development initiatives funded by a competitive grant are
21 deposited into this fund.

22 (b) To be eligible to receive a workforce development
23 initiative grant, a community and technical college shall provide
24 at least the following information in its application:

25 (1) Identification of the specific business or business sector
26 training needs that will be met if a workforce development
27 initiative grant is received;

28 (2) A commitment from the private or public sector partner
29 or partners to provide a match of \$1, cash and in-kind, for each
30 dollar of state grant money received: *Provided*, That the
31 commitment required by this subdivision may be provided by a
32 public sector partner using state or federal dollars to provide the
33 required match if funding for this initiative in the fiscal year
34 exceeds \$650,000 in which case, one-half the amount exceeding
35 \$650,000 may be granted using a public sector match;

36 (3) An agreement to share with other community and
37 technical colleges any curricula developed using funds from a
38 workforce development initiative grant;

39 (4) A specific plan showing how the community and
40 technical college will collaborate with local post-secondary
41 vocational institutions to maximize the use of existing facilities,
42 personnel and equipment; and

43 (5) An acknowledgment that acceptance of a grant under the
44 provisions of this article commits the community and technical
45 college and its consortia committee to such terms, conditions and
46 deliverables as specified by the council in the request for
47 applications, including, but not limited to, the measures by
48 which the performance of the workforce development initiative
49 will be evaluated.

50 (c) Applications submitted by community and technical
51 colleges may be awarded funds for programs which meet the
52 requirements of this article that are operated on a collaborative
53 basis at facilities under the jurisdiction of the public schools and
54 utilized by both secondary and post-secondary students..

CHAPTER 125

**(Com. Sub. for S. B. 6 - By Senators Ferns, Carmichael,
Gaunch, Takubo, Trump, Prezioso, Stollings,
Plymale, Blair, Karnes and Sypolt)**

[Passed March 10, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-3-6, relating to drug

screening for applicants of benefits from the Temporary Assistance for Needy Families Program; requiring drug testing of applicants for whom there is reasonable suspicion of substance abuse; creating pilot program; setting forth an effective date; defining terms; providing basis for reasonable suspicion of drug use; requiring participation in substance abuse treatment, counseling and job skills program with adverse drug test; precluding assistance for refusal to take drug test; establishing administrative review of decisions to deny benefits; providing mechanism for dependent children to receive benefits if parent is deemed ineligible; setting forth prohibition from benefits for adverse drug test; requiring investigation by Child Protective Services upon adverse drug test; setting forth procedure for reapplication for benefits; authorizing rulemaking by Department of Health and Human Resources; requiring results of drug screen or drug test remain confidential; providing for criminal penalties; requiring annual report to the Legislature; setting out elements of annual report; requiring federal approval of program; requiring secretary to modify program to meet any federal objections; and allowing for exceptions.

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 §9-3-6, to read as follows:

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-6. Pilot program for drug screening of applicants for cash assistance.

1 (a) As used in this section:

2 (1) “Applicant” means a person who is applying for benefits
3 from the Temporary Assistance for Needy Families Program.

4 (2) “Board of Review” means the board established in
5 subdivision (2), section six, article two, chapter nine of this code.

6 (3) “Caseworker” means a person employed by the
7 department with responsibility for making a reasonable suspicion
8 determination during the application process for Temporary
9 Assistance for Needy Families.

10 (4) “Child Protective Services” means the agency within the
11 department responsible for investigating reports of child abuse
12 and neglect as required in section eight hundred two, article two,
13 chapter forty-nine of this code.

14 (5) “Department” means the Department of Health and
15 Human Resources.

16 (6) “Drug screen” or “drug screening” means any analysis
17 regarding substance abuse conducted by the Department of
18 Health and Human Resources on applicants for assistance from
19 the Temporary Assistance for Needy Families program.

20 (7) “Drug test” or “drug testing” means a drug test which
21 tests urine for Amphetamines (amphetamine and
22 methamphetamine) Cocaine, Marijuana, Opiates (codeine and
23 morphine), Phencyclidine, Barbiturates, Benzodiazepines,
24 Methadone, Propoxyphene and Expanded Opiates (oxycodone,
25 hydromorphone, hydrocodone, oxymorphone).

26 (8) “Secretary” means the secretary of the department or his
27 or her designee.

28 (9) “Temporary Assistance for Needy Families Program”
29 means assistance provided through ongoing cash benefits
30 pursuant to 42 U. S. C. §601, et seq., operated in West Virginia
31 as the West Virginia Works Program pursuant to article nine of
32 this chapter.

33 (b) Subject to federal approval, the secretary shall implement
34 and administer a three year pilot program to drug screen any
35 adult applying for assistance from the Temporary Assistance for
36 Needy Families Program. The secretary shall seek the necessary
37 federal approval immediately following the enactment of this
38 section and the program shall begin within sixty days of
39 receiving federal approval.

40 (c) Reasonable suspicion exists if:

41 (1) A case worker determines, based upon the result of the
42 drug screen, that the applicant demonstrates qualities indicative
43 of substance abuse based upon the indicators of the drug screen;
44 or

45 (2) An applicant has been convicted of a drug-related offense
46 within the three years immediately prior to an application for
47 Temporary Assistance for Needy Families Program and whose
48 conviction becomes known as a result of a drug screen as set
49 forth in this section.

50 (d) Presentation of a valid prescription for a detected
51 substance that is prescribed by a health care provider authorized
52 to prescribe a controlled substance is an absolute defense for
53 failure of any drug test administered under the provisions of this
54 section.

55 (e) Upon a determination by the case worker of reasonable
56 suspicion as set forth in this section an applicant shall be
57 required to complete a drug test. The cost of administering the
58 drug test and initial substance abuse testing program is the
59 responsibility of the Department of Health and Human
60 Resources. Any applicant whose drug test results are positive
61 may request that the drug test specimen be sent to an alternative
62 drug-testing facility for additional drug testing. Any applicant
63 who requests an additional drug test at an alternative drug-testing

64 facility shall be required to pay the cost of the alternative drug
65 test.

66 (f) Any applicant who has a positive drug test shall complete
67 a substance abuse treatment and counseling program and a job
68 skills program approved by the secretary. An applicant may
69 continue to receive benefits from the Temporary Assistance for
70 Needy Families program while participating in the substance
71 abuse treatment and counseling program or job skills program.
72 Upon completion of both a substance abuse treatment and
73 counseling program and a job skills program, the applicant is
74 subject to periodic drug screening and testing as determined by
75 the secretary in rule. Subject to applicable federal laws, any
76 applicant for Temporary Assistance for Needy Families program
77 who fails to complete, or refuses to participate in, the substance
78 abuse treatment and counseling program or job skills program as
79 required under this subsection is ineligible to receive Temporary
80 Assistance for Needy Families until he or she is successfully
81 enrolled in substance abuse treatment and counseling and job
82 skills programs. Upon a second positive drug test, an applicant
83 shall be ordered to complete a second substance abuse treatment
84 and counseling program and job skills program. He or she shall
85 be suspended from the Temporary Assistance for Needy
86 Families program for a period of twelve months, or until he or
87 she completes both a substance abuse treatment and counseling
88 program and a job skills program. Upon a third positive drug
89 test an applicant shall be permanently terminated from the
90 Temporary Assistance for Needy Families Program subject to
91 applicable federal law.

92 (g) Any applicant who refuses a drug screen or a drug test is
93 ineligible for assistance.

94 (h) The secretary shall order an investigation and home visit
95 from Child Protective Services on any applicant whose benefits
96 are suspended and who has not designated a protective payee or

97 whose benefits are terminated due to failure to pass a drug test.
98 This investigation and home visit may include a face-to-face
99 interview with the child, if appropriate; the development of a
100 protection plan; and, if necessary for the health and well-being
101 of the child, may also involve law enforcement. This
102 investigation and home visit shall be followed by a report
103 detailing recommended action which Child Protective Services
104 shall undertake. Child Protective Services is responsible for
105 providing, directing or coordinating the appropriate and timely
106 delivery of services to any child who is the subject of any
107 investigation and home visit conducted pursuant to this section.
108 In cases where Child Protective Services determines that the best
109 interests of the child requires court action, they shall initiate the
110 appropriate legal proceeding.

111 (i) Any other adult members of a household that includes a
112 person declared ineligible for the Temporary Assistance for
113 Needy Families program pursuant to this section shall, if
114 otherwise eligible, continue to receive Temporary Assistance for
115 Needy Families benefits.

116 (j)(1) No dependent child's eligibility for benefits under the
117 Temporary Assistance for Needy Families program may be
118 affected by a parent's failure to pass a drug test.

119 (2) If pursuant to this section a parent is deemed ineligible
120 for the Temporary Assistance for Needy Families program, the
121 dependent child's eligibility is not affected and an appropriate
122 protective payee shall be designated to receive benefits on behalf
123 of the child.

124 (3) The parent may choose to designate another person as a
125 protective payee to receive benefits for the minor child. The
126 designated person shall be an immediate family member, or if an
127 immediate family member is not available or declines the option,
128 another person may be designated.

129 (4) The secretary shall screen and approve the designated
130 person.

131 (k)(1) An applicant who is determined by the secretary to be
132 ineligible to receive benefits pursuant to subsection (f) of this
133 section due to a failure to participate in a substance abuse
134 treatment and counseling program or a job skills program who
135 can later document successful completion of a drug treatment
136 program approved by the secretary may reapply for benefits six
137 months after the completion of the substance abuse treatment
138 and counseling program or job skills program. An applicant who
139 has met the requirements of this subdivision and reapplies is also
140 required to submit to a drug test and is subject to the provisions
141 of subsection (f) of this section.

142 (2) An applicant may reapply only once pursuant to the
143 exceptions contained in this subsection.

144 (3) The cost of any drug screen or test and drug treatment
145 provided under subsection (k) is the responsibility of the
146 individual being screened and receiving treatment.

147 (l) An applicant who is denied assistance under this section
148 may request a review of the denial by the Board of Review. The
149 results of a drug screen or test are admissible without further
150 authentication or qualification in the review of denial by the
151 Board of Review and in any appeal. The Board of Review shall
152 provide a fair, impartial and expeditious grievance and appeal
153 process to applicants who have been denied Temporary
154 Assistance for Needy Families pursuant to the provisions of this
155 section. The Board of Review shall make findings regarding the
156 denial of benefits and issue a decision which either verifies the
157 denial or reverses the decision to deny benefits. Any applicant
158 adversely affected or aggrieved by a final decision or order of
159 the Board of Review may seek judicial review of that decision.

160 (m) The secretary shall ensure the confidentiality of all drug
161 screen and drug test results administered as part of this program.
162 Drug screen and test results shall be used only for the purpose of
163 determining eligibility for the Temporary Assistance for Needy
164 Families program. At no time may drug screen or test results be
165 released to any public or private person or entity or any
166 law-enforcement agency, except as otherwise authorized by this
167 section.

168 (n) The secretary shall promulgate emergency rules pursuant
169 to the provisions of article three, chapter twenty-nine-a to
170 prescribe the design, operation and standards for the
171 implementation of this section.

172 (o) A person who intentionally misrepresents any material
173 fact in an application filed under the provisions of this section is
174 guilty of a misdemeanor and, upon conviction thereof, shall be
175 punished by a fine of not less than \$100 nor more than \$1,000 or
176 by confinement in jail not to exceed six months, or by both fine
177 and confinement.

178 (p) The secretary shall report to the Joint Committee on
179 Government and Finance by December 31, 2016, and annually
180 after that until the conclusion of the pilot program on the status
181 of the federal approval and pilot program described in this
182 section. The report shall include, but is not limited to:

183 (1) The total number of applicants who were deemed
184 ineligible to receive benefits under the program due to a positive
185 drug test for controlled substances;

186 (2) The number of applicants for whom there was a
187 reasonable suspicion due to a conviction of a drug-related
188 offense within the five years prior to an application for
189 assistance;

190 (3) The number of those applicants that receive benefits after
191 successful completion of a drug treatment program as specified
192 in this section; and

193 (4) The total cost to operate the program.

194 (q) Should federal approval not be given for any portion of
195 the program as set forth in this section, the secretary shall
196 implement the program to meet the federal objections and
197 continue to operate a three year pilot program consistent with the
198 purpose of this section.

199 (r) For the purposes of the pilot program contained in this
200 section, pursuant to the authority and option granted by 21 U. S.
201 C. §862a(d)(1)(A) to the states, West Virginia hereby exempts
202 all persons domiciled within the state from the application of 21
203 U. S. C. §862a(a).

CHAPTER 126

(S. B. 384 - By Senators Takubo and Stollings)

[Passed March 10, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §9-5-12 of the Code of West Virginia, 1931, as amended, relating to requiring West Virginia Bureau for Medical Services seek federal waiver to provide for exemption from the thirty-day waiting period for a tubal ligation; and making stylistic changes.

Be it enacted by the Legislature of West Virginia:

That §9-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.**§9-5-12. Medicaid program; maternity and infant care.**

1 (a) The Legislature finds that high rates of infant mortality
2 and morbidity are costly to the state in terms of human suffering
3 and of expenditures for long-term institutionalization, special
4 education and medical care. It is well documented that
5 appropriate care during pregnancy and delivery can prevent
6 many of the expensive, disabling problems our children
7 experience. There exists a crisis in this state relating to the
8 availability of obstetrical services, particularly to patients in
9 rural areas, and to the cost patients must pay for obstetrical
10 services. The availability of obstetrical service for Medicaid
11 patients enables these patients to receive quality medical care
12 and to give birth to healthier babies and, consequently, improve
13 the health status of the next generation.

14 The Legislature further recognizes that public and private
15 insurance mechanisms remain inadequate, and poor women and
16 children are among the most likely to be without insurance.
17 Generally, low-income, uninsured children receive half as much
18 health care as their insured counterparts. The state is now
19 investing millions to care for sick infants whose deaths and
20 disabilities could have been avoided.

21 It is the intent of the Legislature that the Department of
22 Health and Human Resources participate in the Medicaid
23 program for indigent children and pregnant women established
24 by Congress under the Consolidated Omnibus Budget
25 Reconciliation Act (COBRA), Public Law 99-272, the Sixth
26 Omnibus Budget Reconciliation Act (SOBRA), Public Law
27 99-504, and the Omnibus Budget Reconciliation Act (OBRA),
28 Public Law 100-203.

29 (b) The department shall:

30 (1) Extend Medicaid coverage to pregnant women and their
31 newborn infants to one hundred fifty percent of the federal
32 poverty level, effective July 1, 1988.

33 (2) As provided under COBRA, SOBRA and OBRA,
34 effective July 1, 1988, infants shall be included under Medicaid
35 coverage with all children eligible for Medicaid coverage born
36 on or after October 1, 1983, whose family incomes are at or
37 below one hundred percent of the federal poverty level and
38 continuing until such children reach the age of eight years.

39 (3) Elect the federal options provided under COBRA,
40 SOBRA and OBRA impacting pregnant women and children
41 below the poverty level: *Provided*, That no provision in this
42 article shall restrict the department in exercising new options
43 provided by or to be in compliance with new federal legislation
44 that further expands eligibility for children and pregnant women.

45 (4) The department shall be responsible for the
46 implementation and program design for a maternal and infant
47 health care system to reduce infant mortality in West Virginia.
48 The health system design shall include quality assurance
49 measures, case management and patient outreach activities. The
50 department shall assume responsibility for claims processing in
51 accordance with established fee schedules, and financial aspects
52 of the program necessary to receive available federal dollars and
53 to meet federal rules and regulations.

54 (5) Beginning July 1, 1988, the department shall increase to
55 no less than \$600 the reimbursement rates under the Medicaid
56 program for prenatal care, delivery and post-partum care.

57 (c) In order to be in compliance with the provisions of
58 OBRA, through rules and regulations the department shall
59 ensure that pregnant women and children whose incomes are
60 above the Aid to Families and Dependent Children (AFDC)

61 payment level are not required to apply for entitlements under
62 the AFDC program as a condition of eligibility for Medicaid
63 coverage. Further, the department shall develop a short,
64 simplified pregnancy/pediatric application of no more than three
65 pages, paralleling the simplified OBRA standards.

66 (d) Any woman who establishes eligibility under this section
67 shall continue to be treated as an eligible individual without
68 regard to any change in income of the family of which she is a
69 member until the end of the sixty-day period beginning on the
70 last day of her pregnancy.

71 (e) No later than July 1, 2016, the department shall seek a
72 waiver of the requirements that all women seek thirty-day
73 approval from the federal Center for Medicare and Medicaid
74 Services prior to receiving a tubal ligation.

CHAPTER 127

**(H. B. 4347 - By Delegates Ellington, Summers,
Faircloth, Rohrbach, Sobonya, Stansbury, Storch, Upson,
B. White and Frich)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §9-5-24, relating to
providing pregnant women priority to substance abuse treatment.

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, §9-5-24, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-24. Requiring substance abuse treatment providers to give pregnant woman priority access to services.

1 Substance abuse treatment or recovery service providers that
2 accept Medicaid shall give pregnant women priority in accessing
3 services and shall not refuse access to services solely due to
4 pregnancy as long as the provider’s services are appropriate for
5 pregnant women.



CHAPTER 128

**(S. B. 462 - By Senators Cole (Mr. President), and Kessler)
[By Request of the Executive]**

[Passed February 25, 2016; in effect from passage.]
[Approved by the Governor on March 2, 2016.]

AN ACT to amend and reenact §29-22-18d of the Code of West Virginia, 1931, as amended, relating to the West Virginia Infrastructure Fund; reducing the distributions to the West Virginia Infrastructure Fund to \$30 million for fiscal year 2017 and increasing the percentage of funds available for grants therefrom.

Be it enacted by the Legislature of West Virginia:

That §29-22-18d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18d. Increase in allocation to West Virginia Infrastructure Fund from State Excess Lottery Revenue Fund.

1 Notwithstanding any provision of subsection (d), section
2 eighteen-a of this article to the contrary, the deposit of \$40
3 million into the West Virginia Infrastructure Fund set forth
4 above is for the fiscal year beginning July 1, 2010, only. For the
5 fiscal year beginning July 1, 2011, and each fiscal year
6 thereafter, in lieu of the deposits required under subdivision (5),
7 subsection (d), section eighteen-a of this article, the commission
8 shall, first, deposit \$6 million into the West Virginia
9 Infrastructure Lottery Revenue Debt Service Fund created in
10 subsection (h), section nine, article fifteen-a, chapter thirty-one
11 of this code, to be spent in accordance with the provisions of that
12 subsection, and, second, deposit \$40 million into the West
13 Virginia Infrastructure Fund created in subsection (a), section
14 nine, article fifteen-a, chapter thirty-one of this code, to be spent
15 in accordance with the provisions of that article: *Provided*, That
16 for the fiscal year beginning July 1, 2014, the deposit to the West
17 Virginia Infrastructure Fund shall be \$20 million: *Provided*,
18 *however*, That notwithstanding the provisions of subsection (a),
19 section ten, article fifteen-a, chapter thirty-one of this code, for
20 the fiscal year beginning July 1, 2014, any moneys disbursed
21 from the West Virginia Infrastructure Fund in the form of grants
22 may not exceed fifty percent of the total funds available for the
23 funding of projects: *Provided further*, That for the fiscal year
24 beginning July 1, 2015, the deposit to the West Virginia
25 Infrastructure Fund shall be \$30 million: And provided further,
26 That notwithstanding the provisions of subsection (a), section
27 ten, article fifteen-a, chapter thirty-one of this code, for the fiscal
28 year beginning July 1, 2015, any moneys disbursed from the
29 West Virginia Infrastructure Fund in the form of grants may not
30 exceed fifty percent of the total funds available for the funding
31 of projects: *And provided further*, That for the fiscal year
32 beginning July 1, 2016, the deposit to the West Virginia
33 Infrastructure Fund shall be \$30 million: *And provided further*,
34 That notwithstanding the provisions of subsection (a), section
35 ten, article fifteen-a, chapter thirty-one of this code, for the fiscal

36 year beginning July 1, 2016, any moneys disbursed from the
37 West Virginia Infrastructure Fund in the form of grants may not
38 exceed fifty percent of the total funds available for the funding
39 of projects.

CHAPTER 129

**(S. B. 351 - By Senators Cole (Mr. President), and Kessler)
[By Request of the Executive]**

[Passed February 24, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2016.]

AN ACT to amend and reenact §31-15A-16 of the Code of West Virginia, 1931, as amended, relating to dedication of severance tax proceeds to the West Virginia Infrastructure General Obligation Debt Service Fund; and specifying reduction of the amount of severance tax proceeds dedicated to the West Virginia Infrastructure General Obligation Debt Service Fund.

Be it enacted by the Legislature of West Virginia:

That §31-15A-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-16. Dedication of severance tax proceeds.

1 (a) There shall be dedicated an annual amount from the
2 collections of the tax collected pursuant to article thirteen-a,
3 chapter eleven of this code for the construction, extension,
4 expansion, rehabilitation, repair and improvement of water

5 supply and sewage treatment systems and for the acquisition,
6 preparation, construction and improvement of sites for economic
7 development in this state as provided in this article.

