

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2017
Constitutional Amendment, 2017
First Extraordinary Session, 2017

Volume II
Chapters 140 - 246
Chapters 1 - 7

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

COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF

STEPHEN J. HARRISON
CLERK OF THE HOUSE



OFFICE OF THE CLERK OF THE HOUSE

212 MAIN UNIT
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CHARLESTON, WEST VIRGINIA

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2017

OFFICERS

Speaker: Tim Armstead – Elkview

Clerk: Stephen J. Harrison – Cross Lanes

Sergeant-at-Arms: Marshall Clay – Fayetteville

Doorkeeper: Frank Larese – Belle

Name	District	City	Occupation	Term
Ambler, George "Boogie" (R)	42 nd	Fort Spring	Businessman/Educator/Farmer	81 st – 83 rd
Anderson, Everette W. Jr. (R)	8 th	Williamstown	Educator	71 st – 83 rd
Armstead, Tim (R)	40 th	Elkview	Attorney	Appt. 9/5/1998, 73 rd ; 74 th – 83 rd
Arvon, Karen "Lynne" (R)	31 st	Beckley	Medical Sales/Social Services	81 st – 83 rd
Atkinson III, Martin "Rick" (R)	11 th	Reedy	Director of Sales	82 nd – 83 rd
Baldwin, Jr, Stephen (D)	42 nd	Ronceverte	Minister	83 rd
Barrett, Jason (D)	61 st	Martinsburg	Restaurant Owner	81 st ; 83 rd
Bates, Mick (D)	30 th	Beckley	Physical Therapist/ Small Business Owner	82 nd – 83 rd
Blair, Saira (R)	59 th	Martinsburg	Student	83 rd
Boggs, Brent (D)	34 th	Gassaway	Railroad Engineer	73 rd – 83 rd
Brewer, Scott (D)	13 th	New Haven	Union Carpenter	83 rd
Butler, Jim (R)	14 th	Henderson	Excavating Contractor	81 st – 83 rd
Byrd, Andrew D. (D)	35 th	South Charleston	Attorney/Small Business Owner	83 rd
Canestraro, Joe (D)	4 th	Benwood	Lawyer/Assistant Prosecuting Attorney	83 rd
Capito, Moore (R)	35 th	Charleston	Attorney	83 rd
Caputo, Mike (D)	50 th	Rivesville	UMWA, District 31 Vice-President	73 rd – 83 rd
Cooper, Roy G. (R)	28 th	Wayside	Retired U. S. Navy	81 st – 83 rd
Cowles, Daryl E. (R)	58 th	Berkeley Springs	Businessman	78 th – 83 rd
Criss, Vernon (R)	10 th	Parkersburg	Executive	69 th ; 83 rd
Dean, Mark (R)	21 st	Verner	Principal	83 rd
Deem, Frank (R)	10 th	Vienna	Businessman, Oil and Gas Producer	52 nd – 56 th ; 57 th – 62 nd (Senate); 64 th – 65 th (Senate); 69 th ; 72 nd – 79 th (Senate); 82 nd – 83 rd
Diserio, Phillip (D)	2 nd	Follansbee	Retired Electrician	81 st ; 83 rd
Eldridge, Jeff (D)	22 nd	Alum Creek	Self Employed	77 th – 79 th ; 81 st – 83 rd
Ellington, Joe (R)	27 th	Princeton	Physician	80 th – 83 rd
Espinosa, Paul (R)	66 th	Charles Town	General Manager, Telecommunications	81 st – 83 rd
Evans, Allen V. (R)	54 th	Petersburg	Businessman/Farmer	70 th – 83 rd
Evans, Edward (D)	26 th	Welch	Retired Science Teacher	83 rd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

Name	District	City	Occupation	Term
Fast, Tom (R)	32 nd	Fayetteville	Attorney	82 nd – 83 rd
Ferro, Michael T. (D)	4 th	McMechen	Retired Educator/Coach	79 th – 83 rd
Fleischauer, Barbara Evans (D)	51 st	Morgantown	Attorney/Small Business Owner	72 nd – 76 th ; 78 th – 83 rd
Fluharty, Shawn (D)	3 rd	Wheeling	Attorney	82 nd – 83 rd
Folk, Michael “Mike” (R)	63 rd	Martinsburg	Airline Pilot; Farmer	81 st – 83 rd
Foster, Geoff (R)	15 th	Winfield	Construction Supply	82 nd – 83 rd
Foster, Nancy Reagan (R)	38 th	Scott Depot	Business Owner	83 rd
Frich, Cindy (R)	51 st	Morgantown	Sales/Volunteer Home Care	76 th – 77 th ; 81 st – 83 rd
Gearheart, Marty (R)	27 th	Bluefield	Businessman	80 th – 83 rd
Hamilton, Bill (R)	45 th	Buckhannon	Independent Insurance Agency Owner	76 th – 83 rd
Hamrick, Danny (R)	48 th	Clarksburg	Consulting, Media Production	81 st – 83 rd
Hanshaw, Roger (R)	33 rd	Wallback	Attorney	82 nd – 83 rd
Harshbarger, Jason (R)	7 th	Pullman	Natural Gas Storage Project Management	83 rd
Hartman, William G. (D)	43 rd	Elkins	Retired Independent Insurance Agent	76 th – 83 rd
Hicks, Kenneth Paul (D)	19 th	Kenova	Attorney	82 nd – 83 rd
Higginbotham, Joshua (R)	13 th	Poca	Author	83 rd
Hill, Jordan (R)	41 st	Summersville	Human Resources	82 nd – 83 rd
Hollen, Ray (R)	9 th	Elizabeth	Retired USCG, Retired WV State Police	83 rd
Hornbuckle, Sean (D)	16 th	Huntington	Financial Services Broker	82 nd – 83 rd
Householder, Eric (R)	64 th	Martinsburg	Small Business Owner	80 th – 83 rd
Howell, Gary (R)	56 th	Keyser	Small Business Owner	80 th – 83 rd
Iaquinta, Richard (D)	48 th	Clarksburg	Teacher/Coach	76 th – 81 st , 83 rd
Isner, Phil (D)	43 rd	Elkins	Attorney	83 rd
Kelly, John (R)	10 th	Parkersburg	Retired, Chemical Industry	82 nd – 83 rd
Kessinger, Kayla (R)	32 nd	Mount Hope	Director of Human Resources	82 nd – 83 rd
Lane, Charlotte (R)	35 th	Charleston	Lawyer	64 th ; 67 th ; 70 th ; 83 rd
Lewis, Tony (R)	53 rd	Eggon	Cable Splicer/Farmer	83 rd
Longstreth, Linda (D)	50 th	Fairmont	Administrator/Educator	77 th – 83 rd
Love, Shirley (D)	32 nd	Oak Hill	Retired	Appt. 8/8/1994, 71 st (Senate); 72 nd – 78 th (Senate); 83 rd
Lovejoy, Chad (D)	17 th	Huntington	Attorney	83 rd
Lynch, Dana (D)	44 th	Webster Springs	Retired	81 st – 83 rd
Marcum, Justin (D)	20 th	Williamson	Attorney	Appt. 1/21/2012, 80 th ; 81 st – 83 rd
Martin, Patrick (R)	45 th	Weston	Business Owner	83 rd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