8 (b) Notwithstanding any other provision of this code to the
9 contrary, beginning on July 1, 1995, the first \$16 million of the
10 tax collected pursuant to article thirteen-a, chapter eleven of this
11 code shall be deposited to the credit of the West Virginia
12 Infrastructure General Obligation Debt Service Fund created
13 pursuant to section three, article fifteen-b of this chapter:
14 *Provided*, That beginning on July 1, 1998, the first \$24 million
15 of the tax annually collected pursuant to article thirteen-a of this
16 code shall be deposited to the credit of the West Virginia
17 Infrastructure General Obligation Debt Service Fund created
18 pursuant to section three, article fifteen-b of this chapter:
19 *Provided, however*, That subject to the conditions, limitations,
20 exclusions and constraints prescribed by subsection (c) of this
21 section, beginning on July 1, 2013, the amount deposited under
22 this subsection to the credit of the West Virginia Infrastructure
23 General Obligation Debt Service Fund created pursuant to
24 section three, article fifteen-b of this chapter shall be the first
25 \$23 million of the tax annually collected pursuant to article
26 thirteen-a, chapter eleven of this code: *Provided further*, That
27 subject to the conditions, limitations, exclusions and constraints
28 prescribed by subsection (c) of this section, beginning on July 1,
29 2015, the amount deposited under this subsection to the credit of
30 the West Virginia Infrastructure General Obligation Debt
31 Service Fund created pursuant to section three, article fifteen-b
32 of this chapter shall be the first \$22.5 million of the tax annually
33 collected pursuant to article thirteen-a, chapter eleven of this
34 code: *And provided further*, That subject to the conditions,
35 limitations, exclusions and constraints prescribed by subsection
36 (c) of this section, beginning on July 1, 2016, the amount
37 deposited under this subsection to the credit of the West Virginia
38 Infrastructure General Obligation Debt Service Fund created

39 pursuant to section three, article fifteen-b of this chapter shall be
40 an amount of the tax first collected in the fiscal year pursuant to
41 article thirteen-a, chapter eleven of this code, equal to the annual
42 debt service necessary to pay principle, and interest and to
43 ultimately retire bonds over their scheduled amortization life, in
44 accordance with the provisions of article fifteen-b of this
45 chapter. Such annual debt service amount shall be determined in
46 accordance with a debt amortization table to be published by the
47 Treasurer, not later than April 1, 2016, and subject to
48 amendment, from time to time, as the Treasurer considers
49 necessary. In no case may the amount so deposited in any fiscal
50 year exceed \$22.25 million of the tax annually collected
51 pursuant to article thirteen-a, chapter eleven of this code.

52 (c) Notwithstanding any provision of subsection (b) of this
53 section to the contrary: (1) None of the collections from the tax
54 imposed pursuant to section six, article thirteen-a, chapter eleven
55 of this code shall be so dedicated or deposited; and (2) the
56 portion of the tax imposed by article thirteen-a, chapter eleven
57 and dedicated for purposes of Medicaid and the Division of
58 Forestry pursuant to section twenty-a of said article shall remain
59 dedicated for the purposes set forth in said section.

60 (d) On or before May 1 of each year, commencing May 1,
61 1995, the council, by resolution, shall certify to the Treasurer
62 and the Water Development Authority the principal and interest
63 coverage ratio and amount for the following fiscal year on any
64 infrastructure general obligation bonds issued pursuant to the
65 provisions of article fifteen-b of this chapter.

CHAPTER 130

**(H. B. 4315 - By Mr. Speaker (Mr. Armstead),
and Delegate Miley)
[By Request of the Executive]**

[Passed March 12, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-8a, relating to collection of air-ambulance fees for emergency treatment or air transportation rendered to persons covered by Public Employee Insurance Agency plans; allowing providers of air ambulance services not under contract with the Public Employees Insurance Agency to collect an amount up to the equivalent paid for federal reimbursement for services rendered to covered employees or dependents; and requiring providers of air ambulance services that enter into a subscription service agreement with employees or dependents covered by Public Employee Insurance Agency plans to accept the subscription fee as payment in full for services rendered.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16-8a, to read as follows:

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

§5-16-8a. Air-ambulance fees.

- 1 (a) Notwithstanding any provision of this code to the
- 2 contrary, any air-ambulance provider which does not have a

3 contract with the plan, that provides air transportation or related
4 emergency or treatment services to an employee or dependent of
5 an employee covered by the plan, may not collect from the plan
6 and the covered employee or dependent of the employee, a
7 combined amount for those services which exceeds the
8 reimbursement amount then in effect for the federal Medicare
9 program, including any applicable Geographic Practice Cost
10 Index.

11 (b) If an air-ambulance provider has entered into a
12 subscription service agreement with an employee or dependent
13 of an employee covered by the plan, and the employee or
14 dependent is in good standing with the agreement, the
15 air-ambulance provider shall accept the fee or cost of the
16 subscription service agreement as payment in full for any
17 air-ambulance transport and related emergency treatment or
18 services which the air-ambulance provider may provide to that
19 employee or dependent of an employee.

CHAPTER 131

(Com. Sub. for S. B. 330 - By Senators Gaunch and Bosso)

[Passed March 10, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §33-6A-1 of the Code of West Virginia, 1931, as amended, relating to cancellation or nonrenewal of automobile liability policies; providing restrictions on cancellation of automobile liability insurance policy that has been in effect for sixty days; excepting cancellations in the case of renewals; specifying when an insurer may cancel an automobile liability policy that has been in effect for sixty days; providing for

notice to insureds for certain cancellations or voiding of automobile insurance policies; specifying allowable methods of sending notices and content thereof; providing for thirty days' notice to cancel automobile liability policy for certain reasons; providing exception to requirement of thirty days' notice for nonpayment of premiums or installments of premiums; requiring fourteen days' notice for cancellations due to nonpayment of premiums or installments of premiums; specifying when notice period begins to run and when payment deemed accomplished for purposes of making payment during fourteen day notice period for cancellation due to nonpayment of premiums or installments of premiums; providing for voidability of automobile liability insurance policy if initial payments of premiums or initial installments of premiums not made; and providing for ten-day notice that policy will be voided absent payment of amounts due under terms of policy when initial payment of premiums or initial installments of premiums not made.

Be it enacted by the Legislature of West Virginia:

That §33-6A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6A. CANCELLATION OR NONRENEWAL OF
AUTOMOBILE LIABILITY POLICIES.**

**§33-6A-1. Cancellation prohibited except for specified reasons;
notice.**

1 (a) No insurer once having issued or delivered a policy
2 providing automobile liability insurance for a private passenger
3 automobile may, after the policy has been in effect for sixty
4 days, or in case of renewal effective immediately, issue or cause
5 to issue a notice of cancellation during the term of the policy
6 except for one or more of the reasons specified in this section:

7 (1) The named insured fails to make payments of premium
8 for the policy or any installment of the premium when due;

9 (2) The policy is obtained through material
10 misrepresentation;

11 (3) The insured violates any of the material terms and
12 conditions of the policy;

13 (4) The named insured or any other operator, either residing
14 in the same household or who customarily operates an
15 automobile insured under the policy:

16 (A) Has had his or her operator's license suspended or
17 revoked during the policy period including suspension or
18 revocation for failure to comply with the provisions of article
19 five-a, chapter seventeen-c of this code regarding consent for a
20 chemical test for intoxication: *Provided*, That when a license is
21 suspended for sixty days by the Commissioner of the Division of
22 Motor Vehicles because a person drove a motor vehicle while
23 under the age of twenty-one years with an alcohol concentration
24 in his or her blood of two hundredths of one percent or more, by
25 weight, but less than eight hundredths of one percent, by weight,
26 pursuant to subsection (l), section two of said article, the
27 suspension may not be grounds for cancellation; or

28 (B) Is or becomes subject to epilepsy or heart attacks and the
29 individual cannot produce a certificate from a physician
30 testifying to his or her ability to operate a motor vehicle; or

31 (5) The named insured or any other operator, either residing
32 in the same household or who customarily operates an
33 automobile insured under such policy, is convicted of or forfeits
34 bail during the policy period for any of the following reasons:

35 (A) Any felony or assault involving the use of a motor
36 vehicle;

37 (B) Negligent homicide arising out of the operation of a
38 motor vehicle;

39 (C) Operating a motor vehicle while under the influence of
40 alcohol or of any controlled substance or while having an alcohol
41 concentration in his or her blood of eight hundredths of one
42 percent or more, by weight;

43 (D) Leaving the scene of a motor vehicle accident in which
44 the insured is involved without reporting it as required by law;

45 (E) Theft of a motor vehicle or the unlawful taking of a
46 motor vehicle;

47 (F) Making false statements in an application for a motor
48 vehicle operator's license; or

49 (G) Three or more moving traffic violations committed
50 within a period of twelve months, each of which results in three
51 or more points being assessed on the driver's record by the
52 Division of Motor Vehicles, whether or not the insurer renewed
53 the policy without knowledge of all such violations. Notice of
54 any cancellation made pursuant to this subsection shall be mailed
55 to the named insured either during the current policy period or
56 during the first full policy period following the date that the third
57 moving traffic violation is recorded by the Division of Motor
58 Vehicles.

59 (b) Except as provided in subsections (c) and (d), no insurer
60 may cancel a policy of automobile liability insurance without
61 first giving the insured thirty days' notice of its intention to
62 cancel. Notice of cancellation shall either be sent by first class
63 mail to the named insured at the address supplied on the
64 application for insurance, or by email or other electronic means
65 if at the request of the policyholder in accordance with the
66 Uniform Electronic Transactions Act as codified in chapter
67 thirty-nine-a of this code, and shall state the effective date of the
68 cancellation and provide a written explanation of the specific
69 reason for the cancellation.

70 (c) If, pursuant to subsection (a) of this section, an insurer
71 cancels a policy of automobile liability insurance for the failure
72 of the named insured to make payments of premium for the
73 policy or any installment of the premium when due, then the
74 insurer shall first give the insured at least fourteen days' notice
75 of its intention to cancel. Notice of cancellation shall be sent by
76 first class mail to the named insured at the address supplied on
77 the application for insurance, or by email or other electronic
78 means if at the request of the policyholder in accordance with the
79 Uniform Electronic Transactions Act as codified in chapter
80 thirty-nine-a of this code, and shall state the effective date of the
81 cancellation and provide a written explanation of the specific
82 reason for the cancellation. The notice period provided herein
83 shall begin to run on the date mailed and payment shall be
84 deemed accomplished by depositing in first class mail valid
85 payment on or before the expiration date of the fourteen day
86 notice period.

87 (d) If a named insured fails to make the initial payment of
88 premium or any initial installment of the premium after the
89 initial issuance of an automobile liability insurance policy, the
90 insurance policy is voidable from the effective date and time the
91 policy was issued: *Provided*, That the insurer shall send the
92 insured written notice that the policy will be voided absent
93 payment within ten days of any amounts due under the terms of
94 the policy. Such notice shall either be sent by first class mail to
95 the named insured at the address supplied on the application for
96 insurance, or by email or other electronic means if at the request
97 of the policyholder in accordance with the Uniform Electronic
98 Transactions Act as codified in chapter thirty-nine-a of this code,
99 and shall explain the specific reason for the voidance.

CHAPTER 132

**(H. B. 4739 - By Delegates Shott, Ireland,
Kessinger, Sobonya, Foster, Zatezalo, Lane, Rowe,
Westfall, B. White and Frich)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §33-13D-1 and §33-13D-2, relating to the creation of the Unclaimed Life Insurance Benefits Act; defining terms; regulating insurer conduct generally; requiring insurers to perform an annual comparison of its insureds' Policies, Retained Asset Accounts and Account Owners against a Death Master File; requiring insurers to conduct a comparison against a Death Master File on policies issued as of 1986 and all policies issued thereafter; establishing a two year deadline from the effective date of this article to conduct the full Death Master File comparison; requiring the Insurance Commissioner promulgate rules related to Death Master File comparisons for policies issued prior to 1986 if the commissioner determines that reliable technology and data exist to make such comparison accurate and cost-effective; providing that insurers shall first conduct comparisons to the extent records are available electronically then using the most easily accessible insurer data for records not available electronically; providing that the annual comparison of insureds' Policies, Retained Asset Accounts and Account Owners against a Death Master File shall not apply to those accounts for which the insurer is receiving premiums from outside the policy value, by check, bank draft, payroll deduction or any other similar method of payment within eighteen months immediately preceding the Death Master File comparison;

clarifying that insurers are permitted to request a valid death certificate as part of any claims validation process; providing that, for potential matches identified as a result of a Death Master File match, insurer must within ninety days complete a good faith effort which shall be documented by the insurer to confirm the death against other available records, review insurer records to determine if the deceased person has any other products with the insured and determine if benefits may be due; requiring insurers to implement procedures to account for incomplete identifying information such as nicknames, maiden names or other identifying information; requiring reasonable steps to be taken to locate and contact beneficiaries or other authorized representatives regarding the insurer's claims process if no communication with beneficiaries or other authorized representatives occurs within ninety days after a Death Master File match; requiring the insurer to document its efforts to locate and contact the beneficiary as well as sending information regarding the claims process and any need to provide an official death certificate; clarifying that benefits shall first be paid to beneficiaries and, if beneficiaries cannot be found, paid to the state as unclaimed property; permitting insurers to release such identifying information as may be necessary to help identify or locate beneficiaries; prohibiting insurers or service providers from charging beneficiaries or other authorized representatives for any fees or costs associated with a Death Master File search or verification of a Death Master File match; clarifying that the Insurance Commissioner has exclusive authority to promulgate rules as may be required or reasonably necessary to implement this section; authorizing the Insurance Commissioner to issue orders related to requirements imposed on insurers and imposing a hardship burden on insurers seeking orders adjusting their obligations; and authorizing the Insurance Commissioner to promulgate rules that may be reasonably necessary to implement the Unclaimed Life Insurance Benefits Act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-13D-1 and §33-13D-2, all to read as follows:

**ARTICLE 13D. UNCLAIMED LIFE INSURANCE BENEFITS
ACT.**

§33-13D-1. Definitions.

1 (a) *Definitions.* — For purposes of this section:

2 (1) “Account owner” means the owner of a retained asset
3 account who is a resident of this state.

4 (2) “Annuity contract” means an annuity contract issued in
5 this state. The term “annuity contract” shall not include an
6 annuity used to fund an employment-based retirement plan or
7 program where: (1) The insurer does not perform the
8 record-keeping services; or (2) the insurer is not committed by
9 terms of the annuity contract to pay death benefits to the
10 beneficiaries of specific plan participants.

11 (3) “Death Master File” means the United States Social
12 Security Administration’s Death Master File or any other
13 database or service that is at least as comprehensive as the
14 United States Social Security Administration’s Death Master
15 File for determining whether a person has died.

16 (4) “Death Master File match” means a search of the Death
17 Master File that results in a match of the person’s first and last
18 name and Social Security number or the first and last name and
19 date of birth of an insured, annuity owner or retained asset
20 account holder.

21 (5) “Knowledge of death” shall, for the purposes of this
22 section, mean: (a) Receipt of an original or valid copy of a

23 certified death certificate; or (b) a Death Master File match
24 validated by the insurer in accordance with section two of this
25 article.

26 (6) “Person” means the policy insured, annuity contract
27 owner, annuitant or account owner, as applicable under the
28 policy, annuity contract or retained asset account at issue in this
29 act.

30 (7) “Policy” means any policy or certificate of life insurance
31 issued in this state that provides a death benefit. The term
32 “policy” shall not include: (i) Any policy or certificate of life
33 insurance that provides a death benefit under an employee
34 benefit plan: (a) subject to the Employee Retirement Income
35 Security Act of 1974, as periodically amended; or (b) under any
36 federal employee benefit program: or (ii) any policy or
37 certificate of life insurance that is used to fund a preneed funeral
38 contract or prearrangement; or (iii) any policy or certificate of
39 credit life or accidental death insurance; or (iv) any policy issued
40 to a group master policyholder for which the insurer does not
41 provide record-keeping services.

42 (8) “Record-keeping services” means those circumstances
43 under which the insurer has agreed with a group policy or
44 contract customer to be responsible for obtaining, maintaining
45 and administering in its own or its agents’ systems information
46 about each individual insured under an Insured’s group insurance
47 contract (or a line of coverage thereunder), at least the following
48 information: (1) Social Security number or name and date of
49 birth; and (2) beneficiary designation information; (3) coverage
50 eligibility; (4) benefit amount; and (5) premium payment status.

51 (9) “Retained asset account” means any mechanism whereby
52 the settlement of proceeds payable under a policy or annuity
53 contract is accomplished by the insurer or an entity acting on

54 behalf of the insurer depositing the proceeds into an account
55 with check- or draft-writing privileges, where those proceeds are
56 retained by the insurer or its agent, pursuant to a supplementary
57 contract not involving annuity contract benefits other than death
58 benefits.

§33-13D-2. Insurer conduct.

1 (a) An insurer shall perform a comparison of its insureds'
2 in-force policies, annuity contracts and account owners against
3 a Death Master File to identify potential death master file
4 matches of its insureds, annuitants and account owners, on at
5 least an annual basis, by using the full Death Master File once
6 and thereafter using the Death Master File update files for future
7 comparisons to identify potential Death Master File matches.
8 The comparison using the full Death Master File should be
9 completed within two years of the effective date of this article
10 and must be completed on policies in force as of 1986, and all
11 policies issued thereafter: *Provided*, That the Insurance
12 Commissioner shall promulgate legislative rules requiring that
13 the comparison against a Death Master File be completed on
14 policies issued at earlier times if the commissioner determines
15 that reliable technology and data exist to make such comparison
16 accurate and cost-effective to match to the established Master
17 Death Database.

18 (b) The insurer comparison of policies, annuity contracts and
19 account owners shall be conducted first to the extent that such
20 records are available electronically and then using the most
21 easily accessible insurer data for records that are not available
22 electronically.

23 (c) This section shall not apply to policies or annuity
24 contracts for which the insurer is receiving premiums from
25 outside the policy value, by check, bank draft, payroll deduction
26 or any other similar method of active premium payment within

27 the eighteen months immediately preceding the Death Master
28 File comparison.

29 (d) Nothing in this section shall limit the insurer from
30 requesting a valid death certificate as part of any claims
31 validation process.

32 (e) For those potential matches identified as a result of a
33 Death Master File match, or if an insurer learns of the possible
34 death of a person otherwise, then the insurer shall, within ninety
35 days of a Death Master File match:

36 (1) Complete a good faith effort, which shall be documented
37 by the insurer, to confirm the death of the person against other
38 available records and information;

39 (2) Review its records to determine whether the deceased
40 person has any other products with the insurer;

41 (3) Determine whether benefits may be due in accordance
42 with any applicable policy, annuity contract or retained asset
43 account.

44 (f) Every insurer shall implement procedures to account for:

45 (1) Common nicknames, initials used in lieu of a first or
46 middle name, use of a middle name, compound first and middle
47 names, and interchanged first and middle names;

48 (2) Compound last names, maiden or married names, and
49 hyphens, blank spaces or apostrophes in last names;

50 (3) Transposition of the “month” and “date” portions of the
51 date of birth; and

52 (4) Incomplete Social Security number.

53 (g) If the beneficiary or other authorized representative has
54 not communicated with the insurer within the ninety-day period,
55 the insurer shall take reasonable steps and use good faith efforts,
56 which shall be documented by the insurer, to locate and contact
57 the beneficiary or beneficiaries or other authorized
58 representative on any such policy, annuity contract or retained
59 asset account, including, but not limited to, sending the
60 beneficiary information regarding the insurer's claims process,
61 including the need to provide an official death certificate if
62 applicable under the policy, annuity contract or retained asset
63 account.

64 (h) To the extent permitted by law, the insurer may disclose
65 minimum necessary personal information about a person or
66 beneficiary to a person who the insurer reasonably believes may
67 be able to assist the insurer in locating the beneficiary or a
68 person otherwise entitled to payment of the claims proceeds.

69 (i) An insurer or its service provider shall not charge any
70 beneficiary or other authorized representative for any fees or
71 costs associated with a Death Master File search or verification
72 of Death Master File match conducted pursuant to this section.

73 (j) The benefits from a policy, annuity contract or a retained
74 asset account, plus any applicable accrued contractual interest
75 shall first be payable to the designated beneficiaries or owners,
76 and in the event said beneficiaries or owners cannot be found,
77 shall be paid to the state as unclaimed property pursuant to
78 article eight, chapter thirty-six of this code.

79 (k) The West Virginia Office of the Insurance Commissioner
80 has exclusive authority to promulgate such rules and regulations
81 as may be required or reasonably necessary to implement the
82 provisions of this section.

83 (l) The commissioner may, in his or her reasonable
84 discretion, make an order to:

85 (1) Limit an insurer's Death Master File comparisons
86 required under subsection (a) of this section to the insurer's
87 electronic searchable files or approve a plan and timeline for
88 conversion of the insurer's files to searchable electronic files
89 upon a demonstration of hardship by the insurer;

90 (2) Exempt an insurer from the Death Master File
91 comparisons required under subsection (a) of this section or
92 permitting an insurer to perform such comparisons less
93 frequently than annually upon a demonstration of hardship by
94 the insurer; or

95 (3) Phase-in compliance with this section according to a plan
96 and timeline approved by the commissioner.

CHAPTER 133

**(Com. Sub. for H. B. 4038 - By Ellington, Summers, Bates,
Faircloth, Householder, Rohrbach and Stansbury)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4m; to amend said code by adding thereto a new section, designated §33-16-3y; to amend said code by adding thereto a new section, designated §33-24-7n; to amend said code by adding thereto a new section, designated §33-25-8k; and to amend said code by adding thereto a new section, designated §33-25A-8m, all relating to insurance requirements for the refilling of topical eye medication; requiring a refill take place at a certain time; and establishing when a refill is permitted.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-15-4m; that said code be amended by adding thereto a new section, designated §33-16-3y; that said code be amended by adding thereto a new section, designated §33-24-7n; that said code be amended by adding thereto a new section, designated §33-25-8k; that said code be amended by adding thereto a new section, designated §33-25A-8m, all to read as follows:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4m. Eye drop prescription refills.

1 An insurance policy issued by an insurer pursuant to this
2 article for prescription topical eye medication may not deny
3 coverage for the refilling of a prescription for topical eye
4 medication when:

5 (1) The medication is to treat a chronic condition of the eye;

6 (2) The refill is requested by the insured prior to the last day
7 of the prescribed dosage period and after at least 70% of the
8 predicted days of use; and

9 (3) A person licensed under chapter thirty and authorized to
10 prescribe topical eye medication indicates on the original
11 prescription that refills are permitted and that the early refills
12 requested by the insured do not exceed the total number of refills
13 prescribed.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3y. Eye drop prescription refills.

1 An insurance policy issued by an insurer pursuant to this
2 article for prescription topical eye medication may not deny

3 coverage for the refilling of a prescription for topical eye
4 medication when:

5 (1) The medication is to treat a chronic condition of the eye;

6 (2) The refill is requested by the insured prior to the last day
7 of the prescribed dosage period and after at least 70% of the
8 predicted days of use; and

9 (3) A person licensed under chapter thirty and authorized to
10 prescribe topical eye medication indicates on the original
11 prescription that refills are permitted and that the early refills
12 requested by the insured do not exceed the total number of refills
13 prescribed.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS,
DENTAL SERVICE CORPORATIONS
AND HEALTH SERVICE
CORPORATIONS.**

§33-24-7n. Eye drop prescription refills.

1 A contract, plan or agreement issued by an insurer pursuant
2 to this article for prescription topical eye medication may not
3 deny coverage for the refilling of a prescription for topical eye
4 medication when:

5 (1) The medication is to treat a chronic condition of the eye;

6 (2) The refill is requested by the insured prior to the last day
7 of the prescribed dosage period and after at least 70% of the
8 predicted days of use; and

9 (3) A person licensed under chapter thirty and authorized to
10 prescribe topical eye medication indicates on the original
11 prescription that refills are permitted and that the early refills

12 requested by the insured do not exceed the total number of refills
13 prescribed.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8k. Eye drop prescription refills.

1 A contract, plan or agreement issued by an insurer pursuant
2 to this article for prescription topical eye medication may not
3 deny coverage for the refilling of a prescription for topical eye
4 medication when:

5 (1) The medication is to treat a chronic condition of the eye;

6 (2) The refill is requested by the insured prior to the last day
7 of the prescribed dosage period and after at least 70% of the
8 predicted days of use; and

9 (3) A person licensed under chapter thirty and authorized to
10 prescribe topical eye medication indicates on the original
11 prescription that refills are permitted and that the early refills
12 requested by the insured do not exceed the total number of refills
13 prescribed.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8m. Eye drop prescription refills.

1 A contract, plan or agreement issued by an insurer pursuant
2 to this article for prescription topical eye medication may not
3 deny coverage for the refilling of a prescription for topical eye
4 medication when:

5 (1) The medication is to treat a chronic condition of the eye;

6 (2) The refill is requested by the insured prior to the last day
7 of the prescribed dosage period and after at least 70% of the
8 predicted days of use; and

9 (3) A person licensed under chapter thirty and authorized to
10 prescribe topical eye medication indicates on the original
11 prescription that refills are permitted and that the early refills
12 requested by the insured do not exceed the total number of refills
13 prescribed.

CHAPTER 134

**(Com. Sub. for H. B. 4146 - By Delegates Ellington,
Summers, Bates, Faircloth, Householder, Rohrbach, Sobonya,
Stansbury, Eldridge, McCuskey and Frich)**

[Passed on March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4n; to amend said code by adding thereto a new section, designated §33-16-3z; to amend said code by adding thereto a new section, designated §33-24-7o; to amend said code by adding thereto a new section, designated §33-25-8l; and to amend said code by adding thereto a new section, designated §33-25A-8n, all relating to abuse-deterrent opioid analgesic drugs; providing insurance cover abuse-deterrent opioid analgesic drugs; providing direct health care services cover abuse-deterrent opioid analgesic drugs; providing certain contracts cover abuse-deterrent opioid analgesic drugs; defining terms; providing an effective date; providing for cost sharing; providing for cost tier location; and allowing cost containment measures.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-15-4n; that said code be

amended by adding thereto a new section, designated §33-16-3z; that said code be amended by adding thereto a new section, designated §33-24-7o; that said code be amended by adding thereto a new section, designated §33-25-8l; and that said code be amended by adding thereto a new section, designated §33-25A-8n, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4n. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.

1 (a) As used in this section:

2 (1) “Abuse-deterrent opioid analgesic drug product” means
3 a brand name or generic opioid analgesic drug product approved
4 by the United States Food and Drug Administration with
5 abuse-deterrent labeling that indicates its abuse-deterrent
6 properties are expected to deter or reduce its abuse;

7 (2) “Cost-sharing” means any coverage limit, copayment,
8 coinsurance, deductible or other out-of-pocket expense
9 requirements;

10 (3) “Opioid analgesic drug product” means a drug product
11 that contains an opioid agonist and is indicated by the United
12 States Food and Drug Administration for the treatment of pain,
13 regardless of whether the drug product:

14 (A) Is in immediate release or extended release form; or

15 (B) Contains other drug substances.

16 (b) Notwithstanding any provision of any accident and
17 sickness insurance policy issued by an insurer, on or after
18 January 1, 2017:

19 (1) Coverage shall be provided for at least one
20 abuse-deterrent opioid analgesic drug product for each active
21 opioid analgesic ingredient;

22 (2) Cost-sharing for brand name abuse-deterrent opioid
23 analgesic drug products shall not exceed the lowest tier for brand
24 name prescription drugs on the entity's formulary for
25 prescription drug coverage;

26 (3) Cost-sharing for generic abuse-deterrent opioid analgesic
27 drug products covered pursuant to this section shall not exceed
28 the lowest cost-sharing level applied to generic prescription
29 drugs covered under the applicable health plan or policy; and

30 (4) An entity subject to this section may not require an
31 insured or enrollee to first use an opioid analgesic drug product
32 without abuse-deterrent labeling before providing coverage for
33 an abuse-deterrent opioid analgesic drug product covered on the
34 entity's formulary for prescription drug coverage.

35 (c) Notwithstanding subdivision (3), subsection (b) of this
36 section, an entity subject to this section may undertake
37 utilization review, including preauthorization, for an
38 abuse-deterrent opioid analgesic drug product covered by the
39 entity, if the same utilization review requirements are applied to
40 nonabuse-deterrent opioid analgesic drug products and with the
41 same type of drug release, immediate or extended.

42 (d) For purposes of subsection (b) of this section, the lowest
43 tier and the lowest cost-sharing level shall not mean the
44 cost-sharing tier applicable to preventive care services which are
45 required to be provided at no cost-sharing under the Patient
46 Protection and Affordable Care Act.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS
INSURANCE.**

§33-16-3z. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.

1 (a) As used in this section:

2 (1) “Abuse-deterrent opioid analgesic drug product” means
3 a brand name or generic opioid analgesic drug product approved
4 by the United States Food and Drug Administration with
5 abuse-deterrent labeling that indicates its abuse-deterrent
6 properties are expected to deter or reduce its abuse;

7 (2) “Cost-sharing” means any coverage limit, copayment,
8 coinsurance, deductible or other out-of-pocket expense
9 requirements;

10 (3) “Opioid analgesic drug product” means a drug product
11 that contains an opioid agonist and is indicated by the United
12 States Food and Drug Administration for the treatment of pain,
13 regardless of whether the drug product:

14 (A) Is in immediate release or extended release form; or

15 (B) Contains other drug substances.

16 (b) Notwithstanding any provision of any group accident and
17 sickness insurance policy issued by an insurer pursuant to this
18 article, on or after January 1, 2017:

19 (1) Coverage shall be provided for at least one
20 abuse-deterrent opioid analgesic drug product for each active
21 opioid analgesic ingredient;

22 (2) Cost-sharing for brand name abuse-deterrent opioid
23 analgesic drug products shall not exceed the lowest tier for brand
24 name prescription drugs on the entity’s formulary for
25 prescription drug coverage;

26 (3) Cost-sharing for generic abuse-deterrent opioid analgesic
27 drug products covered pursuant to this section shall not exceed

28 the lowest cost-sharing level applied to generic prescription
29 drugs covered under the applicable health plan or policy; and

30 (4) An entity subject to this section may not require an
31 insured or enrollee to first use an opioid analgesic drug product
32 without abuse-deterrent labeling before providing coverage for
33 an abuse-deterrent opioid analgesic drug product covered on the
34 entity's formulary for prescription drug coverage.

35 (c) Notwithstanding subdivision (3), subsection (b) of this
36 section, an entity subject to this section may undertake
37 utilization review, including preauthorization, for an
38 abuse-deterrent opioid analgesic drug product covered by the
39 entity, if the same utilization review requirements are applied to
40 nonabuse-deterrent opioid analgesic drug products and with the
41 same type of drug release, immediate or extended.

42 (d) For purposes of subsection (b) of this section, the lowest
43 tier and the lowest cost-sharing level shall not mean the
44 cost-sharing tier applicable to preventive care services which are
45 required to be provided at no cost-sharing under the Patient
46 Protection and Affordable Care Act.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS,
DENTAL SERVICE CORPORATIONS
AND HEALTH SERVICE
CORPORATIONS.**

**§33-24-70. Deductibles, copayments and coinsurance for
abuse-deterrent opioid analgesic drugs.**

1 (a) As used in this section:

2 (1) "Abuse-deterrent opioid analgesic drug product" means
3 a brand name or generic opioid analgesic drug product approved
4 by the United States Food and Drug Administration with

5 abuse-deterrent labeling that indicates its abuse-deterrent
6 properties are expected to deter or reduce its abuse;

7 (2) “Cost-sharing” means any coverage limit, copayment,
8 coinsurance, deductible or other out-of-pocket expense
9 requirements;

10 (3) “Opioid analgesic drug product” means a drug product
11 that contains an opioid agonist and is indicated by the United
12 States Food and Drug Administration for the treatment of pain,
13 regardless of whether the drug product:

14 (A) Is in immediate release or extended release form; or

15 (B) Contains other drug substances.

16 (b) Notwithstanding any provision of any policy, provision,
17 contract, plan or agreement to which this article applies, on or
18 after January 1, 2017:

19 (1) Coverage shall be provided for at least one
20 abuse-deterrent opioid analgesic drug product for each active
21 opioid analgesic ingredient;

22 (2) Cost-sharing for brand name abuse-deterrent opioid
23 analgesic drug products shall not exceed the lowest tier for brand
24 name prescription drugs on the entity’s formulary for
25 prescription drug coverage;

26 (3) Cost-sharing for generic abuse-deterrent opioid analgesic
27 drug products covered pursuant to this section shall not exceed
28 the lowest cost-sharing level applied to generic prescription
29 drugs covered under the applicable health plan or policy; and

30 (4) An entity subject to this section may not require an
31 insured or enrollee to first use an opioid analgesic drug product
32 without abuse-deterrent labeling before providing coverage for

33 an abuse-deterrent opioid analgesic drug product covered on the
34 entity's formulary for prescription drug coverage.

35 (c) Notwithstanding subdivision (3), subsection (b) of this
36 section, an entity subject to this section may undertake
37 utilization review, including preauthorization, for an
38 abuse-deterrent opioid analgesic drug product covered by the
39 entity, if the same utilization review requirements are applied to
40 nonabuse-deterrent opioid analgesic drug products and with the
41 same type of drug release, immediate or extended.

42 (d) For purposes of subsection (b) of this section, the lowest
43 tier and the lowest cost-sharing level shall not mean the
44 cost-sharing tier applicable to preventive care services which are
45 required to be provided at no cost-sharing under the Patient
46 Protection and Affordable Care Act.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8I. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.

1 (a) As used in this section:

2 (1) "Abuse-deterrent opioid analgesic drug product" means
3 a brand name or generic opioid analgesic drug product approved
4 by the United States Food and Drug Administration with
5 abuse-deterrent labeling that indicates its abuse-deterrent
6 properties are expected to deter or reduce its abuse;

7 (2) "Cost-sharing" means any coverage limit, copayment,
8 coinsurance, deductible or other out-of-pocket expense
9 requirements;

10 (3) "Opioid analgesic drug product" means a drug product
11 that contains an opioid agonist and is indicated by the United
12 States Food and Drug Administration for the treatment of pain,
13 regardless of whether the drug product:

14 (A) Is in immediate release or extended release form; or

15 (B) Contains other drug substances.

16 (b) Notwithstanding any provision of any policy, provision,
17 contract, plan or agreement to which this article applies, on or
18 after January 1, 2017:

19 (1) Coverage shall be provided for at least one
20 abuse-deterrent opioid analgesic drug product for each active
21 opioid analgesic ingredient;

22 (2) Cost-sharing for brand name abuse-deterrent opioid
23 analgesic drug products shall not exceed the lowest tier for brand
24 name prescription drugs on the entity's formulary for
25 prescription drug coverage;

26 (3) Cost-sharing for generic abuse-deterrent opioid analgesic
27 drug products covered pursuant to this section shall not exceed
28 the lowest cost-sharing level applied to generic prescription
29 drugs covered under the applicable health plan or policy; and

30 (4) An entity subject to this section may not require an
31 insured or enrollee to first use an opioid analgesic drug product
32 without abuse-deterrent labeling before providing coverage for
33 an abuse-deterrent opioid analgesic drug product covered on the
34 entity's formulary for prescription drug coverage.

35 (c) Notwithstanding subdivision (3), subsection (b) of this
36 section, an entity subject to this section may undertake
37 utilization review, including preauthorization, for an
38 abuse-deterrent opioid analgesic drug product covered by the
39 entity, if the same utilization review requirements are applied to
40 nonabuse-deterrent opioid analgesic drug products and with the
41 same type of drug release, immediate or extended.

42 (d) For purposes of subsection (b) of this section, the lowest
43 tier and the lowest cost-sharing level shall not mean the

44 cost-sharing tier applicable to preventive care services which are
45 required to be provided at no cost-sharing under the Patient
46 Protection and Affordable Care Act.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION
ACT.**

**§33-25A-8n. Deductibles, copayments and coinsurance for
abuse-deterrent opioid analgesic drugs.**

1 (a) As used in this section:

2 (1) “Abuse-deterrent opioid analgesic drug product” means
3 a brand name or generic opioid analgesic drug product approved
4 by the United States Food and Drug Administration with
5 abuse-deterrent labeling that indicates its abuse-deterrent
6 properties are expected to deter or reduce its abuse;

7 (2) “Cost-sharing” means any coverage limit, copayment,
8 coinsurance, deductible or other out-of-pocket expense
9 requirements;

10 (3) “Opioid analgesic drug product” means a drug product
11 that contains an opioid agonist and is indicated by the United
12 States Food and Drug Administration for the treatment of pain,
13 regardless of whether the drug product:

14 (A) Is in immediate release or extended release form; or

15 (B) Contains other drug substances.

16 (b) Notwithstanding any provision of any policy, provision,
17 contract, plan or agreement to which this article applies, on or
18 after January 1, 2017:

19 (1) Coverage shall be provided for at least one
20 abuse-deterrent opioid analgesic drug product for each active
21 opioid analgesic ingredient;

22 (2) Cost-sharing for brand name abuse-deterrent opioid
23 analgesic drug products shall not exceed the lowest tier for brand
24 name prescription drugs on the entity's formulary for
25 prescription drug coverage;

26 (3) Cost-sharing for generic abuse-deterrent opioid analgesic
27 drug products covered pursuant to this section shall not exceed
28 the lowest cost-sharing level applied to generic prescription
29 drugs covered under the applicable health plan or policy; and

30 (4) An entity subject to this section may not require an
31 insured or enrollee to first use an opioid analgesic drug product
32 without abuse-deterrent labeling before providing coverage for
33 an abuse-deterrent opioid analgesic drug product covered on the
34 entity's formulary for prescription drug coverage.

35 (c) Notwithstanding subdivision (3), subsection (b) of this
36 section, an entity subject to this section may undertake
37 utilization review, including preauthorization, for an
38 abuse-deterrent opioid analgesic drug product covered by the
39 entity, if the same utilization review requirements are applied to
40 nonabuse-deterrent opioid analgesic drug products and with the
41 same type of drug release, immediate or extended.

42 (d) For purposes of subsection (b) of this section, the lowest
43 tier and the lowest cost-sharing level shall not mean the
44 cost-sharing tier applicable to preventive care services which are
45 required to be provided at no cost-sharing under the Patient
46 Protection and Affordable Care Act.

CHAPTER 135

(*Com. Sub. for H. B. 4040 - By Delegates Kelly, Rohrbach, Cooper, Frich, Sobonya, Border, Faircloth, Atkinson, Perdue, Perry and Waxman)

[Passed March 12, 2016; in effect from passage.]
[Approved by the Governor on March 29, 2016.]

* **NOTE:** It has been determined that Com. Sub. for H. B. 4040, originally styled as Chapter 135 was enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, Com. Sub. for H. B. 4040 did not become law.

CHAPTER 136

(Com. Sub. for S. B. 278 - By Senators Ferns, Takubo, Walters, Stollings and Palumbo)

[Passed March 12, 2016; in effect from passage.]
[Approved by the Governor on March 24, 2016.]

AN ACT to amend and reenact §33-20F-2 and §33-20F-4 of the Code of West Virginia, 1931, as amended, all relating to clarifying that a physicians' mutual insurance company is not a state actor or a quasi-state actor, allowing it to operate as any other commercial insurance company licensed in West Virginia; and clarifying and revising findings and purpose.

Be it enacted by the Legislature of West Virginia:

That §33-20F-2 and §33-20F-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-2. Findings and purpose.

- 1 (a) The Legislature finds that:
 - 2 (1) There is a nationwide crisis in the field of medical
3 liability insurance;
 - 4 (2) Similar crises have occurred at least three times during
5 the past three decades;
 - 6 (3) Such crises are part of a naturally recurring cycle of a
7 hard market period, when medical professional liability coverage
8 is difficult to obtain, and a soft market period, when coverage is
9 more readily available;
 - 10 (4) Such crises are particularly acute in this state due to the
11 small size of the insurance market;
 - 12 (5) During a hard market period, insurers tend to flee this
13 state, creating a crisis for physicians who are left without
14 professional liability coverage;
 - 15 (6) During the current crisis, physicians in West Virginia
16 find it increasingly difficult, if not impossible, to obtain medical
17 liability insurance either because coverage is unavailable or
18 unaffordable;
 - 19 (7) The difficulty or impossibility of obtaining medical
20 liability insurance may result in many qualified physicians
21 leaving the state;
 - 22 (8) Access to quality health care is of utmost importance to
23 the citizens of West Virginia;

24 (9) A mechanism is needed to provide an enduring solution
25 to this recurring medical liability crisis;

26 (10) A physicians' mutual insurance company or a similar
27 entity has proven to be a successful mechanism in other states
28 for helping physicians secure insurance and for stabilizing the
29 insurance market;

30 (11) The state has attempted to temporarily alleviate the
31 current medical crisis by the creation of programs to provide
32 medical liability coverage through the Board of Risk and
33 Insurance Management;

34 (12) The state-run program is a substantial actual and
35 potential liability to the state;

36 (13) There is substantial public benefit in transferring the
37 actual and potential liability of the state to the private sector;

38 (14) A stable, financially viable insurer in the private sector
39 will provide a continuing source of insurance funds to
40 compensate victims of medical malpractice; and

41 (15) Because the public will greatly benefit from the
42 formation of a physicians' mutual insurance company, state
43 efforts to encourage and support the formation of such an entity,
44 including providing a low-interest loan for a portion of the
45 entity's initial capital, is in the clear public interest.

46 (b) The purpose of this article is to create a mechanism for
47 the formation of a physicians' mutual insurance company that
48 will provide:

49 (1) A means for physicians to obtain medical liability
50 insurance that is available and affordable; and

51 (2) Compensation to persons who suffer injuries as a result
52 of medical professional liability as defined in subsection (d),
53 section two, article seven-b, chapter fifty-five of this code.

§33-20F-4. Authorization for creation of company; requirements and limitations.

1 (a) Subject to the provisions of this article, a physicians'
2 mutual insurance company may be created as a domestic,
3 private, nonstock corporation. The company must remain for the
4 duration of its existence a domestic mutual insurance company
5 owned by its policyholders and may not be converted into a
6 stock corporation or any other entity not owned by its
7 policyholders.