Name	District	City	Occupation	Term
Maynard, Zack (R)	22 nd	Harts	Self Employed	83 rd
McGeehan, Pat (R)	1 st	Chester	Business Sales/Author	79 th ; 82 nd – 83 rd
Miley, Tim (D)	48 th	Bridgeport	Attorney	77 th – 83 rd
Miller, Carol (R)	16 th	Huntington	Small Business Owner/Bufalo Farmer	78 th – 83 rd
Miller, Rodney (D)	23 rd	Madison	Retired Sheriff/ Executive Director Sheriff's Assn	83 rd
Moore, Riley (R)	67 th	Harpers Ferry		83 rd
Moye, Ricky (D)	29 th	Crab Orchard	Businessman/School Bus Operator	78 th – 83 rd
Nelson, Eric (R)	35 th	Charleston	Businessman	80 th – 83 rd
O'Neal, John IV (R)	28 th	Beckley	Businessman	80 th – 83 rd
Overington, John (R)	62 nd	Martinsburg	Public Relations/Former Educator	67 th – 83 rd
Paynter, Tony (R)	25 th	Hanover	Truck Driver	83 rd
Pethtel, Dave (D)	5 th	Hundred	Educator	69 th – 71 st ; 74 th – 83 rd
Phillips, Rupert, Jr. (R)*	24 th	Laredo	Sales Manager	80 th – 83 rd
Pushkin, Mike (D)	37 th	Charleston	Taxi Driver/Musician	82 nd – 83 rd
Pyles, Rodney (D)	51 st	Morgantown	Retired	83 rd
Queen, Ben (R)	48 th	Bridgeport	Media Entrepreneur/Photography	83 rd
Robinson, Andrew (D)	36 th	Charleston	Real Estate Appraiser/Broker	83 rd
Rodighiero, Ralph (D)	24 th	Logan	Delivery Driver	78 th – 80 th ; 82 nd – 83 rd
Rohrbach, Matthew (R)	17 th	Huntington	Physician	82 nd – 83 rd
Romine, Chuck (R)	16 th	Huntington	Retired Insurance Agent	59 th – 61 st ; 74 th ; 83 rd
Romine, William Roger (R)	6 th	West Union	Retired School Administrator	75 th – 83 rd
Rowan, Ruth (R)	57 th	Points	Retired Educator	77 th – 83 rd
Rowe, Larry L. (D)	36 th	Charleston	Attorney	73 rd – 74 th ; 75 th – 76 th (Senate); 82 nd – 83 rd
Shott, John (R)	27 th	Bluefield	Attorney	79 th (Resigned and Appt. to Senate May 2010); 81 st – 83 rd
Sobonya, Kelli (R)	18 th	Barboursville	Realtor	76 th – 83 rd
Sponagle, Isaac (D)	55 th	Franklin	Attorney	81 st – 83 rd
Statler, Joe (R)	51 st	Core	Retired	82 nd – 83 rd
Storch, Erika (R)	3 rd	Wheeling	Financial Officer	80 th – 83 rd
Summers, Amy (R)	49 th	Flemington	Registered Nurse	82 nd – 83 rd
Sypolt, Terri Funk (R)	52 nd	Kingwood	Assessor	83 rd
Thompson, Robert (D)	19 th	Wayne	Teacher	83 rd

*Note: Delegate Phillips switched from Democrat to Independent on January 26, 2017, and from Independent to Republican on May 11, 2017.

MEMBERS OF THE HOUSE OF DELEGATES - Continued

Name	District	City	Occupation	Term
Upson, Jill (R)	65 th	Charles Town	Former Retail Manager	82 nd – 83 rd
Wagner, Danny (R)	47 th	Philippi	Retired Educator and Coach	82 nd – 83 rd
Walters, Ron (R)	39 th	Charleston	Insurance Executive/President	71 st – 73 rd ; 75 th – 83 rd
Ward, Guy (R)	50 th	White Hall	Fairmont Community Development Partnership	83 rd
Westfall, Steve (R)	12 th	Ripley	Insurance Agent	81 st – 83 rd
White, Brad (R)	36 th	Charleston	Insurance Agent/Owner	82 nd – 83 rd
Williams, John (D)	51 st	Morgantown	Insurance Sales	83 rd
Wilson, S. Marshall (R)	60 th	Gerrardstown	Author/Army Officer	83 rd
Zatezalo, Mark (R)	1 st	Weirton	Hydrogeologist	82 nd – 83 rd

MEMBERS OF THE SENATE

REGULAR SESSION, 2017

OFFICERS

President: Mitch Carmichael – Ripley

Clerk: Clark Barnes – French Creek

Sergeant-at-Arms: Andrew Palmer – Charleston

Doorkeeper: Jeffrey Branham – Cross Lanes

<u>Name</u>	<u>District</u>	<u>City</u>	<u>Occupation</u>	<u>Term</u>
Azinger, Mike (R)	3 rd	Vienna	Manager, Contractor Group	82 nd (House); 83 rd
Beach, Bob (D)	13 th	Morgantown	Appt. 5/1998, 73 rd ; 75 th – 79 th (House); 80 th – 83 rd	
Blair, Craig (R)	15 th	Martinsburg	Businessman	76 th – 79 th (House); 79 th – 83 rd
Boley, Donna (R)	3 rd	St. Marys	Retired	Appt. 5/14/85; 67 th ; 68 th – 83 rd
Boso, Greg (R)	11 th	Summersville	Civil Engineer	82 nd – 83 rd
Carmichael, Mitch (R)	4 th	Ripley	Director of Commercial Sales	75 th – 80 th (House); 81 st – 83 rd
Clements, Charles H. (R)*	2 nd	New Martinsville	Retired	77 th (House); Appt. 1/2017, 83 rd
Cline, Sue (R)	9 th	Brenton	Real Estate Agent	Appt. 1/2016, 82 nd ; 83 rd
Facemire, Doug (D)	12 th	Sutton	Owner, Grocery Chain	79 th – 83 rd
Ferns, Ryan (R)	1 st	Wheeling	Physical Therapist	80 th – 81 st (House); 83 rd
Gaunch, Ed (R)	8 th	Charleston	Retired/Former President/ Insurance	82 nd – 83 rd
Hall, Mike (R)	4 th	Winfield	72 nd – 77 th (House); 78 th – 83 rd	
Jeffries, Glenn (D)	8 th	Red House	Businessman	83 rd
Karnes, Robert (R)	11 th	Tallmansville	Information and Technology Field Services	82 nd – 83 rd
Mann, Kenny (R)	10 th	Ballard	Funeral Director	83 rd
Maroney, Mike (R)	2 nd	Glen Dale	Physician	83 rd
Maynard, Mark (R)	6 th	Genoa	Automobile Dealer	82 nd – 83 rd
Miller, Ronald (D)	10 th	Lewisburg	Self-Employed	80 th – 83 rd
Mullins, Jeff (R)	9 th	Shady Spring	Insurance	82 nd – 83 rd
Ojeda II, Richard (D)	7 th	Holden	Retired US Army/JROTC Instructor	83 rd
Palumbo, Corey (D)	17 th	Charleston	Attorney	76 th – 78 th (House); 79 th – 83 rd
Plymale, Robert (D)	5 th	Huntington	Businessman	71 st – 83 rd
Prezioso, Roman (D)	13 th	Fairmont	Administrator	69 th – 73 rd (House); 73 rd – 83 rd

Note: Senator Kent Leonhardt served during the January 11, 2017 Organizational Session but resigned January 15, 2017 to become Commissioner of Agriculture. Senator Clements was appointed January 28, 2017 and took the oaths of office on February 2, 2017.