8 (b) For the duration of its existence, the company is not and
9 may not be considered a department, unit, agency,
10 instrumentality of the state, state actor, quasi-state actor or
11 quasi-public entity for any purpose. Any debts, claims,
12 obligations and liabilities of the company, whenever incurred,
13 are the debts, claims, obligations and liabilities of the company
14 only and not of the state or of any department, unit, agency,
15 instrumentality, officer or employee of the state.

16 (c) The moneys of the company are not and may not be
17 considered part of the General Revenue Fund of the state. The
18 debts, claims, obligations and liabilities of the company are not
19 and may not be considered a debt of the state or a pledge of the
20 credit of the state.

21 (d) The company is not subject to the provisions of article
22 nine-a, chapter six of this code or the provisions of article one,
23 chapter twenty-nine-b of this code.

24 (e) All premiums collected by the company are subject to the
25 premium taxes, additional premium taxes, additional fire and
26 casualty insurance premium taxes and surcharges contained in
27 sections fourteen, fourteen-a, fourteen-d and thirty-three, article
28 three of this chapter.

CHAPTER 137

(Com. Sub. for S. B. 429 - By Senators Ashley and Gaunch)

[Passed March 9, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2016.]

AN ACT to amend and reenact §33-24-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-25-6 of said code; to amend and reenact §33-25A-24 of said code; to amend and reenact §33-25D-26 of said code; to amend and reenact §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 of said code; and to amend said code by adding thereto a new article, designated §33-40A-1, §33-40A-2, §33-40A-3, §33-40A-4, §33-40A-5, §33-40A-6, §33-40A-7, §33-40A-8, §33-40A-9, §33-40A-10, §33-40A-11 and §33-40A-12, all relating to risk-based capital; making health organizations subject to statutory provisions concerning risk-based capital reporting; defining terms associated with risk-based capital reporting for health organizations; requiring health organizations to file risk-based capital reports with Insurance Commissioner; requiring health organizations to perform certain actions if risk-based capital report indicates a negative financial trend or hazardous financial condition; requiring Insurance Commissioner to conduct certain actions if risk-based capital report of a health organization indicates negative financial trend or hazardous financial condition; providing health organization right to a confidential hearing with respect to certain notifications; specifying confidential and privileged nature of risk-based capital reports and plans and related matters; prohibiting use of risk-based capital reports in ratemaking of a health organization; granting Insurance Commissioner authority to propose rules for legislative approval; providing immunity to

Insurance Commissioner and his employees and agents for actions taken with respect to monitoring the financial stability of a health organization; and changing the definition of “company action level event” for a life and health insurer.

Be it enacted by the Legislature of West Virginia:

That §33-24-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-25-6 of said code be amended and reenacted; that §33-25A-24 of said code be amended and reenacted; that §33-25D-26 of said code be amended and reenacted; that §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §33-40A-1, §33-40A-2, §33-40A-3, §33-40A-4, §33-40A-5, §33-40A-6, §33-40A-7, §33-40A-8, §33-40A-9, §33-40A-10, §33-40A-11 and §33-40A-12, all to read as follows:

ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-4. Exemptions; applicability of insurance laws.

1 Every corporation defined in section two of this article is
2 hereby declared to be a scientific, nonprofit institution and
3 exempt from the payment of all property and other taxes. Every
4 corporation, to the same extent the provisions are applicable to
5 insurers transacting similar kinds of insurance and not
6 inconsistent with the provisions of this article, shall be governed
7 by and be subject to the provisions as herein below indicated, of
8 the following articles of this chapter: Article two (Insurance
9 Commissioner); article four (general provisions), except that
10 section sixteen of said article may not be applicable thereto;
11 section twenty, article five (borrowing by insurers); section
12 thirty-four, article six (fee for form, rate and rule filing); article
13 six-c (guaranteed loss ratios as applied to individual sickness and
14 accident insurance policies); article seven (assets and liabilities);

15 article eight-a (use of clearing corporations and Federal Reserve
16 book-entry system); article eleven (unfair trade practices); article
17 twelve (insurance producers and solicitors), except that the
18 agent's license fee shall be \$25; section two-a, article fifteen
19 (definitions); section two-b, article fifteen (guaranteed issue;
20 limitation of coverage; election; denial of coverage; network
21 plans); section two-d, article fifteen (exceptions to guaranteed
22 renewability); section two-e, article fifteen (discontinuation of
23 particular type of coverage; uniform termination of all coverage;
24 uniform modification of coverage); section two-f, article fifteen
25 (certification of creditable coverage); section two-g, article
26 fifteen (applicability); section four-e, article fifteen (benefits for
27 mothers and newborns); section fourteen, article fifteen (policies
28 discriminating among health care providers); section sixteen,
29 article fifteen (policies not to exclude insured's children from
30 coverage; required services; coordination with other insurance);
31 section eighteen, article fifteen (equal treatment of state agency);
32 section nineteen, article fifteen (coordination of benefits with
33 Medicaid); article fifteen-a (West Virginia Long-Term Care
34 Insurance Act); article fifteen-c (diabetes insurance); section
35 three, article sixteen (required policy provisions); section
36 three-a, article sixteen (same - mental health); section three-d,
37 article sixteen (Medicare supplement insurance); section three-f,
38 article sixteen (required policy provisions - treatment of
39 temporomandibular joint disorder and craniomandibular
40 disorder); section three-j, article sixteen (hospital benefits for
41 mothers and newborns); section three-k, article sixteen
42 (limitations on preexisting condition exclusions for health
43 benefit plans); section three-l, article sixteen (renewability and
44 modification of health benefit plans); section three-m, article
45 sixteen (creditable coverage); section three-n, article sixteen
46 (eligibility for enrollment); section eleven, article sixteen (group
47 policies not to exclude insured's children from coverage;
48 required services; coordination with other insurance); section
49 thirteen, article sixteen (equal treatment of state agency); section
50 fourteen, article sixteen (coordination of benefits with

51 Medicaid); section sixteen, article sixteen (insurance for
52 diabetics); article sixteen-a (group health insurance conversion);
53 article sixteen-c (employer group accident and sickness
54 insurance policies); article sixteen-d (marketing and rate
55 practices for small employer accident and sickness insurance
56 policies); article twenty-six-a (West Virginia Life and Health
57 Insurance Guaranty Association Act), after October 1, 1991,
58 article twenty-seven (insurance holding company systems);
59 article twenty-eight (individual accident and sickness insurance
60 minimum standards); article thirty-three (annual audited
61 financial report); article thirty-four (administrative supervision);
62 article thirty-four-a (standards and commissioner's authority for
63 companies considered to be in hazardous financial condition);
64 article thirty-five (criminal sanctions for failure to report
65 impairment); article thirty-seven (managing general agents);
66 article forty-a (risk-based capital for health organizations); and
67 article forty-one (Insurance Fraud Prevention Act) and no other
68 provision of this chapter may apply to these corporations unless
69 specifically made applicable by the provisions of this article. If,
70 however, the corporation is converted into a corporation
71 organized for a pecuniary profit or if it transacts business
72 without having obtained a license as required by section five of
73 this article, it shall thereupon forfeit its right to these
74 exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by Insurance Commissioner; exemption from insurance laws.

1 Corporations organized under this article are subject to
2 supervision and regulation of the Insurance Commissioner. The
3 corporations organized under this article, to the same extent
4 these provisions are applicable to insurers transacting similar
5 kinds of insurance and not inconsistent with the provisions of
6 this article, shall be governed by and be subject to the provisions
7 as herein below indicated of the following articles of this

8 chapter: Article four (general provisions), except that section
9 sixteen of said article shall not be applicable thereto; article six-c
10 (guaranteed loss ratio); article seven (assets and liabilities);
11 article eight (investments); article ten (rehabilitation and
12 liquidation); section two-a, article fifteen (definitions); section
13 two-b, article fifteen (guaranteed issue); section two-d, article
14 fifteen (exception to guaranteed renewability); section two-e,
15 article fifteen (discontinuation of coverage); section two-f,
16 article fifteen (certification of creditable coverage); section
17 two-g, article fifteen (applicability); section four-e, article fifteen
18 (benefits for mothers and newborns); section fourteen, article
19 fifteen (individual accident and sickness insurance); section
20 sixteen, article fifteen (coverage of children); section eighteen,
21 article fifteen (equal treatment of state agency); section nineteen,
22 article fifteen (coordination of benefits with Medicaid); article
23 fifteen-c (diabetes insurance); section three, article sixteen
24 (required policy provisions); section three-a, article sixteen
25 (mental health); section three-j, article sixteen (benefits for
26 mothers and newborns); section three-k, article sixteen
27 (preexisting condition exclusions); section three-l, article sixteen
28 (guaranteed renewability); section three-m, article sixteen
29 (creditable coverage); section three-n, article sixteen (eligibility
30 for enrollment); section eleven, article sixteen (coverage of
31 children); section thirteen, article sixteen (equal treatment of
32 state agency); section fourteen, article sixteen (coordination of
33 benefits with Medicaid); section sixteen, article sixteen (diabetes
34 insurance); article sixteen-a (group health insurance conversion);
35 article sixteen-c (small employer group policies); article
36 sixteen-d (marketing and rate practices for small employers);
37 article twenty-five-f (coverage for patient cost of clinical trials);
38 article twenty-six-a (West Virginia Life and Health Insurance
39 Guaranty Association Act); article twenty-seven (insurance
40 holding company systems); article thirty-three (annual audited
41 financial report); article thirty-four-a (standards and
42 commissioner's authority for companies considered to be in
43 hazardous financial condition); article thirty-five (criminal

44 sanctions for failure to report impairment); article thirty-seven
45 (managing general agents); article forty-a (risk-based capital for
46 health organizations); and article forty-one (privileges and
47 immunity); and no other provision of this chapter may apply to
48 these corporations unless specifically made applicable by the
49 provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Scope of provisions; applicability of other laws.

1 (a) Except as otherwise provided in this article, provisions
2 of the insurance laws and provisions of hospital or medical
3 service corporation laws are not applicable to any health
4 maintenance organization granted a certificate of authority under
5 this article. The provisions of this article shall not apply to an
6 insurer or hospital or medical service corporation licensed and
7 regulated pursuant to the insurance laws or the hospital or
8 medical service corporation laws of this state except with respect
9 to its health maintenance corporation activities authorized and
10 regulated pursuant to this article. The provisions of this article
11 may not apply to an entity properly licensed by a reciprocal state
12 to provide health care services to employer groups, where
13 residents of West Virginia are members of an employer group,
14 and the employer group contract is entered into in the reciprocal
15 state. For purposes of this subsection, a “reciprocal state” means
16 a state which physically borders West Virginia and which has
17 subscriber or enrollee hold harmless requirements substantially
18 similar to those set out in section seven-a of this article.

19 (b) Factually accurate advertising or solicitation regarding
20 the range of services provided, the premiums and copayments
21 charged, the sites of services and hours of operation and any
22 other quantifiable, nonprofessional aspects of its operation by a
23 health maintenance organization granted a certificate of
24 authority or its representative may not be construed to violate

25 any provision of law relating to solicitation or advertising by
26 health professions: *Provided*, That nothing contained in this
27 subsection shall be construed as authorizing any solicitation or
28 advertising which identifies or refers to any individual provider
29 or makes any qualitative judgment concerning any provider.

30 (c) Any health maintenance organization authorized under
31 this article may not be considered to be practicing medicine and
32 is exempt from the provisions of chapter thirty of this code
33 relating to the practice of medicine.

34 (d) The following provisions of this chapter are applicable
35 to any health maintenance organization granted a certificate of
36 authority under this article or which is otherwise subject to the
37 provisions of this article: The provisions of sections four, five,
38 six, seven, eight, nine and nine-a, article two (Insurance
39 Commissioner); sections fifteen and twenty, article four (general
40 provisions); section twenty, article five (borrowing by insurers);
41 section seventeen, article six (validity of noncomplying forms);
42 article six-c (guaranteed loss ratios as applied to individual
43 sickness and accident insurance policies); article seven (assets
44 and liabilities); article eight (investments); article eight-a (use of
45 clearing corporations and federal reserve book-entry system);
46 article nine (administration of deposits); article ten
47 (rehabilitation and liquidation); article twelve (insurance
48 producers and solicitors); section fourteen, article fifteen
49 (policies discriminating among health care providers); section
50 sixteen, article fifteen (policies not to exclude insured's children
51 from coverage; required services; coordination with other
52 insurance); section eighteen, article fifteen (equal treatment of
53 state agency); section nineteen, article fifteen (coordination of
54 benefits with Medicaid); article fifteen-b (Uniform Health Care
55 Administration Act); section three, article sixteen (required
56 policy provisions); section three-f, article sixteen (required
57 policy provisions - treatment of temporomandibular joint
58 disorder and craniomandibular disorder); section eleven, article
59 sixteen (group policies not to exclude insured's children from

60 coverage; required services; coordination with other insurance);
61 section thirteen, article sixteen (equal treatment of state agency);
62 section fourteen, article sixteen (coordination of benefits with
63 Medicaid); article sixteen-a (group health insurance conversion);
64 article sixteen-d (marketing and rate practices for small
65 employer accident and sickness insurance policies); article
66 twenty-five-c (Health Maintenance Organization Patient Bill of
67 Rights); article twenty-five-f (coverage for patient cost of
68 clinical trials); article twenty-seven (insurance holding company
69 systems); article thirty-three (annual audited financial report);
70 article thirty-four (administrative supervision); article
71 thirty-four-a (standards and commissioner's authority for
72 companies considered to be in hazardous financial condition);
73 article thirty-five (criminal sanctions for failure to report
74 impairment); article thirty-seven (managing general agents);
75 article thirty-nine (disclosure of material transactions); article
76 forty-a (risk-based capital for health organizations); article
77 forty-one (Insurance Fraud Prevention Act); and article forty-two
78 (Women's Access to Health Care Act). In circumstances where
79 the code provisions made applicable to health maintenance
80 organizations by this subsection refer to the insurer, the
81 corporation or words of similar import, the language shall be
82 construed to include health maintenance organizations.

83 (e) Any long-term care insurance policy delivered or issued
84 for delivery in this state by a health maintenance organization
85 shall comply with the provisions of article fifteen-a of this
86 chapter.

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION ACT.

§33-25D-26. Scope of provisions; applicability of other laws.

1 (a) Except as otherwise provided in this article, provisions
2 of the insurance laws, provisions of hospital, medical, dental or
3 health service corporation laws and provisions of health

4 maintenance organization laws are not applicable to any prepaid
5 limited health service organization granted a certificate of
6 authority under this article. The provisions of this article do not
7 apply to an insurer, hospital, medical, dental or health service
8 corporation, or health maintenance organization licensed and
9 regulated pursuant to the insurance laws, hospital, medical,
10 dental or health service corporation laws or health maintenance
11 organization laws of this state except with respect to its prepaid
12 limited health service corporation activities authorized and
13 regulated pursuant to this article. The provisions of this article
14 do not apply to an entity properly licensed by a reciprocal state
15 to provide a limited health care service to employer groups,
16 where residents of West Virginia are members of an employer
17 group, and the employer group contract is entered into in the
18 reciprocal state. For purposes of this subsection, a “reciprocal
19 state” means a state which physically borders West Virginia and
20 which has subscriber or enrollee hold harmless requirements
21 substantially similar to those set out in section ten of this article.

22 (b) Factually accurate advertising or solicitation regarding
23 the range of services provided, the premiums and copayments
24 charged, the sites of services and hours of operation and any
25 other quantifiable, nonprofessional aspects of its operation by a
26 prepaid limited health service organization granted a certificate
27 of authority, or its representative do not violate any provision of
28 law relating to solicitation or advertising by health professions:
29 *Provided*, That nothing contained in this subsection authorizes
30 any solicitation or advertising which identifies or refers to any
31 individual provider or makes any qualitative judgment
32 concerning any provider.

33 (c) Any prepaid limited health service organization
34 authorized under this article is not considered to be practicing
35 medicine and is exempt from the provision of chapter thirty of
36 this code relating to the practice of medicine.

37 (d) The provisions of section nine, article two, examinations;
38 section nine-a, article two, one-time assessment; section thirteen,
39 article two, hearings; sections fifteen and twenty, article four,
40 general provisions; section twenty, article five, borrowing by
41 insurers; section seventeen, article six, noncomplying forms;
42 article six-c, guaranteed loss ratio; article seven, assets and
43 liabilities; article eight, investments; article eight-a, use of
44 clearing corporations and Federal Reserve book-entry system;
45 article nine, administration of deposits; article ten, rehabilitation
46 and liquidation; article twelve, agents, brokers, solicitors and
47 excess line; section fourteen, article fifteen, individual accident
48 and sickness insurance; section sixteen, article fifteen, coverage
49 of children; section eighteen, article fifteen, equal treatment of
50 state agency; section nineteen, article fifteen, coordination of
51 benefits with Medicaid; article fifteen-b, Uniform Health Care
52 Administration Act; section three, article sixteen, required policy
53 provisions; section eleven, article sixteen, coverage of children;
54 section thirteen, article sixteen, equal treatment of state agency;
55 section fourteen, article sixteen, coordination of benefits with
56 Medicaid; article sixteen-a, group health insurance conversion;
57 article sixteen-d, marketing and rate practices for small
58 employers; article twenty-seven, insurance holding company
59 systems; article thirty-three, annual audited financial report;
60 article thirty-four, administrative supervision; article
61 thirty-four-a, standards and commissioner's authority for
62 companies considered to be in hazardous financial condition;
63 article thirty-five, criminal sanctions for failure to report
64 impairment; article thirty-seven, managing general agents;
65 article thirty-nine, disclosure of material transactions; article
66 forty-a, risk-based capital for health organizations; and article
67 forty-one, privileges and immunity, all of this chapter are
68 applicable to any prepaid limited health service organization
69 granted a certificate of authority under this article. In
70 circumstances where the code provisions made applicable to
71 prepaid limited health service organizations by this section refer

72 to the insurer, the corporation or words of similar import, the
73 language includes prepaid limited health service organizations.

74 (e) Any long-term care insurance policy delivered or issued
75 for delivery in this state by a prepaid limited health service
76 organization shall comply with the provisions of article fifteen-a
77 of this chapter.

78 (f) A prepaid limited health service organization granted a
79 certificate of authority under this article is exempt from paying
80 municipal business and occupation taxes on gross income it
81 receives from its enrollees, or from their employers or others on
82 their behalf, for health care items or services provided directly
83 or indirectly by the prepaid limited health service organization.

ARTICLE 40. RISK-BASED CAPITAL FOR INSURERS.

§33-40-1. Definitions.

1 As used in this article, these terms have the following
2 meanings:

3 (a) “Adjusted RBC report” means an RBC report which has
4 been adjusted by the commissioner in accordance with
5 subsection (e), section two of this article.

6 (b) “Corrective order” means an order issued by the
7 commissioner specifying corrective actions which the
8 commissioner has determined are required.

9 (c) “Domestic insurer” means any insurance company,
10 farmers’ mutual fire insurance company or HMO domiciled in
11 this state.

12 (d) “Foreign insurer” means any insurance company which
13 is licensed to do business in this state under article three of this
14 chapter but is not domiciled in this state.

15 (e) “NAIC” means the National Association of Insurance
16 Commissioners.

17 (f) “Life and/or health insurer” means any insurance
18 company licensed under article three of this chapter or a licensed
19 property and casualty insurer writing only accident and health
20 insurance.

21 (g) “Property and casualty insurer” means any insurance
22 company licensed under article three of this chapter or any
23 farmers’ mutual fire insurance company licensed under article
24 twenty-two of this chapter, but may not include monoline
25 mortgage guaranty insurers, financial guaranty insurers and title
26 insurers.

27 (h) “Negative trend” means, with respect to a life and/or
28 health insurer, negative trend over a period of time, as
29 determined in accordance with the trend test calculation included
30 in the RBC instructions.

31 (i) “RBC instructions” means the RBC report, including
32 risk-based capital instructions adopted by the NAIC, as the RBC
33 instructions may be amended by the NAIC, from time to time, in
34 accordance with the procedures adopted by the NAIC.

35 (j) “RBC level” means an insurer’s company action level
36 RBC, regulatory action level RBC, authorized control level
37 RBC, or mandatory control level RBC where:

38 (1) “Company action level RBC” means, with respect to any
39 insurer, the product of two and its authorized control level RBC;

40 (2) “Regulatory action level RBC” means the product of one
41 and one-half and its authorized control level RBC;

42 (3) “Authorized control level RBC” means the number
43 determined under the risk-based capital formula in accordance
44 with the RBC instructions;

45 (4) "Mandatory control level RBC" means the product of
46 seven-tenths and the authorized control level RBC.

47 (k) "RBC plan" means a comprehensive financial plan
48 containing the elements specified in subsection (b), section three
49 of this article. If the commissioner rejects the RBC plan and it is
50 revised by the insurer, with or without the commissioner's
51 recommendation, the plan shall be called the revised RBC plan.

52 (l) "RBC report" means the report required in section two of
53 this article.

54 (m) "Total adjusted capital" means the sum of:

55 (1) An insurer's statutory capital and surplus as determined
56 in accordance with the statutory accounting applicable to the
57 financial statements required to be filed under section fourteen,
58 article four of this chapter; and

59 (2) Any other items required by the RBC instructions.

§33-40-2. RBC reports.

1 (a) Every domestic insurer, on or prior to each March 1 (the
2 filing date), shall prepare and submit to the commissioner a
3 report of its RBC levels as of the end of the calendar year just
4 ended, in a form and containing the information required by the
5 RBC instructions. In addition, every domestic insurer shall file
6 its RBC report:

7 (1) With the NAIC in accordance with the RBC instructions;
8 and

9 (2) With the Insurance Commissioner in any state in which
10 the insurer is authorized to do business, if the Insurance
11 Commissioner has notified the insurer of its request in writing,
12 in which case the insurer shall file its RBC report not later than
13 the later of:

14 (A) Fifteen days from the receipt of notice to file its RBC
15 report with that state; or

16 (B) The filing date.

17 (b) A life and health insurer's RBC shall be determined in
18 accordance with the formula set forth in the RBC instructions.
19 The formula shall take into account (and may adjust for the
20 covariance between):

21 (1) The risk with respect to the insurer's assets;

22 (2) The risk of adverse insurance experience with respect to
23 the insurer's liabilities and obligations;

24 (3) The interest rate risk with respect to the insurer's
25 business; and

26 (4) All other business risks and any other relevant risks set
27 forth in the RBC instructions determined in each case by
28 applying the factors in the manner set forth in the RBC
29 instructions.

30 (c) A property and casualty insurer's RBC shall be
31 determined in accordance with the applicable formula set forth
32 in the RBC instructions. The formula shall take into account (and
33 may adjust for the covariance between), determined in each case
34 by applying the factors in the manner set forth in the RBC
35 instructions:

36 (1) Asset risk;

37 (2) Credit risk;

38 (3) Underwriting risk; and

39 (4) All other business risks and any other relevant risks as
40 are set forth in the RBC instructions.

41 (d) An excess of capital over the amount produced by the
42 risk-based capital requirements contained in this article and the
43 formulas, schedules and instructions referenced in this article is
44 desirable in the business of insurance. Accordingly, insurers and
45 HMOs should seek to maintain capital above the RBC levels
46 required by this article. Additional capital is used and useful in
47 the insurance business and helps to secure insurers against
48 various risks inherent in, or affecting, the business of insurance
49 and not accounted for or only partially measured by the
50 risk-based capital requirements contained in this article.

51 (e) If a domestic insurer files an RBC report which, in the
52 judgment of the commissioner is inaccurate, then the
53 commissioner shall adjust the RBC report to correct the
54 inaccuracy and shall notify the insurer of the adjustment. The
55 notice shall contain a statement of the reason for the adjustment.
56 An RBC report that is adjusted is referred to as an Adjusted RBC
57 Report.

§33-40-3. Company action level event.

1 (a) “Company action level event” means any of the
2 following events:

3 (1) The filing of an RBC report by an insurer which indicates
4 that:

5 (A) The insurer’s total adjusted capital is greater than or
6 equal to its regulatory action level RBC, but less than its
7 company action level RBC;

8 (B) If a life and/or health insurer, the insurer has total
9 adjusted capital which is greater than or equal to its company
10 action level RBC, but less than the product of its authorized
11 control level RBC and three and has a negative trend; or

12 (C) If a property and casualty insurer, the insurer has total
13 adjusted capital which is greater than or equal to its company

14 action level RBC, but less than the product of its authorized
15 control level RBC and three and triggers the trend test
16 determined in accordance with the trend test calculation included
17 in the property and casualty RBC instructions;

18 (2) The notification by the commissioner to the insurer of an
19 adjusted RBC report that indicates an event in subdivision (1) of
20 this subsection, provided the insurer does not challenge the
21 adjusted RBC report under section seven of this article; or

22 (3) If, pursuant to section seven of this article, an insurer
23 challenges an adjusted RBC report that indicates the event in
24 subdivision (1) of this subsection, the notification by the
25 commissioner to the insurer that the commissioner has, after a
26 hearing, rejected the insurer's challenge.

27 (b) If there is a company action level event, the insurer shall
28 prepare and submit to the commissioner an RBC plan which
29 shall:

30 (1) Identify the conditions which contribute to the company
31 action level event;

32 (2) Contain proposals of corrective actions which the insurer
33 intends to take and would be expected to result in the elimination
34 of the company action level event;

35 (3) Provide projections of the insurer's financial results in
36 the current year and at least the four succeeding years, both in
37 the absence of proposed corrective actions and giving effect to
38 the proposed corrective actions, including projections of
39 statutory operating income, net income, capital and/or surplus.
40 (The projections for both new and renewal business may include
41 separate projections for each major line of business and
42 separately identify each significant income, expense and benefit
43 component);

44 (4) Identify the key assumptions impacting the insurer's
45 projections and the sensitivity of the projections to the
46 assumptions; and

47 (5) Identify the quality of, and problems associated with, the
48 insurer's business, including, but not limited to, its assets,
49 anticipated business growth and associated surplus strain,
50 extraordinary exposure to risk, mix of business and use of
51 reinsurance, if any, in each case.

52 (c) The RBC plan shall be submitted:

53 (1) Within forty-five days of the company action level event;
54 or

55 (2) If the insurer challenges an adjusted RBC report pursuant
56 to section seven of this article, within forty-five days after
57 notification to the insurer that the commissioner has, after a
58 hearing, rejected the insurer's challenge.

59 (d) Within sixty days after the submission by an insurer of
60 an RBC plan to the commissioner, the commissioner shall notify
61 the insurer whether the RBC plan may be implemented or is, in
62 the judgment of the commissioner, unsatisfactory. If the
63 commissioner determines the RBC plan is unsatisfactory, the
64 notification to the insurer shall set forth the reasons for the
65 determination and may set forth proposed revisions which will
66 render the RBC plan satisfactory in the judgment of the
67 commissioner. Upon notification from the commissioner, the
68 insurer shall prepare a revised RBC plan, which may incorporate
69 by reference any revisions proposed by the commissioner, and
70 shall submit the revised RBC plan to the commissioner:

71 (1) Within forty-five days after the notification from the
72 commissioner; or

73 (2) If the insurer challenges the notification from the
74 commissioner under section seven of this article, within

75 forty-five days after a notification to the insurer that the
76 commissioner has, after a hearing, rejected the insurer's
77 challenge.

78 (e) If there is a notification by the commissioner to an
79 insurer that the insurer's RBC plan or revised RBC plan is
80 unsatisfactory, the commissioner may, at the commissioner's
81 discretion, subject to the insurer's right to a hearing under
82 section seven of this article, specify in the notification that the
83 notification constitutes a regulatory action level event.

84 (f) Every domestic insurer that files an RBC plan or revised
85 RBC plan with the commissioner shall file a copy of the RBC
86 plan or revised RBC plan with the Insurance Commissioner in
87 any state in which the insurer is authorized to do business if:

88 (1) The state has an RBC provision substantially similar to
89 subsection (a), section eight of this article; and

90 (2) The Insurance Commissioner of that state has notified
91 the insurer of its request for the filing in writing, in which case
92 the insurer shall file a copy of the RBC plan or revised RBC plan
93 in that state no later than the later of:

94 (A) Fifteen days after the receipt of notice to file a copy of
95 its RBC plan or revised RBC plan with the state; or

96 (B) The date on which the RBC plan or revised RBC plan is
97 filed under subsections (c) and (d) of this section.

§33-40-6. Mandatory control level event.

1 (a) "Mandatory control level event" means any of the
2 following events:

3 (1) The filing of an RBC report which indicates that the
4 insurer's adjusted capital is less than its mandatory control level
5 RBC;

6 (2) Notification by the commissioner to the insurer of an
7 adjusted RBC report that indicates the event in subdivision (1)
8 of this subsection, provided the insurer does not challenge the
9 adjusted RBC report under section seven of this article; or

10 (3) If, pursuant to section seven of this article, the insurer
11 challenges an adjusted RBC report that indicates the event in
12 subdivision (1) of this subsection, notification by the
13 commissioner to the insurer or HMO that the commissioner has,
14 after a hearing, rejected the insurer's or HMO's challenge.

15 (b) If there is a mandatory control level event:

16 (1) With respect to a life insurer, the commissioner shall take
17 any actions that are necessary to place the insurer under
18 regulatory control under article ten of this chapter. In that event,
19 the mandatory control level event shall be considered sufficient
20 grounds for the commissioner to take action under said article,
21 and the commissioner has the rights, powers and duties with
22 respect to the insurer that are set forth in said article. If the
23 commissioner takes actions pursuant to an adjusted RBC report,
24 the insurer is entitled to the protections of said article pertaining
25 to summary proceedings. Notwithstanding any of the provisions
26 of this subdivision, the commissioner may forego action for up
27 to ninety days after the mandatory control level event if the
28 commissioner finds there is a reasonable expectation that the
29 mandatory control level event may be eliminated within the
30 ninety-day period.

31 (2) With respect to a property and casualty insurer, the
32 commissioner shall take any actions that are necessary to place
33 the insurer under regulatory control under article ten of this
34 chapter or, in the case of an insurer which is writing no business
35 and which is running-off its existing business, may allow the
36 insurer to continue its run-off under the supervision of the
37 commissioner. In either event, the mandatory control level event

38 shall be considered sufficient grounds for the commissioner to
39 take action under said article and the commissioner has the
40 rights, powers and duties with respect to the insurer that are set
41 forth in said article. If the commissioner takes actions pursuant
42 to an adjusted RBC report, the insurer is entitled to the
43 protections of said article pertaining to summary proceedings.
44 Notwithstanding any of the provisions of this subdivision, the
45 commissioner may forego action for up to ninety days after the
46 mandatory control level event if the commissioner finds there is
47 a reasonable expectation that the mandatory control level event
48 may be eliminated within the ninety-day period.

§33-40-7. Hearings.

1 Insurers have the right to a confidential departmental
2 hearing, on the record, at which the insurer may challenge any
3 determination or action by the commissioner made pursuant to
4 the provisions of this article. The insurer shall notify the
5 commissioner of its request for a hearing within ten days after
6 receiving notification from the commissioner.

7 (a) Notification to an insurer by the commissioner of an
8 adjusted RBC report; or

9 (b) Notification to an insurer by the commissioner that:

10 (1) The insurer's RBC plan or revised RBC plan is
11 unsatisfactory; and

12 (2) The notification constitutes a regulatory action level
13 event with respect to the insurer; or

14 (c) Notification to any insurer by the commissioner that the
15 insurer has failed to adhere to its RBC plan or revised RBC plan
16 and that the failure has a substantial adverse effect on the ability
17 of the insurer to eliminate the company action level event with

18 respect to the insurer in accordance with its RBC plan or revised
19 RBC plan; or

20 (d) Notification to an insurer by the commissioner of a
21 corrective order with respect to the insurer.

22 (e) Upon receipt of the insurer's request for a hearing, the
23 commissioner shall set a date for the hearing, which shall be no
24 less than fifteen nor more than forty-five days after the date of
25 the insurer's request.

ARTICLE 40A. RISKED-BASED CAPITAL FOR HEALTH ORGANIZATIONS.

§33-40A-1. Definitions.

1 As used in this article, these terms have the following
2 meanings:

3 (a) "Adjusted RBC report" means an RBC report which has
4 been adjusted by the commissioner in accordance with
5 subsection (d), section two of this article.

6 (b) "Corrective order" means an order issued by the
7 commissioner specifying corrective actions which the
8 commissioner has determined are required.

9 (c) "Domestic health organization" means a health
10 organization domiciled in this state.

11 (d) "Foreign health organization" means a health
12 organization that is licensed to do business in this state under
13 article twenty-five-a of this chapter but is not domiciled in this
14 state.

15 (e) "Health organization" means a health maintenance
16 organization licensed under article twenty-five-a of this chapter,

17 limited health service organization licensed under article
18 twenty-five-d of this chapter, provider-sponsored network
19 licensed under article twenty-five-g of this chapter, hospital,
20 medical and dental indemnity or service corporation licensed
21 under article twenty-four of this chapter or other managed care
22 organization licensed under article twenty-five of this chapter.
23 This definition does not include an organization that is licensed
24 under article three of this chapter as either a life or health insurer
25 or a property and casualty insurer and that is otherwise subject
26 to either the life and health or property and casualty RBC
27 requirements.

28 (f) "NAIC" means the National Association of Insurance
29 Commissioners.

30 (g) "Negative trend" means a negative trend over a period of
31 time, as determined in accordance with the trend test calculation
32 included in the RBC instructions.

33 (h) "RBC instructions" means the RBC report including
34 risk-based capital instructions adopted by the NAIC, as these
35 RBC instructions may be amended by the NAIC from time to
36 time in accordance with the procedures adopted by the NAIC.

37 (i) "RBC level" means a health organization's company
38 action level RBC, regulatory action level RBC, authorized
39 control level RBC, or mandatory control level RBC where:

40 (1) "Company action level RBC" means, with respect to any
41 health organization, the product of 2.0 and its authorized control
42 level RBC;

43 (2) "Regulatory action level RBC" means the product of 1.5
44 and its authorized control level RBC;

45 (3) "Authorized control level RBC" means the number
46 determined under the risk-based capital formula in accordance
47 with the RBC instructions;

48 (4) “Mandatory control level RBC” means the product of .70
49 and the authorized control level RBC.

50 (j) “RBC plan” means a comprehensive financial plan
51 containing the elements specified in subsection (b), section three
52 of this article. If the commissioner rejects the RBC plan, and it
53 is revised by the health organization, with or without the
54 commissioner’s recommendation, the plan shall be called the
55 “revised RBC plan”.

56 (k) “RBC report” means the report required in section two of
57 this article.

58 (l) “Total adjusted capital” means the sum of:

59 (1) A health organization’s statutory capital and surplus (i.e.
60 net worth) as determined in accordance with the statutory
61 accounting application to the annual financial statements
62 required to be filed under:

63 (A) Section four, article twenty-four of this chapter;

64 (B) Section nine, article twenty-five of this chapter;

65 (C) Section nine, article twenty-five-a of this chapter; or

66 (D) Section twelve, article twenty-five-d of this chapter; and

67 (2) Such other items, if any, as the RBC instructions may
68 provide.

§33-40A-2. RBC reports.

1 (a) A domestic health organization, on or prior to each
2 March 1 (the filing date), shall prepare and submit to the
3 commissioner a report of its RBC levels as of the end of the
4 calendar year just ended, in a form and containing such

5 information as is required by the RBC instructions. In addition,
6 a domestic health organization shall file its RBC report:

7 (1) With the NAIC in accordance with the RBC instructions;
8 and

9 (2) With the Insurance Commissioner in any state in which
10 the health organization is authorized to do business, if the
11 Insurance Commissioner has notified the health organization of
12 its request in writing, in which case the health organization shall
13 file its RBC report not later than the later of:

14 (A) Fifteen days from the receipt of notice to file its RBC
15 report with that state; or

16 (B) The filing date.

17 (b) A health organization's RBC shall be determined in
18 accordance with the formula set forth in the RBC instructions.
19 The formula shall take the following into account (and may
20 adjust for the covariance between) determined in each case by
21 applying the factors in the manner set forth in the RBC
22 instructions.

23 (1) Asset risk;

24 (2) Credit risk;

25 (3) Underwriting risk; and

26 (4) All other business risks and such other relevant risks as
27 are set forth in the RBC instructions.

28 (c) An excess of capital (i.e. net worth) over the amount
29 produced by the risk-based capital requirements contained in this
30 article and the formulas, schedules and instructions referenced
31 in this article is desirable in the business of health insurance.

32 Accordingly, health organizations should seek to maintain
33 capital above the RBC levels required by this article. Additional
34 capital is used and useful in the insurance business and helps to
35 secure a health organization against various risks inherent in, or
36 affecting, the business of insurance and not accounted for or only
37 partially measured by the risk-based capital requirements
38 contained in this article.

39 (d) If a domestic health organization files an RBC report that
40 in the judgment of the commissioner is inaccurate, then the
41 commissioner shall adjust the RBC report to correct the
42 inaccuracy and shall notify the health organization of the
43 adjustment. The notice shall contain a statement of the reason for
44 the adjustment. An RBC report as so adjusted is referred to as an
45 adjusted RBC report.

§33-40A-3. Company action level event.

1 (a) “Company action level event” means any of the
2 following events:

3 (1) The filing of an RBC report by a health organization that
4 indicates that the health organization’s total adjusted capital is
5 greater than or equal to its regulatory action level RBC but less
6 than its company action level RBC;

7 (2) If a health organization has total adjusted capital which
8 is greater than or equal to its company action level RBC but less
9 than the product of its authorized control level RBC and 3.0 and
10 triggers the trend test determined in accordance with the trend
11 test calculation included in the health RBC instructions:

12 (3) Notification by the commissioner to the health
13 organization of an adjusted RBC report that indicates an event in
14 subdivision (1) of this subsection, provided the health
15 organization does not challenge the adjusted RBC report under
16 section seven of this article; or

17 (4) If, pursuant to section seven of this article, a health
18 organization challenges an adjusted RBC report that indicates
19 the event in subdivision (1) of this subsection, the notification by
20 the commissioner to the health organization that the
21 commissioner has, after a hearing, rejected the health
22 organization's challenge.

23 (b) If there is a company action level event, the health
24 organization shall prepare and submit to the commissioner an
25 RBC plan that shall:

26 (1) Identify the conditions that contribute to the company
27 action level event;

28 (2) Contain proposals of corrective actions that the health
29 organization intends to take and that would be expected to result
30 in the elimination of the company action level event;

31 (3) Provide projections of the health organization's financial
32 results in the current year and at least two succeeding years, both
33 in the absence of proposed corrective actions and giving effect
34 to the proposed corrective actions, including projections of
35 statutory balance sheets, operating income, net income, capital
36 and surplus, and RBC levels. The projections for both new and
37 renewal business might include separate projections for each
38 major line of business and separately identify each significant
39 income, expense and benefit component;

40 (4) Identify the key assumptions impacting the health
41 organization's projections and the sensitivity of the projections
42 to the assumptions; and

43 (5) Identify the quality of, and problems associated with, the
44 health organization's business, including, but not limited to, its
45 assets, anticipated business growth and associated surplus strain,
46 extraordinary exposure to risk, mix of business and use of
47 reinsurance, if any, in each case.

48 (c) The RBC plan shall be submitted:

49 (1) Within forty-five days of the company action level event;
50 or

51 (2) If the health organization challenges an adjusted RBC
52 report pursuant to section seven of this article, within forty-five
53 days after notification to the health organization that the
54 commissioner has, after a hearing, rejected the health
55 organization's challenge.

56 (d) Within sixty days after the submission by a health
57 organization of an RBC plan to the commissioner, the
58 commissioner shall notify the health organization whether the
59 RBC plan shall be implemented or is, in the judgment of the
60 commissioner, unsatisfactory. If the commissioner determines
61 the RBC plan is unsatisfactory, the notification to the health
62 organization shall set forth the reasons for the determination, and
63 may set forth proposed revisions which will render the RBC plan
64 satisfactory, in the judgment of the commissioner. Upon
65 notification from the commissioner, the health organization shall
66 prepare a revised RBC plan, which may incorporate by reference
67 any revisions proposed by the commissioner, and shall submit
68 the revised RBC plan to the commissioner:

69 (1) Within forty-five days after the notification from the
70 commissioner; or

71 (2) If the health organization challenges the notification from
72 the commissioner under section seven of this article, within
73 forty-five days after a notification to the health organization that
74 the commissioner has, after a hearing, rejected the health
75 organization's challenge.

76 (e) If there is a notification by the commissioner to a health
77 organization that the health organization's RBC plan or revised

78 RBC plan is unsatisfactory, the commissioner may, subject to the
79 health organization's right to a hearing under section seven of
80 this article, specify in the notification that the notification
81 constitutes a regulatory action level event.

82 (f) Every domestic health organization that files an RBC
83 plan or revised RBC plan with the commissioner shall file a copy
84 of the RBC plan or revised RBC plan with the Insurance
85 Commissioner in any state in which the health organization is
86 authorized to do business if:

87 (1) The state has an RBC provision substantially similar to
88 subsection (a), section eight of this article; and

89 (2) The Insurance Commissioner of that state has notified
90 the health organization of its request for the filing in writing, in
91 which case the health organization shall file a copy of the RBC
92 plan or revised RBC plan in that state no later than the later of:

93 (A) Fifteen days after the receipt of notice to file a copy of
94 its RBC plan or revised RBC plan with the state; or

95 (B) The date on which the RBC plan or revised RBC plan is
96 filed under subsections (c) and (d) of this section.

§33-40A-4. Regulatory action level event.