MEMBERS OF THE SENATE - Continued

Name	District	City	Occupation	Term
Romano, Mike (D)	12 th	Clarksburg	Attorney/CPA	82 nd – 83 rd
Rucker, Patricia (R)	16 th	Harpers Ferry	Home Schooling Mother	83 rd
Smith, Randy (R)	14 th	Davis	Coal Miner	81 st – 82 nd (House); 83 rd
Stollings, Ron (D)	7 th	Madison	Physician	78 th – 83 rd
Swope, Chandler (R)	6 th	Bluefield	Retired	83 rd
Sypolt, Dave (R)	14 th	Kingwood	Professional Land Surveyor	78 th – 83 rd
Takubo, Tom (R)	17 th	South Charleston	Physician	82 nd – 83 rd
Trump, Charles (R)	15 th	Berkeley Springs	Lawyer	71 st – 78 th (House); 82 nd – 83 rd
Unger, John II (D)	16 th	Martinsburg	Businessman/Economic Development	74 th – 83 rd
Weld, Ryan (R)	1 st	Wellsburg	Physical Therapist	82 nd – 83 rd
Woelfel, Mike (D)	5 th	Huntington	Lawyer	82 nd – 83 rd

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2017

STANDING

AGRICULTURE AND NATURAL RESOURCES

Allen Evans, Chair (*Agriculture*), Bill Hamilton, Chair (*Natural Resources*), Roger Romine, Vice Chair (*Agriculture*), George Ambler, Vice Chair, (*Natural Resources*), Isaac Sponaugle, Minority Chair, (*Agriculture*), Ralph Rodighiero, Minority Chair, (*Natural Resources*), Robert Thompson, Minority Vice Chair (*Agriculture*), Ken Hicks, Minority Vice Chair (*Natural Resources*), Anderson, Atkinson, Cooper, Folk, Hanshaw, Harshbarger, Lewis, C. Miller, Moore, Overington, Summers, Wagner, Baldwin, Brewer, Eldridge, Love, Lynch

BANKING AND INSURANCE

Cindy Frich, Chair (*Banking*), Steve Westfall, Chair (*Insurance*), Jill Upson, Vice Chair (*Banking*), Brad White, Vice Chair, (*Insurance*), Justin Marcum, Minority Chair, (*Banking*), Bill Hartman, Minority Chair (*Insurance*), Chad Lovejoy, Minority Vice Chair, (*Banking*), Andrew Robinson, Minority Vice Chair, (*Insurance*) Arvon, Capito, Criss, Deem, A. Evans, Householder, McGeehan, Nelson, O'Neal, C. Romine, Shott, Walters, Bates, Iaquinta, Isner, Rowe, Sponaugle

EDUCATION

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ENROLLED BILLS

Roger Hanshaw, Chair, Steve Westfall, Vice Chair, Lane, Marcum, Pushkin

FINANCE

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INTERSTATE COOPERATION

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PENSIONS AND RETIREMENT

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Joe Ellington, Chair, Kayla Kessinger, Vice Chair, Frich, Hollen, Sobonya, Storch, Upson, Baldwin, Bates, Boggs, Hornbuckle

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RULE MAKING REVIEW

Kelli Sobonya, Chair, Cindy Frich, Vice Chair, G. Foster, Hanshaw, Fleischauer, Rowe

RULES

Tim Armstead, Chair, Anderson, Cowles, Ellington, Espinosa, Hanshaw, Howell, C. Miller, Nelson, O'Neal, Overington, Shott, Sobonya, Boggs, Caputo, Ferro, Fleischauer, Miley, Moye, Pethel

SENIOR CITIZEN ISSUES

Ruth Rowan, Chair, Matt Rohrbach, Vice Chair, Dana Lynch, Minority Chair, Rodney Pyles, Minority Vice Chair, A. Evans, Kelly, Lewis, Martin, Maynard, Paynter, Queen, C. Romine, R. Romine, Sypolt, Walters, White, Zatezalo, Boggs, Eldridge, Ferro, Fleischauer, Love, Lovejoy, Moye, Pethel

SMALL BUSINESS AND ECONOMIC DEVELOPMENT

Jordan Hill, Chair, Rick Atkinson, Vice Chair, Larry Rowe, Minority Chair, Jason Barrett, Minority Vice Chair, Blair, Espinosa, N. Foster, Higginbotham, Kelly, Kessinger, Martin, C. Miller, Moore, Storch, Ward, Westfall, Wilson, Zatezalo, Bates, Byrd, Marcum, Miley, Phillips, Sponaugle, Thompson

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VETERANS' AFFAIRS AND HOMELAND SECURITY

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SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2017

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Senators Sybolt (Chair), Rucker (Vice Chair), Clements, Cline, Mann, Maynard, Smith, Beach, Miller, Ojeda, Woelfel.

BANKING AND INSURANCE

Senators Gaunch (Chair), Azinger (Vice Chair), Clements, Hall, Mann, Maroney, Mullins, Swope, Facemire, Palumbo, Prezioso, Romano, Woelfel.

CONFIRMATIONS

Senators Boley (Chair), Ferns (Vice Chair), Azinger, Blair, Boso, Gaunch, Miller, Plymale, Prezioso.

ECONOMIC DEVELOPMENT

Senators Maroney (Chair), Maynard (Vice Chair), Blair, Boso, Cline, Mann, Smith, Swope, Takubo, Jeffries, Miller, Stollings, Romano, Woelfel.

EDUCATION

Senators Mann (Chair), Karnes (Vice Chair), Azinger, Boley, Hall, Maynard, Rucker, Swope, Trump, Beach, Plymale, Romano, Stollings, Unger.

ENERGY, INDUSTRY AND MINING

Senators Smith (Chair), Sybolt (Vice Chair), Blair, Boley, Cline, Ferns, Gaunch, Mullins, Swope, Facemire, Jeffries, Ojeda, Woelfel.

SENATE COMMITTEES

ENROLLED BILLS

Senators Maynard (Chair), Azinger, Gaunch, Palumbo, Presiozo.

FINANCE

Senators Hall (Chair), Mullins (Vice Chair), Blair, Boley, Boso, Ferns, Gaunch, Mann, Maroney, Sypolt, Takubo, Facemire, Palumbo, Plymale, Prezioso, Stollings, Unger.

GOVERNMENT ORGANIZATION

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HEALTH AND HUMAN RESOURCES

Senators Takubo (Chair), Maroney (Vice Chair), Azinger, Clements, Karnes, Rucker, Trump, Weld, Palumbo, Plymale, Prezioso, Stollings, Unger.

INTERSTATE COOPERATION

Senators Cline (Chair), Azinger (Vice Chair), Maroney, Maynard, Sypolt, Palumbo, Unger.

JUDICIARY

Senators Trump (Chair), Weld (Vice Chair), Azinger, Clements, Cline, Ferns, Karnes, Maynard, Rucker, Smith, Swope, Beach, Jeffries, Miller, Ojeda, Romano, Woelfel.

MILITARY

Senators Weld (Chair), Boley (Vice Chair), Azinger, Clements, Cline, Sypolt, Facemire, Ojeda, Palumbo.

SENATE COMMITTEES

NATURAL RESOURCES

Senators Maynard (Chair), Mann (Vice Chair), Cline, Karnes, Rucker, Smith, Sypolt, Takubo, Beach, Facemire, Prezioso, Stollings, Woelfel.

PENSIONS

Senators Gaunch (Chair), Hall (Vice Chair), Maroney, Mullins, Weld, Plymale, Romano.

RULES

Senators Carmichael (Chair), Blair, Boley, Ferns, Hall, Sypolt, Trump, Palumbo, Prezioso, Plymale, Stollings.

TRANSPORTATION AND INFRASTRUCTURE

Senators Boso (Chair), Swope (Vice Chair), Gaunch, Maroney, Maynard, Rucker, Beach, Jeffries, Plymale.

SELECT COMMITTEE ON TAX REFORM

Senators Karnes (Chair), Blair (Vice Chair), Ferns, Boso, Gaunch, Jeffries, Plymale.

COMMITTEE ON THE WORKFORCE

Senators Swope (Chair), Weld (Vice Chair), Boso, Karnes, Mullins, Rucker, Smith, Beach, Jeffries, Ojeda, Stollings.

CHAPTER 140

(Com. Sub. for S. B. 113 - By Senator Maynard)

[Passed March 30, 2017; in effect from passage.]
[Approved by the Governor on April 8, 2017.]

AN ACT to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to awarding of matching grants for local litter control programs; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to alternative emission limitations during startup, shutdown and maintenance operations; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits, permission to commence construction and procedures for evaluation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality

standards; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment.

Be it enacted by the Legislature of West Virginia:

That §64-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

1 (a) The legislative rule filed in the State Register on
2 August 25, 2016, authorized under the authority of section
3 three, article fifteen-a, chapter twenty-two of this code,
4 relating to the Department of Environmental Protection
5 (awarding of matching grants for local litter control
6 programs, 33 CSR 41), is authorized.

7 (b) The legislative rule filed in the State Register on
8 August 26, 2016, authorized under the authority of section
9 four, article five, chapter twenty-two of this code, relating
10 to the Department of Environmental Protection (alternative
11 emission limitations during startup, shutdown and
12 maintenance operations, 45 CSR 01), is authorized.