1 (a) "Regulatory action level event" means, with respect to a
2 health organization, any of the following events:

3 (1) Filing of an RBC report by the health organization that
4 indicates that the health organization's total adjusted capital is
5 greater than or equal to its authorized control level RBC but less
6 than its regulatory action level RBC;

7 (2) Notification by the commissioner to a health organization
8 of an adjusted RBC report that indicates the event in subdivision

9 (1) of this subsection, provided the health organization does not
10 challenge the adjusted RBC report under section seven of this
11 article;

12 (3) If, pursuant to section seven of this article, the health
13 organization challenges an adjusted RBC report that indicates
14 the event in subdivision (1) of this subsection, the notification by
15 the commissioner to the health organization that the
16 commissioner has, after a hearing, rejected the health
17 organization's challenge;

18 (4) The failure of the health organization to file an RBC
19 report by the filing date, unless the health organization has
20 provided an explanation for the failure that is satisfactory to the
21 commissioner and has cured the failure within ten days after the
22 filing date;

23 (5) The failure of the health organization to submit an RBC
24 plan to the commissioner within the time period set forth in
25 subsection (c), section three of this article;

26 (6) Notification by the commissioner to the health
27 organization that:

28 (A) The RBC plan or revised RBC plan submitted by the
29 health organization is, in the judgment of the commissioner,
30 unsatisfactory; and

31 (B) Notification constitutes a regulatory action level event
32 with respect to the health organization, provided the health
33 organization has not challenged the determination under section
34 seven of this article;

35 (7) If, pursuant to section seven of this article, the health
36 organization challenges a determination by the commissioner
37 under subdivision (6) of this subsection, the notification by the

38 commissioner to the health organization that the commissioner
39 has, after a hearing, rejected the challenge;

40 (8) Notification by the commissioner to the health
41 organization that the health organization has failed to adhere to
42 its RBC plan or revised RBC plan, but only if the failure has a
43 substantial adverse effect on the ability of the health
44 organization to eliminate the company action level event in
45 accordance with its RBC plan or revised RBC plan and the
46 commissioner has so stated in the notification, provided the
47 health organization has not challenged the determination under
48 section seven of this article; or

49 (9) If, pursuant to section seven of this article, the health
50 organization challenges a determination by the commissioner
51 under subdivision (8) of this subsection, the notification by the
52 commissioner to the health organization that the commissioner
53 has, after a hearing, rejected the challenge.

54 (b) If there is a regulatory action level event, the
55 commissioner shall:

56 (1) Require the health organization to prepare and submit an
57 RBC plan or, if applicable, a revised RBC plan;

58 (2) Perform such examination or analysis as the
59 commissioner considers necessary of the assets, liabilities and
60 operations of the health organization including a review of its
61 RBC plan or revised RBC plan; and

62 (3) Subsequent to the examination or analysis, issue an order
63 specifying such corrective actions as the commissioner
64 determines are required (a corrective order).

65 (c) In determining corrective actions, the commissioner may
66 take into account factors the commissioner deems relevant with
67 respect to the health organization based upon the commissioner's

68 examination or analysis of the assets, liabilities and operations
69 of the health organization, including, but not limited to, the
70 results of any sensitivity tests undertaken pursuant to the RBC
71 instructions. The RBC plan or revised RBC plan shall be
72 submitted:

73 (1) Within forty-five days after the occurrence of the
74 regulatory action level event;

75 (2) If the health organization challenges an adjusted RBC
76 report pursuant to section seven of this article and the challenge
77 is not frivolous in the judgment of the commissioner, within
78 forty-five days after the notification to the health organization
79 that the commissioner has, after a hearing, rejected the health
80 organization's challenge; or

81 (3) If the health organization challenges a revised RBC plan
82 pursuant to section seven of this article and the challenge is not
83 frivolous in the judgment of the commissioner, within forty-five
84 days after the notification to the health organization that the
85 commissioner has, after a hearing, rejected the health
86 organization's challenge.

87 (d) The commissioner may retain actuaries and investment
88 experts and other consultants as may be necessary in the
89 judgment of the commissioner to review the health
90 organization's RBC plan or revised RBC plan, examine or
91 analyze the assets, liabilities and operations (including
92 contractual relationships) of the health organization and
93 formulate the corrective order with respect to the health
94 organization. The fees, costs and expenses relating to consultants
95 shall be borne by the affected health organization or such other
96 party as directed by the commissioner.

§33-40A-5. Authorized control level event.

1 (a) "Authorized control level event" means any of the
2 following events:

3 (1) The filing of an RBC report by the health organization
4 that indicates that the health organization's total adjusted capital
5 is greater than or equal to its mandatory control level RBC but
6 less than its authorized control level RBC;

7 (2) The notification by the commissioner to the health
8 organization of an adjusted RBC report that indicates the event
9 in subdivision (1) of this subsection, if the health organization
10 does not challenge the adjusted RBC report under section seven
11 of this article;

12 (3) If, pursuant to section seven of this article, the health
13 organization challenges an adjusted RBC report that indicates
14 the event in subdivision (1) of this subsection, notification by the
15 commissioner to the health organization that the commissioner
16 has, after a hearing, rejected the health organization's challenge;

17 (4) The failure of the health organization to respond, in a
18 manner satisfactory to the commissioner, to a corrective order,
19 if the health organization has not challenged the corrective order
20 under section seven of this article; or

21 (5) If the health organization has challenged a corrective
22 order under section seven of this article and the commissioner
23 has, after a hearing, rejected the challenge or modified the
24 corrective order, the failure of the health organization to respond,
25 in a manner satisfactory to the commissioner, to the corrective
26 order subsequent to rejection or modification by the
27 commissioner.

28 (b) If there is an authorized control level event with respect
29 to a health organization, the commissioner shall:

30 (1) Take such actions as are required under section four of
31 this article regarding a health organization with respect to which
32 a regulatory action level event has occurred; or

33 (2) If the commissioner considers it to be in the best interests
34 of the policyholders and creditors of the health organization and
35 of the public, take such actions as are necessary to cause the
36 health organization to be placed under regulatory control under
37 article ten of this chapter. If the commissioner takes such
38 actions, the authorized control level event shall be considered
39 sufficient grounds for the commissioner to take action under
40 article ten of this chapter, and the commissioner has the rights,
41 powers and duties with respect to the health organization as are
42 set forth in article ten of this chapter. If the commissioner takes
43 actions under this subdivision pursuant to an adjusted RBC
44 report, the health organization is entitled to such protections as
45 are afforded to health organizations under article ten of this
46 chapter pertaining to summary proceedings.

§33-40A-6. Mandatory control level event.

1 (a) “Mandatory control level event” means any of the
2 following events:

3 (1) The filing of an RBC report which indicates that the
4 health organization’s total adjusted capital is less than its
5 mandatory control level RBC;

6 (2) Notification by the commissioner to the health
7 organization of an adjusted RBC report that indicates the event
8 in subdivision (1) of this subsection, if the health organization
9 does not challenge the adjusted RBC report under section seven
10 of this article; or

11 (3) If, pursuant to section seven of this article, the health
12 organization challenges an adjusted RBC report that indicates
13 the event in subdivision (1) of this subsection, notification by the
14 commissioner to the health organization that the commissioner
15 has, after a hearing, rejected the health organization’s challenge.

16 (b) If it is a mandatory control level event, the commissioner
17 shall take such actions as are necessary to place the health

18 organization under regulatory control under article ten of this
19 chapter. In that event, the mandatory control level event is
20 sufficient grounds for the commissioner to take action under
21 article ten of this chapter, and the commissioner has the rights,
22 powers and duties with respect to the health organization as are
23 set forth in article ten of this chapter. If the commissioner takes
24 actions pursuant to an adjusted RBC report, the health
25 organization is entitled to the protections of article ten of this
26 chapter pertaining to summary proceedings. Notwithstanding
27 any of the foregoing, the commissioner may forego action for up
28 to ninety days after the mandatory control level event if the
29 commissioner finds there is a reasonable expectation that the
30 mandatory control level event may be eliminated within the
31 ninety-day period.

§33-40A-7. Hearings.

1 Upon the occurrence of any of the following events the
2 health organization has the right to a confidential departmental
3 hearing, on a record, at which the health organization may
4 challenge any determination or action by the commissioner. The
5 health organization shall notify the commissioner of its request
6 for a hearing within five days after the notification by the
7 commissioner under subsection (a), (b), (c) or (d) of this section.
8 Upon receipt of the health organization's request for a hearing,
9 the commissioner shall set a date for the hearing, which shall be
10 no less than ten nor more than thirty days after the date of the
11 health organization's request. The events include:

12 (a) Notification to a health organization by the commissioner
13 of an adjusted RBC report;

14 (b) Notification to a health organization by the commissioner
15 that:

16 (1) The health organization's RBC plan or revised RBC plan
17 is unsatisfactory; and

18 (2) Notification constitutes a regulatory action level event
19 with respect to the health organization;

20 (c) Notification to a health organization by the commissioner
21 that the health organization has failed to adhere to its RBC plan
22 or revised RBC plan and that the failure has a substantial adverse
23 effect on the ability of the health organization to eliminate the
24 company action level event with respect to the health
25 organization in accordance with its RBC plan or revised RBC
26 plan; or

27 (d) Notification to a health organization by the commissioner
28 of a corrective order with respect to the health organization.

**§33-40A-8. Confidentiality; prohibition on announcements;
prohibition on use in ratemaking.**

1 (a) All RBC reports (to the extent the information is not
2 required to be set forth in a publicly available annual statement
3 schedule) and RBC plans (including the results or report of any
4 examination or analysis of a health organization performed
5 pursuant to this statute and any corrective order issued by the
6 commissioner pursuant to examination or analysis) with respect
7 to a domestic health organization or foreign health organization
8 that are in the possession or control of the commissioner are
9 confidential by law and privileged, are not subject to the
10 provisions of chapter twenty-nine-b of this code, are not subject
11 to subpoena, and are not subject to discovery or admissible in
12 evidence in any private civil action. However, the commissioner
13 may use the documents, materials or other information in the
14 furtherance of any regulatory or legal action brought as a part of
15 the commissioner's official duties.

16 (b) Neither the commissioner nor any person who received
17 documents, materials or other information while acting under the
18 authority of the commissioner are permitted or required to testify

19 in any private civil action concerning any confidential
20 documents, materials or information subject to subsection (a) of
21 this section.

22 (c) In order to assist in the performance of the
23 commissioner's duties, the commissioner:

24 (1) May share documents, materials or other information,
25 including the confidential and privileged documents, materials
26 or information subject to subsection (a) of this section, with
27 other state, federal and international regulatory agencies, with
28 the NAIC and its affiliates and subsidiaries, and with state,
29 federal and international law-enforcement authorities, provided
30 that the recipient agrees to maintain the confidentiality and
31 privileged status of the document, material or other information;

32 (2) May receive documents, materials or information,
33 including otherwise confidential and privileged documents,
34 materials or information, from the NAIC and its affiliates and
35 subsidiaries, and from regulatory and law-enforcement officials
36 of other foreign or domestic jurisdictions, and shall maintain as
37 confidential or privileged any document, material or information
38 received with notice or the understanding that it is confidential
39 or privileged under the laws of the jurisdiction that is the source
40 of the document, material or information; and

41 (3) May enter into agreements governing sharing and use of
42 information consistent with this subsection.

43 (d) No waiver of any applicable privilege or claim of
44 confidentiality in the documents, materials or information may
45 occur as a result of disclosure to the commissioner under this
46 section or as a result of sharing as authorized in subdivision (3),
47 subsection (c) of this section.

48 (e) It is the finding of the Legislature that the comparison of
49 a health organization's total adjusted capital to any of its RBC

50 levels is a regulatory tool which may indicate the need for
51 corrective action with respect to the health organization, and is
52 not intended as a means to rank health organizations generally.
53 Therefore, except as otherwise required under the provisions of
54 this article, the making, publishing, disseminating, circulating or
55 placing before the public, or causing, directly or indirectly to be
56 made, published, disseminated, circulated or placed before the
57 public, in a newspaper, magazine or other publication, or in the
58 form of a notice, circular, pamphlet, letter or poster, or over a
59 radio or television station, or in any other way, an advertisement,
60 announcement or statement containing an assertion,
61 representation or statement with regard to the RBC levels of any
62 health organization, or of any component derived in the
63 calculation, by any health organization, agent, broker or other
64 person engaged in any manner in the insurance business would
65 be misleading and is therefore prohibited: *Provided*, That if any
66 materially false statement with respect to the comparison
67 regarding a health organization's total adjusted capital to its
68 RBC levels (or any of them) or an inappropriate comparison of
69 any other amount to the health organization's RBC levels is
70 published in any written publication and the health organization
71 is able to demonstrate to the commissioner with substantial proof
72 the falsity of the statement, or the inappropriateness, as the case
73 may be, then the health organization may publish an
74 announcement in a written publication if the sole purpose of the
75 announcement is to rebut the materially false statement.

76 (f) It is the further finding of the Legislature that the RBC
77 instructions, RBC reports, adjusted RBC reports, RBC plans and
78 revised RBC plans are intended solely for use by the
79 commissioner in monitoring the solvency of health organizations
80 and the need for possible corrective action with respect to health
81 organizations and shall not be used by the commissioner for
82 ratemaking nor considered or introduced as evidence in any rate
83 proceeding nor used by the commissioner to calculate or derive

84 any elements of an appropriate premium level or rate of return
85 for any line of insurance that a health organization or any
86 affiliate is authorized to write.

§33-40A-9. Supplemental provisions; rules; exemption.

1 (a) The provisions of this article are supplemental to any
2 other provisions of the laws of this state, and do not preclude or
3 limit any other powers or duties of the commissioner under such
4 laws, including, but not limited to, article ten and article
5 thirty-four of this chapter.

6 (b) The commissioner may propose rules for legislative
7 approval in accordance with article three, chapter twenty-nine-a
8 of this code, as are necessary to effectuate the purposes of this
9 article and to prevent circumvention and evasion thereof.

10 (c) The commissioner may exempt from the application of
11 this article a domestic health organization that:

12 (1) Writes direct business only in this state;

13 (2) Assumes no reinsurance in excess of five percent of
14 direct premiums written; and

15 (3) Writes direct annual premiums for comprehensive
16 medical business of \$2 million or less; or

17 (4) Is a limited health service organization that covers less
18 than two thousand lives.

§33-40A-10. Foreign health organizations.

1 (a)(1) A foreign health organization, upon the written request
2 of the commissioner, shall submit to the commissioner an RBC
3 report as of the end of the calendar year just ended, not later than
4 the later of:

5 (A) The date an RBC report would be required to be filed by
6 a domestic health organization under this article; or

7 (B) Fifteen days after the request is received by the foreign
8 health organization.

9 (2) A foreign health organization, at the written request of
10 the commissioner, shall promptly submit to the commissioner a
11 copy of any RBC plan that is filed with the insurance
12 commissioner of any other state.

13 (b) If there is a company action level event, regulatory action
14 level event or authorized control level event with respect to a
15 foreign health organization as determined under the RBC statute
16 applicable in the state of domicile of the health organization (or,
17 if no RBC statute is in force in that state, under the provisions of
18 this article), if the insurance commissioner of the state of
19 domicile of the foreign health organization fails to require the
20 foreign health organization to file an RBC plan in the manner
21 specified under that state's RBC statute (or, if no RBC statute is
22 in force in that state, under section three of this article), the
23 commissioner may require the foreign health organization to file
24 an RBC plan with the commissioner. The failure of the foreign
25 health organization to file an RBC plan with the commissioner
26 is grounds to order the health organization to cease and desist
27 from writing new insurance business in this state.

28 (c) If there is a mandatory control level event with respect to
29 a foreign health organization, and no domiciliary receiver has
30 been appointed with respect to the foreign health organization
31 under the rehabilitation and liquidation statute applicable in the
32 state of domicile of the foreign health organization, the
33 commissioner may make application to the circuit court of
34 Kanawha County permitted under section two, article ten of this
35 chapter with respect to the liquidation of property of foreign
36 health organizations found in this state, and the occurrence of the

37 mandatory control level event shall be considered adequate
38 grounds for the application.

§33-40A-11. Immunity.

1 There is no liability on the part of, and no cause of action
2 may arise against, the commissioner or the West Virginia Office
3 of the Insurance Commissioner or its employees or agents for
4 any action taken by them in the performance of their powers and
5 duties under this article.

§33-40A-12. Notices.

1 All notices by the commissioner to a health organization that
2 may result in regulatory action under this article are effective
3 upon dispatch if transmitted by registered or certified mail, or in
4 the case of any other transmission shall be effective upon the
5 health organization's receipt of notice.

CHAPTER 138

(H. B. 4655 - By Delegates Walters and Perry)

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to amend and reenact §33-25E-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-25E-5, all relating to vision care insurance, benefit and discount plans; defining terms; prohibiting requirement that eye care providers give discounts on noncovered services or materials; prohibiting eye care providers from charging more to enrollees for noncovered services than the

customary rate; requiring reasonable reimbursements, requiring fee schedule and stating that plans may not provide for nominal reimbursements in order to claim that a service or material is covered; prohibiting plans from falsely representing benefits; specifying application to subcontractors; prohibiting the requirement that eye care providers be credentialed through a designated vision plan as a condition of participation in a health care network; providing pay parity for optometrists and ophthalmologists; providing that optometrists and ophthalmologists be held to the same credentialing standards; setting forth requirements for alterations to and content of eye care provider agreements; requiring that eye care providers be permitted to use any lab or supplier; creating a private right of action for persons or entities adversely affected, including injunctive relief, specifying damages and providing for attorney fees and costs; placing limits on chargebacks of administrative fees and other recoups; authorizing suits for injunctions by Insurance Commissioner; prohibiting discrimination against a provider based on geographic location of the eye care provider; and providing effective date.

Be it enacted by the Legislature of West Virginia:

That §33-25E-2 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 §33-25E-5, all to read as follows:

ARTICLE 25E. PATIENTS' EYE CARE ACT.

§33-25E-2. Definitions.

- 1 For the purposes of this article:
- 2 (1) "Commissioner" means the Insurance Commissioner of
- 3 West Virginia.

4 (2) “Covered services” and “covered materials” means
5 services or materials for which reimbursement from the insurer
6 or vision care plan or vision care discount plan is available under
7 an enrollee’s vision plan or contract, or for which a
8 reimbursement would be available but for the application of
9 contractual limitations such as deductibles, copayments,
10 coinsurance, waiting periods, annual or lifetime maximums,
11 frequency limitations, alternative benefit payments or other
12 limitations.

13 (3) “Covered person” means an individual enrolled in a
14 health benefit plan or an eligible dependent of that person.

15 (4) “Enrollee” means any individual enrolled in a health care
16 plan, vision care plan or vision care discount plan provided by a
17 group, employer or other entity that purchases or supplies
18 coverage for a vision care plan or vision care discount plan.

19 (5) “Eye care provider” means a licensed doctor of
20 optometry practicing under the authority of article eight, chapter
21 thirty of this code or a licensed medical physician specializing
22 in ophthalmology licensed in West Virginia to practice medicine
23 and surgery under the authority of article three, chapter thirty of
24 this code or osteopathy under article fourteen, chapter thirty of
25 this code.

26 (6) “Eye care benefits” means coverage for the diagnosis,
27 treatment and management of eye disease and injury.

28 (7) “Health benefit policy” means any individual or group
29 plan, policy or contract providing medical, hospital or surgical
30 coverage issued, delivered, issued for delivery or renewed in this
31 state by an insurer, after January 1, 2001. It does not include
32 credit accident and sickness, long-term care, Medicare
33 supplement, champus supplement, disability or limited benefits
34 policies.

35 (8) “Insurer” means any health care corporation, health
36 maintenance organization, accident and sickness insurer,
37 nonprofit hospital service corporation, nonprofit medical service
38 corporation or similar entity.

39 (9) “Materials” means ophthalmic devices, including, but not
40 limited to, lenses, devices containing lenses, artificial intraocular
41 lenses, ophthalmic frames and other lens-mounting apparatus,
42 prisms, lens treatments and coatings, contact lenses and
43 prosthetic devices to correct, relieve or treat defects or abnormal
44 conditions of the human eye or its adnexa.

45 (10) “Services” means the professional work performed by
46 an eye care provider.

47 (11) “Subcontractor” means any company, group or third
48 party entity, including, but not limited to, agents, servants,
49 partially- or wholly-owned subsidiaries and controlled
50 organizations that is contracted by the insurer, vision care plan
51 or vision care discount plan to supply services or materials for an
52 eye care provider or enrollee to fulfill the benefit plan of an
53 insurer, vision care plan or vision care discount plan.

54 (12) “Vision care benefits” means benefits for the refraction
55 of the eyes and other optical benefits.

56 (13) “Vision care discount plan” means a business
57 arrangement or contract offered by an insurer in which a person,
58 in exchange for fees, dues, charges or other consideration, offers
59 access for its plan members to providers of eye care or ancillary
60 services and the right to receive discounts on eye care or
61 ancillary services provided under the discount vision care plan
62 from those providers.

63 (14) “Vision care plan” means an entity that creates,
64 promotes, sells, provides, advertises or administers an integrated

65 or stand-alone vision benefit plan, or a vision care insurance
66 policy or contract which provides vision benefits to an enrollee
67 pertaining to the provision of covered services or covered
68 materials.

§33-25E-5. Noncovered discounts.

1 (a) An agreement between an insurer, vision care plan or
2 vision care discount plan and an eye care provider may not seek
3 to or require that an eye care provider provide services or
4 materials at a fee limited or set by the insurer, vision care plan
5 or vision care discount plan, unless the services or materials are
6 reimbursed as covered services or covered materials under the
7 contract.

8 (1) An eye care provider may not charge more for services
9 and materials that are non-covered services or non-covered
10 materials to an enrollee of a vision care plan, vision care
11 discount plan or insurer than his or her usual and customary rate
12 for the services and materials.