13 (c) The legislative rule filed in the State Register on
14 August 26, 2016, authorized under the authority of section
15 eleven, article five, chapter twenty-two of this code, relating
16 to the Department of Environmental Protection (permits for
17 construction, modification, relocation and operation of
18 stationary sources of air pollutants, notification
19 requirements, administrative updates, temporary permits,
20 general permits, permission to commence construction and
21 procedures for evaluation, 45 CSR 13), is authorized.

22 (d) The legislative rule filed in the State Register on
23 August 26, 2016, authorized under the authority of section

24 four, article five, chapter twenty-two of this code, relating
25 to the Department of Environmental Protection (permits for
26 construction and major modification of major stationary
27 sources for the prevention of significant deterioration of air
28 quality, 45 CSR 14), is authorized.

29 (e) The legislative rule filed in the State Register on
30 August 26, 2016, authorized under the authority of section
31 four, article five, chapter twenty-two of this code, relating
32 to the Department of Environmental Protection (standards
33 of performance for new stationary sources, 45 CSR 16), is
34 authorized.

35 (f) The legislative rule filed in the State Register on
36 August 26, 2016, authorized under the authority of section
37 four, article five, chapter twenty-two of this code, relating
38 to the Department of Environmental Protection (control of
39 air pollution from hazardous waste treatment, storage and
40 disposal facilities, 45 CSR 25), is authorized.

41 (g) The legislative rule filed in the State Register on
42 August 26, 2016, authorized under the authority of section
43 four, article five, chapter twenty-two of this code, relating to
44 the Department of Environmental Protection (emission
45 standards for hazardous air pollutants, 45 CSR 34), is
46 authorized.

47 (h) The legislative rule filed in the State Register on
48 August 26, 2016, authorized under the authority of section
49 four, article five, chapter twenty-two of this code, relating to
50 the Department of Environmental Protection (ambient air
51 quality standards, 45 CSR 08), is authorized.

52 (i) The legislative rule filed in the State Register on August
53 25, 2016, authorized under the authority of section three,
54 article twenty-two, chapter twenty-two of this code, relating to
55 the Department of Environmental Protection (voluntary
56 remediation and redevelopment, 60 CSR 03), is authorized.

CHAPTER 141

(Com. Sub. for S. B. 125 - By Senator Maynard)

[Passed April 4, 2017; in effect from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend and reenact §64-5-1 and §64-5-2 of the Code of West Virginia, 1931, as amended, all relating generally to promulgation of legislative rules by the Department of Health and Human Resources and the Health Care Authority; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with amendments recommended by the Legislature; authorizing the Health Care Authority to promulgate a legislative rule relating to the Hospital Assistance Grant Program; authorizing the Health Care Authority to promulgate a legislative rule relating to exemption from certificate of need; authorizing the Health Care Authority to promulgate a legislative rule relating to Rural Health Systems Grant Program; authorizing the Health Care Authority to promulgate a legislative rule relating to certificate of need; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to expedited partner therapy; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clinical laboratory technician and technologist licensure and certification; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clandestine drug laboratory remediation; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication-assisted treatment–opioid treatment programs; and authorizing the Department of Health and Human Resources to promulgate a

legislative rule relating to medication-assisted treatment—
office-based, medication-assisted treatment.

Be it enacted by the Legislature of West Virginia:

That §64-5-1 and §64-5-2 of the Code of West Virginia, 1931,
as amended, be amended and reenacted, all to read as follows:

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT
OF HEALTH AND HUMAN RESOURCES TO
PROMULGATE LEGISLATIVE RULES.**

§64-5-1. Health Care Authority.

1 (a) The legislative rule filed in the State Register on
2 August 24, 2016, authorized under the authority of section
3 eight, article twenty-nine-b, chapter sixteen of this code,
4 modified by the Health Care Authority to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on December
7 16, 2016, relating to the Health Care Authority (Hospital
8 Assistance Grant Program, 65 CSR 31), is authorized.

9 (b) The legislative rule filed in the State Register on
10 August 22, 2016, authorized under the authority of section
11 four, article two-d, chapter sixteen of this code, modified by
12 the Health Care Authority to meet the objections of the
13 Legislative Rule-Making Review Committee and refiled in
14 the State Register on January 6, 2017, relating to the Health
15 Care Authority (exemption from certificate of need, 65 CSR
16 29), is authorized.

17 (c) The legislative rule filed in the State Register on
18 August 24, 2016, authorized under the authority of section
19 four, article two-d, chapter sixteen of this code, modified by
20 the Health Care Authority to meet the objections of the
21 Legislative Rule-Making Review Committee and refiled in
22 the State Register on December 16, 2016, relating to the
23 Health Care Authority (Rural Health Systems Grant
24 Program, 65 CSR 30), is authorized.

25 (d) The legislative rule filed in the State Register on
26 August 23, 2016, authorized under the authority of section
27 four, article two-d, chapter sixteen of this code, modified by
28 the Health Care Authority to meet the objections of the
29 Legislative Rule-Making Review Committee and refiled in
30 the State Register on December 19, 2016, relating to the
31 Health Care Authority (certificate of need, 65 CSR 32), is
32 authorized.

§64-5-2. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on
2 August 26, 2016, authorized under the authority of section
3 five, article four-f, chapter sixteen of this code, modified by
4 the Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on October 6,
7 2016, relating to the Department of Health and Human
8 Resources (expedited partner therapy, 64 CSR 103), is
9 authorized.

10 (b) The legislative rule filed in the State Register on
11 August 26, 2016, authorized under the authority of section
12 ten, article five-j, chapter sixteen of this code, modified by
13 the Department of Health and Human Resources to meet the
14 objections of the Legislative Rule-Making Review
15 Committee and refiled in the State Register on October 6,
16 2016, relating to the Department of Health and Human
17 Resources (clinical laboratory technician and technologist
18 licensure and certification, 64 CSR 57), is authorized.

19 (c) The legislative rule filed in the State Register on
20 August 26, 2016, authorized under the authority of section
21 three, article eleven, chapter sixty-a of this code, modified
22 by the Department of Health and Human Resources to meet
23 the objections of the Legislative Rule-making Review
24 Committee and refiled in the State Register on October 11,
25 2016, relating to the Department of Health and Human
26 Resources (clandestine drug laboratory remediation, 64
27 CSR 92), is authorized with the following amendments:

28 On page five, section 6.1.c., by striking out subdivision
29 6.1.c. in its entirety and inserting in lieu thereof a new
30 subdivision 6.1.c. to read as follows:

31 6.1.c. In the case of a hotel, motel, or apartment
32 building, all units or areas immediately adjacent to a unit or
33 area within the hotel, motel, or apartment unit that contained
34 a clandestine drug laboratory and that is under the control
35 of the residential property owner must be secured, vacated
36 and tested in accordance with this rule.

37 (d) The legislative rule filed in the State Register on
38 August 26, 2016, authorized under the authority of section
39 thirteen, article five-y, chapter sixteen of this code, modified
40 by the Department of Health and Human Resources to meet
41 the objections of the Legislative Rule-Making Review
42 Committee and refiled in the State Register on January 25,
43 2017, relating to the Department of Health and Human
44 Resources (medication-assisted treatment—opioid treatment
45 programs, 69 CSR 11), is authorized with the following
46 amendments:

47 On page sixteen, section 8.4.e., after the word “shall” by
48 striking out the words “practice 90 percent of the hours in
49 which the opioid treatment program is dispensing or
50 administering medications each week in order to”;

51 And,

52 On page seventeen, section 8.5.d., after the word
53 “operation” by inserting the words “when medication is
54 dispensed or administered”.