13 (2) Reimbursements paid by an insurer, vision care plan or
14 vision care discount plan for covered services and covered
15 materials, regardless of supplier or optical lab used to obtain
16 materials, shall be reasonable, shall be clearly listed on a fee
17 schedule that is made available to the eye care provider prior to
18 accepting a contract from the insurer, vision care plan or vision
19 discount plan and shall not provide nominal reimbursement or
20 advertise services and materials to be covered with additional
21 copay or coinsurance if the health plan, vision care plan or vision
22 care discount plan does not reimburse for the services or
23 materials in order to claim that services and materials are
24 covered services and materials.

25 (3) Insurers, vision care plans and vision care discount plans
26 shall not falsely represent, publish or disseminate the benefits

27 that are provided to groups, employers or individual enrollees as
28 a means of selling coverage to or communicating benefit
29 coverage to enrollees.

30 (4) All provisions in this section apply to any successors in
31 interest of an insurer, vision care plan or vision care discount
32 plan and apply to any subcontractors that are used by an insurer,
33 vision care plan or vision care discount plan to supply materials
34 or services to an eye care provider or enrollee and are subject to
35 all applicable penalties as provided in this section.

36 (b) An agreement between an insurer, vision care plan or
37 vision care discount plan and an eye care provider may not
38 require that an eye care provider must participate with or be
39 credentialed by any specific vision care plan or vision care
40 discount plan as a condition of participation in the health care
41 network of the insurer to provide covered medical services to its
42 enrollees.

43 (1) Any insurer issuing or renewing a health benefit plan,
44 vision care plan or vision care discount plan issued or renewed
45 which provides coverage for services rendered by an eye care
46 provider shall provide the same reimbursement for services to
47 optometrists as allowed for those services rendered by
48 physicians or osteopaths.

49 (2) An insurer may not require an optometrist to meet terms
50 and conditions that are not required of a physician or osteopath
51 as a condition for participation in its provider network for the
52 provision of services that are within the scope of practice of an
53 optometrist.

54 (3) If an eye care provider enters into any subcontract
55 agreement with another provider to provide covered services or
56 covered materials to an enrollee which provides that the
57 subcontracted provider will bill the vision care plan or enrollee

58 directly for the subcontracted services or materials, the
59 subcontract agreement shall meet all requirements of this
60 section.

61 (4) The provisions of subdivisions (1), (2) and (3) of this
62 subsection also apply to any agreements an insurer enters into
63 for services covered under the health benefit plan, vision care
64 plan or vision care discount plan.

65 (c) An insurer, vision care plan or vision care discount plan
66 may not change or alter an agreement entered into with an eye
67 care provider without performing the following steps:

68 (1) Mailing a certified letter detailing proposed changes to
69 the eye care provider;

70 (2) Obtaining agreement or disagreement to the proposed
71 changes from the eye care provider; and

72 (3) Providing a new agreement after three or more material
73 changes are made to an existing agreement from an insurer,
74 vision care plan or vision care discount plan.

75 (d) An agreement between an insurer, vision care plan or
76 vision care discount plan and an eye care provider may not
77 restrict or limit, either directly or indirectly, the eye care
78 provider's choice of sources and suppliers of services or
79 materials or use of optical labs provided by the eye care provider
80 to an enrollee.

81 (e) An insurer, vision care plan or vision care discount plan
82 may not change the terms, discounts or reimbursement rates
83 contained in the agreement, regardless of supplier or fabricating
84 lab used to supply materials, without a signed acknowledgement
85 of written agreement from the eye care provider.

86 (f) A person or entity adversely affected by a violation of
87 this section may bring action in a court of competent jurisdiction

88 for injunctive relief against the insurer, vision care plan or vision
89 care discount plan and, upon prevailing, may recover monetary
90 damages of no more than \$1,000 for each instance found to be in
91 violation of this section, plus attorneys' fees and costs.

92 (g) In a fiscal year, an insurer, vision care plan or vision care
93 discount plan may not charge back or otherwise recoup
94 administrative fees or other amounts from an eye care provider
95 in a total amount of more than three percent of the payments
96 received by the eye care provider from the insurer, vision care
97 plan or vision care discount plan for providing services to
98 enrollees without the written agreement of the eye care provider.

99 (h) The Commissioner may seek an injunction against an
100 insurer, vision care plan or vision care discount plan in a court
101 of competent jurisdiction for violation of this section.

102 (i) The requirements of this section apply to insurers, vision
103 care plans, vision care discount plans, contracts, addendums and
104 certificates executed, delivered, issued for delivery, continued or
105 renewed in the State of West Virginia.

106 (1) An insurer, vision care plan or vision care discount plan
107 contract may not be in effect for more than two years from the
108 date that it was first signed.

109 (2) An insurer, vision care plan or vision care discount plan
110 may not construe recredentialing as recontracting with an eye
111 care provider.

112 (j) An insurer, vision care plan or vision care discount plan
113 may not discriminate against any eye care provider who is
114 located within the geographic coverage area of the insurer,
115 vision care plan or vision care discount plan and who is willing
116 to meet the terms and conditions for participation established by
117 the insurer, vision care plan or vision care discount plan,

118 including West Virginia Medicaid programs and Medicaid
119 partnerships.

120 (k) This section becomes effective on July 1, 2016, and
121 applies to vision care plans and vision care discount plans which
122 take effect or are renewed on or after July 1, 2016.

CHAPTER 139

**(H. B. 4734 - By Delegates McCuskey, Shott,
Deem, Sobonya, Folk, Fast, Manchin, Moore, Fluharty,
Fleischauer and Caputo)**

[Passed March 11, 2016; in effect October 1, 2016.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend and reenact §33-30-6 and §33-30-8 of the Code of West Virginia, 1931, as amended, all relating to mine subsidence insurance; increasing the maximum amount of total insured value reinsured by Board of Risk and Insurance Management; and deleting threshold provision for loss coverage.

Be it enacted by the Legislature of West Virginia:

That §33-30-6 and §33-30-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 30. MINE SUBSIDENCE INSURANCE.

§33-30-6. Mine subsidence coverage; waivers.

1 Beginning October 1, 1982, every insurance policy issued or
2 renewed insuring on a direct basis a structure located in this state
3 shall include, at a separately stated premium, insurance for loss

4 occurring on or after October 1, 1982, caused by mine
5 subsidence unless waived by the insured: A waiver is not
6 required and the coverage may only be provided if requested by
7 the insured in the following counties: Berkeley, Cabell, Calhoun,
8 Hampshire, Hardy, Jackson, Jefferson, Monroe, Morgan,
9 Pendleton, Pleasants, Ritchie, Roane, Wirt, and Wood: The
10 effective date of a new policy or endorsement containing mine
11 subsidence insurance coverage shall be on the thirtieth calendar
12 day after the application date. The premium charged for
13 coverage shall be set by the board. At no time may the
14 deductible be less than \$250 nor more than \$500; and total
15 insured value reinsured by the board may not exceed \$200,000.
16 In no event may the amount of mine subsidence reinsurance
17 exceed the amount of the fire insurance on the structure.

§33-30-8. Reinsurance agreements.

1 All companies authorized to write fire insurance in this state
2 shall enter into a reinsurance agreement with the board in which
3 each insurer agrees to cede to the board one hundred percent, up
4 to \$200,000, of any subsidence insurance coverage issued and,
5 in consideration of the ceding commission retained by the
6 insurer, agree to absorb all expenses of the insurer necessary for
7 sale of policies and any administration duties of the mine
8 subsidence insurance program imposed upon it pursuant to the
9 terms of the reinsurance agreement. The board is authorized to
10 undertake adjustment of losses and administer the fund, or it may
11 provide in a reinsurance agreement that the insurer do so. The
12 board shall agree to reimburse the insurer from the fund for all
13 amounts paid policyholders for claims resulting from mine
14 subsidence and shall pay from the fund all costs of
15 administration incurred by the board but an insurer is not
16 required to pay any claim for any loss insured under this article
17 except to the extent that the amount available in the mine
18 subsidence insurance fund, as maintained pursuant to sections

19 four and five of this article, is sufficient to reimburse the insurer
20 for such claim under this section, and without moral obligation.

CHAPTER 140

**(Com. Sub. for S. B. 465 - By Senators Carmichael, Gaunch,
Maynard, Karnes, Sypolt and Walters)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2016.]

AN ACT to amend and reenact §33-31-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-46A-9 of said code, all relating to allowing professional employer organizations to insure certain risks through an insurance captive; establishing that professional employer organizations holding the appropriate license may insure its risks for insurance for accident and sickness as defined in current code; providing that such coverage for all employees and covered employees may be through a captive insurance company; eliminating prohibition against professional employer organizations offering or establishing self-funding health plans for covered employees; providing that professional employer organizations can offer plans not fully insured by authorized insurers so long as the plan complies with current code requirements; clarifying that all employees covered by a professional employer organization's health benefit plan shall be considered employees of the professional employer organization; clarifying that health benefit plans offered under this provision shall be treated as a single employer welfare benefit plan; deleting obsolete code provision related to a study that was never conducted; and authorizing insurance commissioner to promulgate and adopt rules with respect to professional employer organizations sponsoring health benefit plans.

Be it enacted by the Legislature of West Virginia:

That §33-31-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-46A-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-2. Licensing; authority.

1 (a) Any captive insurance company, when permitted by its
2 articles of association, charter or other organizational document,
3 may apply to the commissioner for a license to do any and all
4 insurance comprised in section ten, article one of this chapter:
5 *Provided*, That all captive insurance companies, except pure
6 captive insurance companies, shall maintain their principal office
7 and principal place of business in this state: *Provided, however*,
8 That:

9 (1) No pure captive insurance company may insure any risks
10 other than those of its parent and affiliated companies or
11 controlled unaffiliated business;

12 (2) No association captive insurance company may insure
13 any risks other than those of the member organizations of its
14 association and their affiliated companies;

15 (3) No industrial insured captive insurance company may
16 insure any risks other than those of the industrial insureds that
17 comprise the industrial insured group and their affiliated
18 companies;

19 (4) No risk retention group may insure any risks other than
20 those of its members and owners;

21 (5) No captive insurance company may provide personal
22 motor vehicle or homeowner's insurance coverage or any
23 component thereof;

24 (6) No captive insurance company may accept or cede
25 reinsurance except as provided in section eleven of this article;

26 (7) No risk retention group may retain any risk on any one
27 subject of insurance, whether located or to be performed in West
28 Virginia or elsewhere, in an amount exceeding ten percent of the
29 surplus required by section four of this article unless approved
30 by the commissioner;

31 (8) Any captive insurance company may provide excess
32 workers' compensation insurance to its parent and affiliated
33 companies, unless prohibited by the federal law or laws of the
34 state having jurisdiction over the transaction. Any captive
35 insurance company, unless prohibited by federal law, may
36 reinsure workers' compensation of a qualified self-insured plan
37 of its parent and affiliated companies; and

38 (9) Any captive insurance company which insures risks
39 described in subsections (a) and (b), section ten, article one of
40 this chapter shall comply with all applicable state and federal
41 laws.

42 (10) A professional employer organization licensed pursuant
43 to the provisions of article forty-six-a of this chapter may insure
44 its risks for insurance coverage for accident and sickness, as such
45 insurance coverage is defined under subsection (b), section ten,
46 article one of this chapter, for all employees and covered
47 employees through a captive insurance company.

48 (b) No captive insurance company may do any insurance
49 business in this state unless:

50 (1) It first obtains from the commissioner a license
51 authorizing it to do insurance business in this state;

52 (2) Its board of directors or, in the case of a reciprocal
53 insurer, its subscribers' advisory committee, holds at least one
54 meeting each year in this state; and

55 (3) It appoints a registered agent to accept service of process
56 and to otherwise act on its behalf in this state: *Provided*, That
57 whenever such registered agent cannot with reasonable diligence
58 be found at the registered office of the captive insurance
59 company, the Secretary of State shall be an agent of such captive
60 insurance company upon whom any process, notice or demand
61 may be served.

62 (c) (1) Before receiving a license, a captive insurance
63 company shall:

64 (A) File with the commissioner a certified copy of its
65 organizational documents, a statement under oath of its president
66 and secretary showing its financial condition, and any other
67 statements or documents required by the commissioner; and

68 (B) Submit to the commissioner for approval a description
69 of the coverages, deductibles, coverage limits and rates, together
70 with such additional information as the commissioner may
71 reasonably require. In the event of any subsequent material
72 change in any item in such description, the captive insurance
73 company shall submit to the commissioner for approval an
74 appropriate revision and shall not offer any additional kinds of
75 insurance until a revision of such description is approved by the
76 commissioner. The captive insurance company shall inform the
77 commissioner of any material change in rates within thirty days
78 of the adoption of such change.

79 (2) Each applicant captive insurance company shall also file
80 with the commissioner evidence of the following:

81 (A) The amount and liquidity of its assets relative to the
82 risks to be assumed;

83 (B) The adequacy of the expertise, experience and character
84 of the person or persons who will manage it;

85 (C) The overall soundness of its plan of operation;

86 (D) The adequacy of the loss prevention programs of its
87 insureds; and

88 (E) Such other factors deemed relevant by the commissioner
89 in ascertaining whether the proposed captive insurance company
90 will be able to meet its policy obligations;

91 (3) Information submitted pursuant to this subsection shall
92 be and remain confidential and may not be made public by the
93 commissioner or an employee or agent of the commissioner
94 without the written consent of the company, except that:

95 (A) Such information may be discoverable by a party in a
96 civil action or contested case to which the captive insurance
97 company that submitted such information is a party, upon a
98 showing by the party seeking to discover such information that:

99 (i) The information sought is relevant to and necessary for
100 the furtherance of such action or case;

101 (ii) The information sought is unavailable from other
102 nonconfidential sources; and

103 (iii) A subpoena issued by a judicial or administrative officer
104 of competent jurisdiction has been submitted to the
105 commissioner: *Provided*, That the provisions of this subdivision
106 shall not apply to any risk retention group; and

107 (B) The commissioner may, in the commissioner's
108 discretion, disclose such information to a public officer having
109 jurisdiction over the regulation of insurance in another state if:

110 (i) The public official shall agree in writing to maintain the
111 confidentiality of such information; and

112 (ii) The laws of the state in which such public official serves
113 require such information to be and to remain confidential.

114 (d) Each captive insurance company shall pay to the
115 commissioner a nonrefundable fee of \$200 for examining,
116 investigating and processing its application for license, and the
117 commissioner is authorized to retain legal, financial and
118 examination services from outside the department, the
119 reasonable cost of which may be charged against the applicant.
120 The provisions of subsection (r), section nine, article two of this
121 chapter shall apply to examinations, investigations and
122 processing conducted under the authority of this section. In
123 addition, each captive insurance company shall pay a license fee
124 for the year of registration and a renewal fee for each year
125 thereafter of \$300.

126 (e) If the commissioner is satisfied that the documents and
127 statements that such captive insurance company has filed comply
128 with the provisions of this article, the commissioner may grant
129 a license authorizing it to do insurance business in this state until
130 May 31, thereafter, which license may be renewed.

131 (f) A captive insurance company shall notify the
132 commissioner in writing within thirty days of becoming aware
133 of any material change in information previously submitted to
134 the commissioner, including information submitted in or with
135 the license application.

ARTICLE 46A. PROFESSIONAL EMPLOYER ORGANIZATIONS.

§33-46A-9. Health benefit plans; self-funded plans permitted under certain circumstances.

1 (a) A professional employer organization that sponsors a
2 health benefit plan shall be considered the employer of all of its
3 covered employees, and all covered employees of one or more
4 client employers participating in a health benefit plan sponsored
5 by a single professional employer organization shall be
6 considered employees of that professional employer

7 organization. For purposes of state law, such health benefit plans
8 shall be treated as a single employer welfare benefit plan.

9 (b) If a professional employer organization offers to its
10 covered employees any health benefit plan which is not fully
11 insured by an authorized insurer, the professional employer
12 organization must comply with the provisions of article
13 thirty-one of this chapter. The Insurance Commissioner of West
14 Virginia is authorized to promulgate and adopt rules with respect
15 to professional employer organizations sponsoring health benefit
16 plans in accordance with this section.

CHAPTER 141

**(Com. Sub. for H. B. 4502 - By Delegates Lane,
Miller and Sobonya)**

[Passed March 10, 2016; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-1-29, relating to reciprocity agreements with contiguous states and the District of Columbia; authorizing the governor to enter into and renew reciprocity agreements with the governors and other appropriate state governmental agencies from states that share contiguous borders with this state, and the District of Columbia, to establish regulations, licensing requirements and taxation for small businesses headquartered in this state or in contiguous states or the District of Columbia that conduct business in both this state and the contiguous state; providing the governor discretionary power to delegate such authority to the Attorney General or secretary of an executive branch department to negotiate and enter into such

reciprocity agreements on behalf of the governor; requiring any reciprocity agreement that impacts or affects taxation, either the receipt or payment thereof, to be approved by legislative 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 section, designated §5-1-29, to read as follows:

ARTICLE 1. THE GOVERNOR.

§5-1-29. Reciprocity agreements to establish regulations, licensing requirements and taxes for small businesses in contiguous states and the District of Columbia doing business in West Virginia.

1 (a) The Governor is hereby authorized to enter into and
2 renew reciprocity agreements with the governors and other
3 appropriate state governmental agencies from states that share
4 contiguous borders with this state, and the District of Columbia,
5 to establish regulations, licensing requirements and taxation for
6 small businesses headquartered in this state or contiguous states
7 or the District of Columbia that conduct business in both. In the
8 discretion of the Governor, the Attorney General or secretary of
9 an executive branch department may be delegated and
10 empowered in writing to negotiate and enter into such
11 reciprocity agreements on behalf of the Governor.

12 (b) Notwithstanding the authority granted in subsection (a)
13 of this section, any reciprocity agreement that impacts or affects
14 taxation, either the receipt or payment thereof, may not be
15 entered into unless and until such agreement is approved by the
16 Legislature by act.

17 (c) For the purposes of this section, the term “small
18 business” has the same meaning as prescribed under section
19 seven-a, article thirteen-c, chapter eleven of this code.

CHAPTER 142

**(S. B. 1 - By Senators Cole (Mr. President), Blair, Boso,
Ferns, Gaunch, Trump, Carmichael,
Sypolt and Takubo)**

[Passed February 5, 2016; in effect ninety days from passage.]
[Vetoed by the Governor. Repassed notwithstanding the objections
of the Governor, February 12, 2016.]

AN ACT to amend and reenact §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §21-5G-1, §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6 and §21-5G-7, all relating to establishing the West Virginia Workplace Freedom Act; removing certain provisions under the Labor-Management Relations Act for the Private Sector to be consistent with the West Virginia Workplace Freedom Act; clarifying what constitutes an unfair labor practice under the Labor-Management Relations Act for the Private Sector to be consistent with the West Virginia Workplace Freedom Act; eliminating the statutory provisions that allow an employment agreement to require membership in a labor organization as a condition of employment; granting employees the right to refrain from paying any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to a labor organization as a condition or continuation of employment; granting employees the right to refrain from paying any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to any third party, including a charity, in lieu of payment to a labor organization as a condition or continuation of employment; eliminating statutory provisions that allow, as an exception to the prohibitions against unfair labor practices by an employer, an employment agreement to require

membership in a labor organization as a condition of employment; eliminating statutory provisions that allow an employer to justify discrimination against an employee for nonmembership in a labor organization in certain circumstances; prohibiting any requirement that a person become or remain a member of a labor organization as a condition or continuation of employment; prohibiting any requirement that a person pay any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to a labor organization as a condition or continuation of employment; prohibiting any requirement that, as a condition or continuation of employment, a person pay any charity or third party in lieu of paying dues, fees, assessments or other similar charges, however denominated, of any kind or amount that is equivalent to or a pro rata portion of dues, fees, assessments or other charges required of members of a labor organization; providing that any agreement, contract, understanding or practice of any kind between any labor organization and an employer or public body which provides for the exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor organization or employee organization of any kind to be unlawful, null and void, and of no legal effect; creating a criminal offense for any person who knowingly requires another person, as a condition or continuation of employment, to perform any conduct prohibited by the West Virginia Workplace Freedom Act; providing for criminal penalties; providing for civil relief; establishing a civil cause of action which, if proven in a court of competent jurisdiction, may permit a person to recover damages, including compensatory and punitive damages, costs and attorney's fees, injunctive relief or other appropriate equitable relief against any person or persons violating or threatening to violate the West Virginia Workplace Freedom Act; providing for exceptions to the application of the West Virginia Workplace Freedom Act; defining terms; establishing provisions addressing the construction, applicability and severability of the West Virginia Workplace Freedom Act; clarifying application of the West

Virginia Workplace Freedom Act to collective bargaining or collective bargaining agreements in the building and construction industry; and providing that the West Virginia Workplace Freedom Act applies to any written or oral contract or agreement entered into, modified, renewed or extended after July 1, 2016 and shall not otherwise apply or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

Be it enacted by the Legislature of West Virginia:

That §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §21-5G-1, §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6 and §21-5G-7 all to read as follows:

**ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT
FOR THE PRIVATE SECTOR.**

§21-1A-3. Rights of employees.