55 (e) The legislative rule filed in the State Register on
56 August 26, 2016, authorized under the authority of section
57 one, article five-y, chapter sixteen of this code, modified by
58 the Department of Health and Human Resources to meet the
59 objections of the Legislative Rule-Making Review
60 Committee and refiled in the State Register on January 25,
61 2017, relating to the Department of Health and Human

62 Resources (medication-assisted treatment—office-based
63 medication assisted treatment, 69 CSR 12), is authorized
64 with the following amendments:

65 On page two, after section 2.8. by inserting a new
66 section 2.9. to read as follows:

67 2.9. Coordination of Care Agreement – An agreement
68 signed by the physician, counsel and patient allowing open
69 communication and the exchange of health information
70 between the indicated providers to ensure the patient is
71 provided comprehensive and holistic treatment for
72 substance use disorder, when medical treatment and
73 counselling services are not being treated within the same
74 program.;

75 And by renumbering the remaining sections;

76 On page four, after section 2.24. by inserting a new
77 section 2.25. to read as follows:

78 2.25. Maintenance Treatment – treatment following
79 induction and stabilization phases of treatment, and means
80 the prescribing of a partial agonist treatment medication at
81 stable dosage levels for a period in excess of twenty-one
82 days in the treatment of an individual for opioid use
83 disorder.;

84 And by renumbering the remaining sections;

85 On page fourteen, section 7.5.b., after the words
86 “primary counselor” by inserting the words “or counseling
87 service”;

88 On page twenty-one, section 13.3.b.3., after the word
89 “patient” by inserting the words “related to the treatment
90 being provided”;

91 On page twenty-five, section 19.5., after the words
92 “program staff” by inserting a period and striking out the
93 remainder of the sentence;

94 On page forty-seven, section 29.6., after the period by
95 inserting the words “Refer to section 32.5 of this rule for
96 administrate withdrawal for female patients with a positive
97 pregnancy screen.”;

98 On page forty-eight, section 30.6., after the period by
99 inserting the words “Refer to section 32.5 of this rule for
100 administrate withdrawal for female patients with a positive
101 pregnancy screen.”;

102 And,

103 On page fifty-two, section 32.5.f., by striking out the
104 section and inserting in lieu thereof a new section to read as
105 follows:

106 32.5.f. If a pregnant patient is discharged, the OBMAT
107 program shall identify the physician to whom the patient is
108 being discharged. If a provider is not available, a referral
109 shall be made to a Comprehensive Behavioral Health
110 Center. This information shall be retained in the clinical
111 record.

CHAPTER 142

(Com. Sub. for S. B. 116 - By Senator Maynard)

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §64-6-1, §64-6-2 and §64-6-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain Department of Military Affairs and Public Safety legislative rules; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing

certain agencies to promulgate legislative rules with various amendments recommended by the Legislature; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law-enforcement training and certification standards; authorizing the State Fire Marshal to promulgate a legislative rule relating to the regulation of fireworks and related explosive material; and directing the Division of Justice and Community Services to promulgate a legislative rule relating to the William R. Laird, IV- Second Chance Driver's License Program.

Be it enacted by the Legislature of West Virginia:

That §64-6-1, §64-6-2 and §64-6-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF
MILITARY AFFAIRS AND PUBLIC SAFETY TO
PROMULGATE LEGISLATIVE RULES.**

**§64-6-1. Governor's Committee on Crime, Delinquency and
Correction.**

1 The legislative rule filed in the State Register on August
2 26, 2016, authorized under the authority of section three,
3 article twenty-nine, chapter thirty of this code, modified by
4 the Governor's Committee on Crime, Delinquency and
5 Correction to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the State Register
7 on December 20, 2016, relating to the Governor's
8 Committee on Crime, Delinquency and Correction (law-
9 enforcement training and certification standards, 149 CSR
10 02), is authorized with the following amendments:

11 On page 10, subdivision 8.2.a., by striking out each of
12 the two uses of the underlined word "must" and inserting in
13 lieu thereof the word "shall";

14 On page 16, subdivision 14.1.b., after the underlined
15 word "certification" by inserting the word "holder";

16 And,

17 On page 16, subdivision 14.1.b, after the underlined
18 word “against” by striking the word “it” and inserting in lieu
19 thereof the words “him or her”.

§64-6-2. State Fire Marshal.

1 The legislative rule filed in the State Register on August
2 26, 2016, authorized under the authority of section eight,
3 article three-e, chapter twenty-nine of this code, modified
4 by the State Fire Marshal to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on December 21, 2016, relating to the
7 State Fire Marshal (regulation of fireworks and related
8 explosive materials, 103 CSR 04), is authorized with the
9 following amendments:

10 On page 5, subsection 3.44, after the word “issued” by
11 deleting the word “a”;

12 On page 6, paragraph 5.1.b.6, by striking out the
13 following “Require Manager(s) of any CFRS to complete
14 and pass a limited online safety training approved by the
15 State Fire Commission. At least one (1) certificate shall be
16 submitted” and inserting in lieu thereof the words “Submit
17 at least one (1) certificate”;

18 On page 7, subdivision 5.1.o, by striking the words “this
19 article” and inserting in lieu thereof the word “the law or
20 this rule”;

21 On page 9, subdivision 5.4.a, after the words
22 “jurisdiction over” by inserting the word “the”;

23 On page 11, subdivision 8.2.f, by striking out the words
24 “Applicants shall be required to provide” and inserting in
25 lieu thereof the word “Provide”;

26 On page 12, paragraph 8.3.a.2, by striking out the words
27 “Pay the required” and inserting in lieu thereof the word
28 “A”;

29 On page 12, subsection 9.1, after the words “engaged
30 in”, by inserting the word “the”;

31 On page 14, paragraph 10.1.a.3, after the words
32 “certificate and” by inserting the word “meets”;

33 On page 15, subdivision 11.4.c, by adding the word “or”
34 after the semicolon;

35 On page 15, subdivision 11.7.a, after the word “alcohol”
36 by striking the period and adding a semicolon;

37 On page 15, subdivision 11.7.b, after the word
38 “substance” by striking the period and adding a semicolon;

39 On page 15, subdivision 11.7.c, after the word “drug”
40 by striking the period and adding a semicolon;

41 On page 15, subdivision 11.7.d, after the word “drug”
42 by striking the period and adding a semicolon and the word
43 “or”;

44 And,

45 On page 15, subdivision 11.6.f, by striking out the
46 subdivision number and inserting in lieu thereof a new
47 subsection number 11.8.

§64-6-3. Division of Justice and Community Services.

1 The Legislature directs the Division of Justice and
2 Community Services, pursuant to the authority given to the
3 division in section ten, article seven, chapter seventeen-b of
4 this code, to promulgate the legislative rule filed in the State
5 Register by the Division on February 17, 2017, relating to
6 the division (William R. Laird IV – Second Chance Driver’s
7 License Program, 224 CSR 1), with the following
8 amendments:

- 9 On page 2, by renumbering subdivision “2.1” to “2.9”;
- 10 And,
- 11 On page 8, by correcting the Code date from “1131” to
12 “1931”.

CHAPTER 143

(Com. Sub. for S. B. 127 - By Senator Maynard)

[Passed March 24, 2017; in effect from passage.]
[Approved by the Governor on April 6, 2017.]

AN ACT to amend and reenact §64-7-1, §64-7-2, §64-7-3, §64-7-4 and §64-7-5 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain Department of Revenue legislative rules; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies and boards under the Department of Revenue which are no longer authorized or are obsolete; authorizing the Insurance Commissioner to promulgate a legislative rule relating to adoption of a valuation manual; repealing the Office of the Insurance Commissioner legislative rule relating to utilization management; repealing the Office of the Insurance Commissioner legislative rule relating to Medicare supplement insurance coverage; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; authorizing the Lottery Commission to promulgate a legislative rule relating to limited video lottery; repealing the Tax Division legislative rule relating to listing of interests in natural resources for purposes of first statewide appraisal; repealing the Tax Division legislative rule relating to guidelines for assessors to assure fair and uniform nonutility personal property values; repealing the

Tax Division legislative rule relating to review by circuit court on certiorari; repealing the Tax Division legislative rule relating to review of appraisals by the county commission sitting as an administrative appraisal review board; repealing the Tax Division legislative rule relating to additional review and implementation of property appraisals; repealing the Tax Division legislative rule relating to review by circuit court on certiorari; repealing the Tax Division legislative rule relating to revision of levy estimates; repealing the Tax Division legislative rule relating to inheritance and transfer tax; repealing the Tax Division legislative rule relating to annual tax on incomes of certain carriers; repealing the Tax Division legislative rule relating to the telecommunications tax; repealing the Tax Division legislative rule relating to tax credit for employing former members of Colin Anderson Center; repealing the Tax Division legislative rule relating to tax credits for new value-added, wood manufacturing facilities; repealing the Tax Division legislative rule relating to tax credits for new steel, aluminum and polymer manufacturing operations; repealing the Tax Division legislative rule relating to the business investment and jobs expansion tax credit, corporation headquarters relocation tax credit and small business tax credit; repealing the Tax Division legislative rule relating to appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes; repealing the Banking Commissioner legislative rule relating to the West Virginia Consumer Credit and Protection Act; and repealing the Banking Commissioner procedural rule relating to West Virginia Board of Banking and Financial Institutions.

Be it enacted by the Legislature of West Virginia:

That §64-7-1, §64-7-2, §64-7-3, §64-7-4 and §64-7-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Insurance Commissioner.

1 The legislative rule filed in the State Register on August
2 22, 2016, authorized under the authority of section ten,
3 article two, chapter thirty-three of this code, relating to the
4 Insurance Commissioner (adoption of valuation manual,
5 114 CSR 98), is authorized.

6 (b) The legislative rule effective on May 16, 1997,
7 authorized under the authority of section four, article
8 twenty-five-a, chapter thirty-three of this code, relating to
9 the Office of the Insurance Commissioner (utilization
10 management, 114 CSR 51), is repealed.

11 (c) The legislative rule effective on December 28, 1981,
12 authorized under the authority of section ten, article two,
13 chapter thirty-three of this code, relating to the Office of the
14 Insurance Commissioner (Medicare supplement insurance
15 coverage, 114 CSR 17), is repealed.

§64-7-2. Racing Commission.

1 (a) The legislative rule filed in the State Register on
2 August 18, 2016, authorized under the authority of section
3 two, article twenty-three, chapter nineteen of this code,
4 modified by the Racing Commission to meet the objections
5 of the Legislative Rule-Making Review Committee and
6 refiled in the State Register on September 19, 2016, relating
7 to the Racing Commission (thoroughbred racing, 178 CSR
8 01), is authorized with the following amendment:

9 On pages 91 through 93, by striking out all of
10 subdivision 49.3.m. and inserting in lieu thereof a new
11 subdivision 49.3.m. to read as follows:

12 49.3.m. Multiple Medication Violations. A trainer who
13 receives a penalty for a medication violation based upon a
14 horse testing positive for a Class 1-5 medication with a
15 Penalty Class A- C, as provided in the Uniform
16 Classification Guidelines for Foreign Substances as
17 promulgated by the Association of Racing Commissioners

18 International (RCI), Version 12.0 (revised April 8, 2016),
 19 set forth in table 178-1D at the end of this rule, shall be
 20 assigned points as follows:

Penalty Class	Points if Controlled Therapeutic Substance	Points if Non-Controlled Substance
Class A	N/A	6
Class B	2	4
Class C	½ for first violation with an additional ½ point for each additional violation within 365 days. Points for NSAID violations only apply when the primary threshold of the NSAID is exceeded. Points are not to be separately assigned for a stacking violation.	1 for first violation with an additional ½ point for each additional violation within 365 days.
Class D	0	0

21 49.3.m.1. If the stewards or the Commission determine
 22 that the violation is due to environmental contamination,
 23 they may assign lesser or no points against the trainer based
 24 upon the specific facts of the case.

25 49.3.m.2. The points assigned to a medication violation
 26 by the stewards' or the Commission's ruling shall be
 27 included in the Association of Racing Commissioners
 28 International official database. The Association of Racing
 29 Commissioners International shall record points consistent
 30 with the table set forth under subdivision 49.3.m. including,
 31 when appropriate, a designation that the points have been
 32 suspended for the medication violation. Points assigned by
 33 such regulatory ruling shall reflect, in the case of multiple
 34 positive tests as described in paragraph 49.3.m.3, whether

35 they shall constitute a single violation. The stewards' or the
36 Commission's ruling shall be posted on the official website
37 of the Commission and within the official database of the
38 Association of Racing Commissioners International. If an
39 appeal is pending, that fact shall be noted in such ruling. No
40 points shall be applied until a final adjudication of the
41 enforcement of any such violation.

42 49.3.m.3. A trainer's cumulative points for violations
43 in all racing jurisdictions shall be maintained by the
44 Association of Racing Commissioners International. Once
45 all appeals are waived or exhausted, the points shall
46 immediately become part of the trainer's official
47 Association of Racing Commissioners International record
48 and shall be considered by the stewards or the Commission
49 in their determination to subject the trainer to the mandatory
50 enhanced penalties as provided in this rule.

51 49.3.m.4. Multiple positive tests for the same
52 medication incurred by a trainer prior to delivery of official
53 notice by the stewards or the Commission may be treated as
54 a single violation. In the case of a positive test indicating
55 multiple substances found in a single post-race sample, the
56 stewards or the Commission may treat each substance found
57 as an individual violation for which points will be assigned,
58 depending upon the facts and circumstances of the case.

59 49.3.m.5. The official Association of Racing
60 Commissioners International record shall be used to advise
61 the stewards or the Commission of a trainer's past record of
62 violations and cumulative points. Nothing in this rule shall
63 be construed to confer upon a trainer the right to appeal a
64 violation for which the remedies have been exhausted or for
65 which the appeal time has expired as provided by West
66 Virginia Code §§ 19-23-16(c) and 19-23-17.

67 49.3.m.6. The stewards or the Commission shall
68 consider all points for violations in all racing jurisdictions
69 as contained in the trainers' official Association of Racing
70 Commissioners International record when determining

71 whether the mandatory enhancements provided in this rule
72 shall be imposed.

73 49.3.m.7. In addition to the penalty for the underlying
74 offense, the following enhancements shall be imposed upon
75 a trainer based upon the cumulative points contained in his
76 or her official Association of Racing Commissioners
77 International record:

Points	Suspension in days
5-5.5	15 to 30
6-8.5	45 to 60
9-10.5	90 to 180
11 or more	180 to 360

78 49.3.m.8. The multiple medication violation penalty
79 system is not a substitute for the penalty system otherwise
80 set forth in this rule and is intended to be an additional
81 uniform penalty when a permit holder:

82 49.3.m.8.A. Has more than one violation for the relevant
83 time period; and

84 49.3.m.8.B. Exceeds the permissible number of points.

85 49.3.m.9. The stewards and the Commission shall
86 consider aggravating and mitigating factors, including the
87 trainer's prior record for medication violations, when
88 determining the appropriate penalty for the underlying
89 offense. The multiple medication violation penalty is
90 intended to be a separate and additional penalty for a pattern
91 of violations.

92 49.3.m.10. The suspension periods as provided in the
93 table set forth under paragraph 49.3.m.6. shall run

94 consecutive to any suspension imposed for the underlying
95 offense.

96 49.3.m.11. The stewards' or the Commission's ruling
97 shall distinguish between the penalty for the underlying
98 offense and any enhancement based upon a stewards' or
99 Commission review of a trainer's cumulative points and
100 regulatory record, which may be considered an aggravating
101 factor in a case.

102 49.3.m.12. Points shall expire as follows:

Penalty Classification	Time to Expungement
A	3 years
B	2 years
C	1 year

103 49.3.m.-13. In the case of a medication violation that
104 results in a suspension, any points assessed expire on the
105 anniversary date of the date the suspension is completed.

106 (b) The legislative rule filed in the State Register on
107 August 18, 2016, authorized under the authority of section
108 six, article twenty-three, chapter nineteen of this code,
109 modified by the Racing Commission to meet the objections
110 of the Legislative Rule-Making Review Committee and
111 refiled in the State Register on September 19, 2016, relating
112 to the Racing Commission (pari-mutuel wagering, 178 CSR
113 05), is authorized.