1 Employees shall have the right to self-organization, to form,
2 join or assist labor organizations, to bargain collectively through
3 representatives of their own choosing, and to engage in other
4 concerted activities for the purpose of collective bargaining or
5 other mutual aid or protection, and shall also have the right to
6 refrain from any or all of such activities, including the right to
7 refrain from paying any dues, fees, assessments or other similar
8 charges however denominated of any kind or amount to a labor
9 organization or to any third party including, but not limited to,
10 a charity in lieu of a payment to a labor organization.

§21-1A-4. Unfair labor practices.

- 1 (a) It shall be an unfair labor practice for an employer:
- 2 (1) To interfere with, restrain or coerce employees in the
3 exercise of the rights guaranteed in section three of this article;

4 (2) To dominate or interfere with the formation or
5 administration of any labor organization or contribute financial
6 or other support to it: *Provided*, That an employer shall not be
7 prohibited from permitting employees to confer with him or her
8 during working hours without loss of time or pay;

9 (3) By discrimination in regard to hire or tenure of
10 employment or any term or condition of employment, to
11 encourage or discourage membership in any labor organization.

12 (4) To discharge or otherwise discriminate against an
13 employee because he or she has filed charges or given testimony
14 under this article; and

15 (5) To refuse to bargain collectively with the representatives
16 of his or her employees, subject to the provisions of subsection
17 (a), section five of this article.

18 (b) It shall be an unfair labor practice for a labor
19 organization or its agents:

20 (1) To restrain or coerce: (A) Employees in the exercise of
21 the rights guaranteed in section three of this article: *Provided*,
22 That this subdivision shall not impair the right of a labor
23 organization to prescribe its own rules with respect to the
24 acquisition or retention of membership therein; or (B) an
25 employer in the selection of his or her representatives for the
26 purposes of collective bargaining or the adjustment of
27 grievances;

28 (2) To cause or attempt to cause an employer to discriminate
29 against an employee in violation of subdivision (3), subsection
30 (a) of this section or to discriminate against an employee with
31 respect to whom membership in such organization has been
32 denied or terminated on some ground other than his or her failure

33 to tender the periodic dues and the initiation fees uniformly
34 required as a condition of acquiring or retaining membership;

35 (3) To refuse to bargain collectively with an employer,
36 provided it is the representative of his or her employees subject
37 to the provisions of subsection (a), section five of this article;

38 (4) (i) To engage in or induce or encourage any individual
39 employed by any person to engage in, a strike or a refusal in the
40 course of employment to use, manufacture, process, transport, or
41 otherwise handle or work on any goods, articles, materials or
42 commodities or to perform any services; or (ii) to threaten,
43 coerce, or restrain any person, where in either case an object
44 thereof is:

45 (A) Forcing or requiring any employer or self-employed
46 person to join any labor or employer organization or to enter into
47 any agreement which is prohibited by subsection (e) of this
48 section;

49 (B) Forcing or requiring any person to cease using, selling,
50 handling, transporting or otherwise dealing in the products of
51 any other producer, processor or manufacturer, or to cease doing
52 business with any other person, or forcing or requiring any other
53 employer to recognize or bargain with a labor organization as the
54 representative of his or her employees unless such labor
55 organization has been certified as the representative of such
56 employees under the provisions of section five of this article:
57 *Provided*, That nothing contained in this paragraph may be
58 construed to make unlawful, where not otherwise unlawful, any
59 primary strike or primary picketing;

60 (C) Forcing or requiring any employer to recognize or
61 bargain with a particular labor organization as the representative
62 of his or her employees if another labor organization has been
63 certified as the representative of such employees under the
64 provisions of section five of this article;

65 (D) Forcing or requiring any employer to assign particular
66 work to employees in a particular labor organization or in a
67 particular trade, craft or class rather than to employees in another
68 labor organization or in another trade, craft or class, unless such
69 employer is failing to conform to an order of certification of the
70 board determining the bargaining representative for employees
71 performing such work: *Provided*, That nothing contained in this
72 subsection shall be construed to make unlawful a refusal by any
73 person to enter upon the premises of any employer (other than
74 his or her own employer), if the employees of such employer are
75 engaged in a strike ratified or approved by a representative of
76 such employees whom such employer is required by law to
77 recognize;

78 (5) To require of employees covered by an agreement
79 authorized under subdivision (3), subsection (a) of this section,
80 the payment, as a condition precedent to becoming a member of
81 such organization, of a fee in an amount which the board finds
82 excessive or discriminatory under all the circumstances. In
83 making such a finding, the board shall consider, among other
84 relevant factors, the practices and customs of labor organizations
85 in the particular industry, and the wages currently paid to the
86 employees affected;

87 (6) To cause or attempt to cause an employer to pay or
88 deliver or agree to pay or deliver any money or other thing of
89 value, in the nature of an exaction, for services which are not
90 performed or not to be performed; and

91 (7) To picket or cause to be picketed, or threaten to picket or
92 cause to be picketed, any employer where an object thereof is
93 forcing or requiring an employer to recognize or bargain with a
94 labor organization as the representative of his or her employees,
95 or forcing or requiring the employees of an employer to accept
96 or select such labor organization as their collective bargaining

97 representative, unless such labor organization is currently
98 certified as the representative of such employees:

99 (A) Where the employer has lawfully recognized in
100 accordance with this article any other labor organization and a
101 question concerning representation may not appropriately be
102 raised under subsection (c), section five of this article;

103 (B) Where within the preceding twelve months a valid
104 election under subsection (c), section five of this article has been
105 conducted; or

106 (C) Where such picketing has been conducted without a
107 petition under subsection (c), section five of this article being
108 filed within a reasonable period of time not to exceed fifteen
109 days from the commencement of such picketing: *Provided*, That
110 when such a petition has been filed the board shall forthwith,
111 without regard to the provisions of said subsection (c), section
112 five or the absence of a showing of a substantial interest on the
113 part of the labor organization, direct an election in such unit as
114 the board finds to be appropriate and shall certify the results
115 thereof. Nothing in this subdivision (7) of this subsection shall
116 be construed to permit any act which would otherwise be an
117 unfair labor practice under this subsection.

118 (c) The expressing of any views, argument or opinion, or the
119 dissemination thereof, whether in written, printed, graphic or
120 visual form, shall not constitute or be evidence of an unfair labor
121 practice, or be prohibited under this article, if such expression
122 contains no threat of reprisal or force or promise of benefit.

123 (d) For the purposes of this section, to bargain collectively
124 is the performance of the mutual obligation of the employer and
125 the representative of the employees to meet at reasonable times
126 and confer in good faith with respect to wages, hours and other
127 terms and conditions of employment, or the negotiation of an

128 agreement, or any question arising thereunder, and the execution
129 of a written contract incorporating any agreement reached if
130 requested by either party, but such obligation does not compel
131 either party to agree to a proposal or require the making a
132 concession: *Provided*, That where there is in effect a collective
133 bargaining contract covering employees, the duty to bargain
134 collectively shall also mean that no party to such contract shall
135 terminate or modify such contract, unless the party desiring such
136 termination or modification:

137 (1) Gives a written notice to the other party of the proposed
138 termination or modification sixty days prior to the expiration
139 date thereof, or in the event such contract contains no expiration
140 date, sixty days prior to the time it is proposed to make such
141 termination or modification;

142 (2) Offers to meet and confer with the other party for the
143 purpose of negotiating a new contract or a contract containing
144 the proposed modifications;

145 (3) Notifies the Commissioner of Labor of the existence of
146 a dispute;

147 (4) Continues in full force and effect, without resorting to
148 strike or lockout, all the terms and conditions of the existing
149 contract for a period of sixty days after such notice is given or
150 until the expiration date of such contract, whichever occurs later.
151 The duties imposed upon employers, employees, and labor
152 organizations by subdivisions (2), (3) and (4) of this subsection
153 shall become inapplicable upon an intervening certification of
154 the board, under which the labor organization or individual,
155 which is a party to the contract, has been superseded as or ceased
156 to be the representative of the employees subject to the
157 provisions of subsection (a), section five of this article, and the
158 duties so imposed shall not be construed as requiring either party
159 to discuss or agree to any modification of the terms and

160 conditions contained in a contract for a fixed period, if such
161 modification is to become effective before such terms and
162 conditions can be reopened under the provisions of the contract.
163 Any employee who engages in a strike within the sixty-day
164 period specified in this subsection shall lose his or her status as
165 an employee of the employer engaged in the particular labor
166 dispute, for the purposes of sections three, four and five of this
167 article, but such loss of status for such employee shall terminate
168 if and when he or she is reemployed by such employer.

169 (e) It shall be an unfair labor practice for any labor
170 organization and any employer to enter into any contract or
171 agreement, express or implied, whereby such employer ceases or
172 refrains or agrees to cease or refrain from handling, using,
173 selling, transporting, or otherwise dealing in any of the products
174 of any other employer, or to cease doing business with any other
175 person and any such contract or agreement entered into
176 heretofore or hereafter shall be to such extent unenforceable and
177 void.

ARTICLE 5G. WEST VIRGINIA WORKPLACE FREEDOM ACT.

§21-5G-1. Definitions.

1 As used in this article, the following terms have the
2 following definitions:

3 (a) The term “person” means any individual, proprietorship,
4 partnership, firm, association, corporation, labor organization or
5 any other legal entity.

6 (b) The term “labor organization” means any organization,
7 agency, union or employee representation committee of any kind
8 that exists, in whole or in part, to assist employees in negotiating
9 with employers concerning grievances, labor disputes, wages,
10 rates of pay or other terms or conditions of employment.

11 (c) The term “employer” means any person employing at
12 least one individual in the state, or any agent of an employer
13 employing at least one individual in the state.

14 (d) The term “state” means any officer, board, branch,
15 commission, department, division, bureau, committee, agency,
16 authority or other instrumentality of the State of West Virginia.

§21-5G-2. Individual’s right to refrain from affiliating with a labor organization.

1 A person may not be required, as a condition or continuation
2 of employment, to:

3 (1) Become or remain a member of a labor organization;

4 (2) Pay any dues, fees, assessments or other similar charges,
5 however denominated, of any kind or amount to any labor
6 organization; or

7 (3) Pay any charity or third party, in lieu of those payments,
8 any amount that is equivalent to or a pro rata portion of dues,
9 fees, assessments or other charges required of members of a
10 labor organization.

§21-5G-3. Contracting for exclusion from employment because of affiliation or nonaffiliation with a labor organization.

1 Any agreement, contract, understanding or practice, either
2 written or oral, implied or expressed, between any labor
3 organization and an employer or public body which provides for
4 the exclusion from employment of any person because of
5 membership in, affiliation with, resignation from, or refusal to
6 join or affiliate with any labor organization or employee
7 organization of any kind is hereby declared to be unlawful, null
8 and void, and of no legal effect.

§21-5G-4. Criminal penalty.

1 Any person who knowingly requires another person, as a
2 condition or continuation of employment, to perform any of the
3 conduct enumerated in section two of this article, is guilty of a
4 misdemeanor and, upon conviction thereof, shall be fined not
5 less than \$500 nor more than \$5,000.

§21-5G-5. Civil relief; damages.

1 Any person injured as a result of any violation or threatened
2 violation of this article shall have a cause of action, and, if
3 proven in a court of competent jurisdiction, may be entitled to
4 the following relief against a person or persons violating or
5 threatening to violate this article:

6 (1) Compensatory damages;

7 (2) Costs and reasonable attorney fees, which shall be
8 awarded if the injured person substantially prevails;

9 (3) Punitive damages in accordance with the provisions of
10 section twenty-nine, article seven, chapter fifty-five of this code;

11 (4) Preliminary and permanent injunctive relief; and

12 (5) Any other appropriate equitable relief.

§21-5G-6. Exceptions.

1 This article does not apply:

2 (1) To any employee or employer covered by the federal
3 Railway Labor Act, 45 U. S. C. §151, *et seq.*;

4 (2) To any employee of the United States or a wholly owned
5 corporation of the United States;

6 (3) To any employee who is employed on property over
7 which the United States government has exclusive jurisdiction
8 for purposes of labor relations; or

9 (4) Where the provisions of this article would otherwise
10 conflict with, or be preempted by, federal law.

§21-5G-7. Construction; applicability; severability.

1 (a) *Construction.* — Except to the extent expressly
2 prohibited by the provisions of this article, nothing in this article
3 is intended, or should be construed, to change or affect any law
4 concerning collective bargaining or collective bargaining
5 agreements in the building and construction industry.

6 (b) *Applicability.* — This article applies to any written or
7 oral contract or agreement entered into, modified, renewed or
8 extended after July 1, 2016: *Provided,* That the provisions of this
9 article shall not otherwise apply to or abrogate a written or oral
10 contract or agreement in effect on or before June 30, 2016.

11 (c) *Severability.* — If any provision of this act or the
12 application of any such provision to any person or circumstance
13 should be held invalid by a court of competent jurisdiction, the
14 remainder of this act or the application of its provisions to
15 persons or circumstances other than those to which it is held
16 invalid shall not be affected thereby.

CHAPTER 143

**(H. B. 4364 - By Delegates Skinner, McGeehan,
Hamrick, Fluharty, Householder, Blair, Sponaugle, Manchin,
Miley, Byrd and Marcum)**

[Passed March 12, 2016; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2016.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5H-1, relating to employee personal social media; prohibiting an employer from requesting or requiring that an employee or potential employee disclose any user name, password or other authentication information for accessing a personal account; prohibiting an employer from requesting or requiring that an employee or potential employee access his or her personal account in the employer's presence; setting forth permissible actions for an employer; specifying required action when an employer inadvertently receives an employee's or potential employee's username, password or other authentication information; setting forth circumstances under which an employer is liable for having that information; setting forth authority and obligation of employer to investigate complaints, allegations or the occurrence of sexual, racial or other harassment; and defining the term personal account.

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 §21-5H-1, to read as follows:

ARTICLE 5H. EMPLOYEE PERSONAL SOCIAL MEDIA.

§21-5H-1. Employer access to employee or potential employee personal accounts prohibited.

1 (a) An employer shall not do any of the following:

2 (1) Request, require or coerce an employee or a potential
3 employee to disclose a username and password, password or any
4 other authentication information that allows access to the
5 employee or potential employee's personal account;

6 (2) Request, require or coerce an employee or a potential
7 employee to access the employee or the potential employee's
8 personal account in the presence of the employer; or

9 (3) Compel an employee or potential employee to add the
10 employer or an employment agency to their list of contacts that
11 enable the contacts to access a personal account.

12 (b) Nothing in this section prevents an employer from:

13 (1) Accessing information about an employee or potential
14 employee that is publicly available;

15 (2) Complying with applicable laws, rules or regulations;

16 (3) Requiring an employee to disclose a username or
17 password or similar authentication information for the purpose
18 of accessing:

19 (A) An employer-issued electronic device; or

20 (B) An account or service provided by the employer,
21 obtained by virtue of the employee's employment relationship
22 with the employer, or used for the employer's business purposes;

23 (4) Conducting an investigation or requiring an employee to
24 cooperate in an investigation. The employer may require an
25 employee to share the content that has been reported to make a
26 factual determination, if the employer has specific information
27 about an unauthorized transfer of the employer's proprietary

28 information, confidential information or financial data, to an
29 employee's personal account;

30 (5) Prohibiting an employee or potential employee from
31 using a personal account during employment hours, while on
32 employer time or for business purposes; or

33 (6) Requesting an employee to share specific content
34 regarding a personal account for the purposes of ensuring
35 compliance with applicable laws, regulatory requirements or
36 prohibitions against work-related employee misconduct.

37 (c) If an employer inadvertently receives the username,
38 password or any other authentication information that would
39 enable the employer to gain access to the employee or potential
40 employee's personal account through the use of an otherwise
41 lawful technology that monitors the employer's network or
42 employer-provided electronic devices for network security or
43 data confidentiality purposes, then the employer is not liable for
44 having that information, unless the employer:

45 (1) Uses that information, or enables a third party to use that
46 information, to access the employee or potential employee's
47 personal account;

48 (2) After the employer becomes aware that that information
49 was received, does not delete the information as soon as is
50 reasonably practicable, unless that information is being retained
51 by the employer in connection with an ongoing investigation of
52 an actual or suspected breach of the computer, network or data
53 security. Where an employer knows or, through reasonable
54 efforts, should be aware that its network monitoring technology
55 is likely inadvertently to receive such information, the employer
56 shall make reasonable efforts to secure that information.

57 (d) Nothing in this section diminishes the authority and
58 obligation of an employer to investigate complaints, allegations

59 or the occurrence of sexual, racial, or other harassment as
60 provided in this code.

61 (e) As used in this section, “personal account” means an
62 account, service or profile on a social networking website that is
63 used by an employee or potential employee exclusively for
64 personal communications unrelated to any business purposes of
65 the employer.

CHAPTER 144

**(H. B. 4324 - By Mr. Speaker (Mr. Armstead),
and Delegate Miley)
[By Request of the Executive]**

[Passed March 7, 2016; in effect ninety days from passage.]
[Approved by the Governor on March 10, 2016.]

AN ACT to amend and reenact §21A-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing information sharing by Workforce West Virginia related to administration of the Workforce Innovation and Opportunity Act with agencies of state government responsible for vocational rehabilitation, employment and training.

Be it enacted by the Legislature of West Virginia:

That §21A-10-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

1 (a) Each employer, including labor organizations as defined
2 in subsection (i) of this section, shall, quarterly, submit certified
3 reports on or before the last day of the month next following the
4 calendar quarter, on forms to be prescribed by the commissioner.
5 The reports shall contain:

6 (1) The employer's assigned unemployment compensation
7 registration number, the employer's name and the address at
8 which the employer's payroll records are maintained;

9 (2) Each employee's Social Security account number, name
10 and the gross wages paid to each employee, which shall include
11 the first \$12,000 of remuneration and all amounts in excess of
12 that amount, notwithstanding subdivision (1), subsection (b),
13 section twenty-eight, article one-a of this chapter;

14 (3) The total gross wages paid within the quarter for
15 employment, which includes money wages and the cash value of
16 other remuneration, and shall include the first \$12,000 of
17 remuneration paid to each employee and all amounts in excess
18 of that amount, notwithstanding subdivision (1), subsection (b),
19 section twenty-eight, article one-a of this chapter; and

20 (4) Other information that is reasonably connected with the
21 administration of this chapter.

22 (b) Information obtained may not be published or be open to
23 public inspection to reveal the identity of the employing unit or
24 the individual.

25 (c) Notwithstanding the provisions of subsection (b) of this
26 section, the commissioner may provide information obtained to
27 the following governmental entities for purposes consistent with
28 state and federal laws:

29 (1) The United States Department of Agriculture;

30 (2) The state agency responsible for enforcement of the
31 Medicaid program under Title XIX of the Social Security Act;

32 (3) The United States Department of Health and Human
33 Services or any state or federal program operating and approved
34 under Title I, Title II, Title X, Title XIV or Title XVI of the
35 Social Security Act;

36 (4) Those agencies of state government responsible for
37 economic and community development; early childhood,
38 primary, secondary, postsecondary and vocational education; the
39 West Virginia P-20 longitudinal data system established
40 pursuant to section ten, article one-d, chapter eighteen-b of this
41 code; and vocational rehabilitation, employment and training,
42 including, but not limited to, the administration of the Perkins
43 Act and the Workforce Innovation and Opportunity Act;

44 (5) The Tax Division, but only for the purposes of collection
45 and enforcement;

46 (6) The Division of Labor for purposes of enforcing the
47 wage bond and the contractor licensing provisions of chapter
48 twenty-one of this code;

49 (7) Any agency of this or any other state, or any federal
50 agency, charged with the administration of an unemployment
51 compensation law or the maintenance of a system of public
52 employment offices;

53 (8) Any claimant for benefits or any other interested party to
54 the extent necessary for the proper presentation or defense of a
55 claim; and

56 (9) The Insurance Commissioner for purposes of its Workers
57 Compensation regulatory duties.

58 (d) The agencies or organizations which receive information
59 under subsection (c) of this section shall agree that the

60 information shall remain confidential as not to reveal the identity
61 of the employing unit or the individual consistent with the
62 provisions of this chapter.

63 (e) The commissioner may, before furnishing any
64 information permitted under this section, require that those who
65 request the information shall reimburse the Bureau of
66 Employment Programs for any cost associated for furnishing the
67 information.

68 (f) The commissioner may refuse to provide any information
69 requested under this section if the agency or organization making
70 the request does not certify that it will comply with the state and
71 federal law protecting the confidentiality of the information.

72 (g) A person who violates the confidentiality provisions of
73 this section is guilty of a misdemeanor and, upon conviction
74 thereof, shall be fined not less than \$20 nor more than \$200 or
75 confined in a county or regional jail not longer than ninety days,
76 or both.

77 (h) An action for slander or libel, either criminal or civil,
78 may not be predicated upon information furnished by any
79 employer or any employee to the commissioner in connection
80 with the administration of any of the provisions of this chapter.

81 (i) For purposes of subsection (a) of this section, the term
82 "labor organization" means any organization of any kind, or any
83 agency or employee representation committee or plan, in which
84 employees participate and which exists for the purpose, in whole
85 or in part, of dealing with employers concerning grievances,
86 labor disputes, wages, rates of pay, hours of employment or
87 conditions of work. It includes any entity, also known as a hiring
88 hall, which is used by the organization and an employer to carry
89 out requirements described in 29 U. S. C. §158(f)(3) of an
90 agreement between the organization and the employer.