§64-7-3. Lottery Commission.

1 The legislative rule filed in the State Register on August
2 22, 2016, authorized under the authority of section four
3 hundred two, article twenty-two-b, chapter twenty-nine of

4 this code, modified by the Lottery Commission to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on December 7,
7 2016, relating to the Lottery Commission (limited video
8 lottery, 179 CSR 5), is authorized with the following
9 amendments:

10 On page 4, subdivision 2.12.1., after the words
11 “straight-line feet from”, by inserting the words “the closest
12 exterior wall of”;

13 On page 4, subdivision 2.12.1., after the word “engine”,
14 by inserting the words “as determined by the commission
15 during the license application review”;

16 On page 4, paragraph 2.12.2.a., following the
17 designation “(ii)”, by striking out the word “with” and
18 inserting in lieu thereof the word “has”;

19 On page 4, paragraph 2.12.2.b., following the words
20 “requirement in”, by striking out the words “section 2.12.2.”
21 and inserting in lieu thereof the words “this subdivision
22 2.12.2. of this subsection.”;

23 On page 4, after paragraph 2.12.2.b., before the words
24 “The provisions of any” by inserting “2.12.3.”;

25 And,

26 On page 4, subdivision 2.12.3. by striking out “2.12”.

§64-7-4. Tax Division.

1 (a) The legislative rule effective on June 12, 1987,
2 authorized under the authority of section one, article one-a,
3 chapter eleven of this code, relating to the Tax Division
4 (listing of interests in natural resources for purposes of first
5 statewide appraisal, 110 CSR 1B), is repealed.

6 (b) The legislative rule effective on May 13, 1987,
7 authorized under the authority of section twenty-nine-a,
8 article one-a, chapter eleven of this code, relating to the Tax

9 Division (guidelines for assessors to assure fair and uniform
10 nonutility personal property values, 110 CSR 1C), is
11 repealed.

12 (c) The legislative rule effective on June 12, 1987,
13 authorized under the authority of section one, article one-a,
14 chapter eleven of this code, relating to the Tax Division
15 (review by circuit court on certiorari, 110 CSR 1D), is
16 repealed.

17 (d) The legislative rule effective on June 12, 1987,
18 authorized under the authority of section one, article one-a,
19 chapter eleven of this code, relating to the Tax Division
20 (review of appraisals by the county commission sitting as an
21 administrative appraisal review board, 110 CSR 1E), is
22 repealed.

23 (e) The legislative rule effective on May 13, 1987,
24 authorized under the authority of section one, article one-a,
25 chapter eleven of this code, relating to the Tax Division
26 (additional review and implementation of property
27 appraisals, 110 CSR 1F), is repealed.

28 (f) The legislative rule effective on May 13, 1987,
29 authorized under the authority of section one, article one-a,
30 chapter eleven of this code, relating to the Tax Division
31 (review by circuit court on certiorari, 110 CSR 1G), is
32 repealed.

33 (g) The legislative rule effective on June 29, 1964,
34 authorized under the authority of article one, chapter eleven
35 of this code, relating to the Tax Division (revision of levy
36 estimates, 110 CSR 8), is repealed.

37 (h) The legislative rule effective on September 16, 1966,
38 authorized under the authority of article ten, chapter eleven
39 of this code, relating to the Tax Division (inheritance and
40 transfer tax, 110 CSR 11), is repealed.

41 (i) The legislative rule effective on January 1, 1974,
42 authorized under the authority of section five-a, article ten,

43 chapter eleven of this code, relating to the Tax Division
44 (annual tax on incomes of certain carriers, 110 CSR 12A),
45 is repealed.

46 (j) The legislative rule effective on April 4, 1988,
47 authorized under the authority of section five, article ten,
48 chapter eleven of this code, relating to the Tax Division
49 (telecommunications tax, 110 CSR 13B), is repealed.

50 (k) The legislative rule effective on May 1, 1996,
51 authorized under the authority of section three, article
52 thirteen-i, chapter eleven of this code, relating to the Tax
53 Division (tax credit for employing former members of Colin
54 Anderson Center, 110 CSR 13I), is repealed.

55 (l) The legislative rule effective on May 1, 1999,
56 authorized under the authority of section seven, article
57 thirteen-m, chapter eleven of this code, relating to the Tax
58 Division (tax credits for new value-added, wood
59 manufacturing facilities, 110 CSR 13M), is repealed.

60 (m) The legislative rule effective on May 1, 1999,
61 authorized under the authority of section seven, article
62 thirteen-n, chapter eleven of this code, relating to the Tax
63 Division (tax credits for new steel, aluminum and polymer
64 manufacturing operations, 110 CSR 13N), is repealed.

65 (n) The legislative rule effective on May 1, 1995,
66 authorized under the authority of section five, article ten,
67 chapter eleven of this code, relating to the Tax Division
68 (business investment and jobs expansion tax credit,
69 corporation headquarters relocation tax credit and small
70 business tax credit, 110 CSR 13C), is repealed.

71 (o) The legislative rule effective on April 4, 1988,
72 authorized under the authority of section one, article one-
73 a, chapter eleven of this code, relating to the Tax Division
74 (appraisal of property for periodic statewide reappraisals
75 for ad valorem property tax purposes, 110 CSR 1), is
76 repealed.

§64-7-5. Banking Commissioner.

1 (a) The legislative rule effective on April 23, 1982,
2 authorized under the authority of section four, article three,
3 chapter thirty-one-a of this code, relating to the Banking
4 Commissioner (West Virginia Consumer Credit and
5 Protection Act, 106 CSR 8), is repealed.

6 (b) The procedural rule effective on January 10, 1975,
7 authorized under the authority of section two, article three,
8 chapter thirty-one-a of this code, relating to the Banking
9 Commissioner (West Virginia Board of Banking and
10 Financial Institutions, 107 CSR 5), is repealed.

CHAPTER 144

(Com. Sub. for H. B. 2219 - By Delegate Sobonya)

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-9-8, §64-9-9, §64-9-10, §64-9-11, §64-9-12, §64-9-13, §64-9-14, §64-9-15, §64-9-16, §64-9-17, §64-9-18, §64-9-19, §64-9-20 and §64-9-21 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by various executive or administrative agencies of the state; authorizing certain agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with amendments recommended by the Legislative Rule-Making Review Committee; authorizing

certain agencies to promulgate certain legislative rules with amendments recommended by the Legislature; directing various agencies to amend and promulgate certain legislative rules; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to dangerous wild animals; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to livestock care standards; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to captive cervid; authorizing the Board of Architects to promulgate a legislative rule relating to the registration of architects; authorizing the Athletic Commission to promulgate a legislative rule relating to administrative rules of the West Virginia State Athletic Commission; authorizing the Athletic Commission to promulgate a legislative rule relating to regulation of mixed martial arts; authorizing the Auditor's Office to promulgate a legislative rule relating to standards for requisitions for payment issued by state officers on the Auditor; authorizing the Auditor's Office to promulgate a legislative rule relating to the procedure for local levying bodies to apply for permission to extend time to meet as levying body; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to qualifications, training, examination and certification of instructors in barbering and cosmetology; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to licensing schools of barbering, cosmetology, nail technology and aesthetics; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to operational standards for schools of barbering, cosmetology, hair styling, nail technology and aesthetics; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the operation of barber, beauty, nail and aesthetic shops/salons and schools of barbering and beauty culture; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to a schedule of fees; authorizing the Board of Barbers and

Cosmetologists to promulgate a legislative rule relating to continuing education; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to barber apprenticeships; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to waxing specialists; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to licensed professional counselor fees; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to licensed professional counselor license renewal and continuing professional education requirements; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist fees; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist license renewal and continuing professional education requirements; authorizing the Dangerous Wild Animal Board to promulgate a legislative rule relating to dangerous wild animals; authorizing the Board of Dentistry to promulgate a legislative rule relating to the board; authorizing the Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures: physicians; podiatrists; authorizing the Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures, continuing education, physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to the dispensing of legend drugs by practitioners; authorizing the Board of Optometry to promulgate a legislative rule relating to continuing education; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to mail-order and non-resident pharmacies; authorizing the Board of Pharmacy to promulgate a legislative rule, relating to the

registration of pharmacy technicians; authorizing the Board of Pharmacy to promulgate a legislative rule, relating to a controlled substances monitoring program; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for physical therapist and physical therapist assistant; authorizing the Public Service Commission to promulgate a legislative rule relating to telephone conduit occupancy; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to requirements for registration and licensure and conduct constituting professional misconduct; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; authorizing the State Board of Sanitarians to promulgate a legislative rule relating to practice of public health sanitation; authorizing the Secretary of State to promulgate a legislative rule relating to voter registration at the Division of Motor Vehicles; authorizing the Secretary of State to promulgate a legislative rule relating to voter registration list maintenance by the Secretary of State; authorizing the Board of Social Work Examiners to promulgate a legislative rule relating to continuing education for social workers and providers; authorizing the Board of Speech-Language Pathology and Audiology to promulgate a legislative rule relating to licensure of speech-pathology and audiology; authorizing the Treasurer's Office to promulgate a legislative rule relating to procedures for deposit of moneys with the State Treasurer's Office by state agencies; authorizing the Treasurer's Office to promulgate a legislative rule relating to selection of state depositories for disbursement accounts through competitive bidding; authorizing the Treasurer's Office to promulgate a legislative rule relating to selection of state depositories for receipt accounts; authorizing the Treasurer's Office to promulgate a legislative rule relating to procedures for processing payments from the state treasury; authorizing the Treasurer's Office to promulgate a legislative rule relating to the procedure for fees in collections by charge, credit or debit card or by electronic payment; authorizing the Treasurer's

Office to promulgate a legislative rule relating to procedures for providing services to political subdivisions; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to standards of practice.

Be it enacted by the Legislature of West Virginia:

That §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-9-8, §64-9-9, §64-9-10, §64-9-11, §64-9-12, §64-9-13, §64-9-14, §64-9-15, §64-9-16, §64-9-17, §64-9-18, §64-9-19, §64-9-20 and §64-9-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted all to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of Agriculture.

1 (a) The legislative rule filed in the State Register on
2 August 23, 2016, authorized under the authority of section
3 two, article nine, chapter nineteen of this code, modified by
4 the Commissioner of Agriculture to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled
6 in the State Register on September 23, 2016, relating to the
7 Commissioner of Agriculture (animal disease control, 61
8 CSR 01), is authorized.

9 (b) The legislative rule filed in the State Register on
10 August 23, 2016, authorized under the authority of section
11 three, article thirty-four, chapter nineteen of this code
12 relating to the Commissioner of Agriculture (dangerous
13 wild animals, 61 CSR 30), is authorized.

14 (c) The legislative rule filed in the State Register on
15 August 23, 2016, authorized under the authority of section
16 four, article one-c, chapter nineteen of this code, relating to
17 the Commissioner of Agriculture (livestock care standards,
18 61 CSR 31), is authorized.

19 (d) The legislative rule filed in the State Register on
20 August 26, 2016, authorized under the authority of section
21 one, article two-h, chapter nineteen of this code, modified
22 by the Commissioner of Agriculture to meet the objections
23 of the Legislative Rule-Making Review Committee and
24 refiled in the State Register on September 23, 2016, relating
25 to the Commissioner of Agriculture (captive cervid, 61 CSR
26 34), is authorized with the following amendments:

27 On page two, subsection 2.10, by striking out “Class II”
28 and inserting in lieu thereof “Class I”;

29 On page two, by striking out subsection 2.17 and
30 inserting in lieu thereof a new subsection 2.17 to read as
31 follows:

32 “2.17. Slaughter facility” means a slaughter facility with
33 a valid captive cervid license operating under state or
34 federal inspection that may hold cervids for up to seventy-
35 two (72) hours prior to slaughtering, or a slaughter facility
36 with no captive cervid facility license operating under state
37 or federal inspection that must slaughter all cervids within
38 the operating day of receipt of the animal(s).”;

39 On page four, by striking out subsection 5.1 and
40 inserting in lieu thereof a new subsection 5.1 to read as
41 follows:

42 “5.1. An updated inventory record containing birth and
43 death records, and testing results shall be provided
44 biannually: at license renewal on June 30 and by December
45 31.”;

46 On page five, paragraph 8.1.a.2, by striking out “white-
47 tailed deer” and inserting in lieu thereof “cervids”;

48 On page five, paragraph 8.1.a.5, by striking out “white-
49 tailed deer” and inserting in lieu thereof “cervids”;

50 On page five, subparagraph 8.1.b.3.d., by striking out
51 “Flooring” and inserting in lieu thereof “Flooding”;

52 On page eight, by striking out all of subsection 10.2 and
53 inserting in lieu thereof a new subsection 10.2 to read as
54 follows:

55 “10.2. A licensee shall forward a copy of the records of
56 all acquisitions, mortalities by unknown cause, sales or
57 possession transfers to the State Veterinarian’s Office
58 within fifteen (15) days. Applications to receive or transfer
59 captive cervids shall be made on forms provided by the
60 Department.”;

61 On page eight, subsection 11.6, after the word
62 “months”, by inserting a comma and the following words:
63 or from an out-of-state captive cervid facility which is
64 located within a fifteen (15) mile radius of a confirmed
65 CWD or TB positive cervid in the last sixty (60) months.”;

66 On page ten, by striking out subsection 12.2 and
67 inserting in lieu thereof a new subsection 12.2 to read as
68 follows:

69 “12.2. Any captive cervid that escapes from a captive
70 cervid facility shall be dispatched by the Department or
71 DNR personnel, unless after review by the Commissioner
72 of Agriculture and the West Virginia State Veterinarian it is
73 determined that the escaped captive cervid, after being
74 secured and returned to the premise from which it escaped,
75 does not present a health risk to the public, other captive
76 cervids or wildlife: *Provided*, That all escaped cervids that
77 are sourced from a known, confirmed TB and CWD
78 containment area will be dispatched.”;

79 On page eleven, subsection 13.6, by striking out the
80 words “if from a captive cervid facility” and inserting in lieu
81 thereof the word “number”;

82 On page eleven, by un-striking subsection 3.7;

83 And,

84 By renumbering the remaining subsection.

§64-9-2. Board of Architects.

1 The legislative rule filed in the State Register on August
2 26, 2016, authorized under the authority of section one,
3 article twelve, chapter thirty of this code, modified by the
4 Board of Architects to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on October 5, 2016, relating to the Board of
7 Architects (registration of architects, 2 CSR 01), is
8 authorized with the following amendments:

9 On page one, subsection 1.5, by striking out the phrase
10 “fifteen (15)” and inserting in lieu thereof the phrase “ten
11 (10)”.

§64-9-3. Athletic Commission.

1 (a) The legislative rule filed in the State Register on
2 August 24, 2016, authorized under the authority of section
3 twenty-four, article five-a, chapter twenty-nine of this code,
4 modified by the Athletic Commission to meet the objections
5 of the Legislative Rule-Making Review Committee and
6 refiled in the State Register on December 20, 2016, relating
7 to the Athletic Commission (administrative rules of the
8 West Virginia State Athletic Commission, 177 CSR 01), is
9 authorized with the following amendments:

10 On page four, after subdivision “4.5.g.” by striking out
11 the words “No fee for amateurs. —” and inserting in lieu
12 thereof “4.6”;

13 On page four, in the paragraph beginning with the words
14 “No fee for amateurs” after the words “amateur contestant
15 or a” by striking out the word “managers” and inserting in
16 lieu thereof the word “manager”;

17 On page eight, in the section heading “11a. Testing for
18 Older Fighters”, by striking out 11.a and inserting in lieu
19 thereof “12”;

20 On page eight, by striking out 11a.1 and inserting in lieu
21 thereof “12.1”;

22 On page nine, by striking out 11a.2 and inserting in lieu
23 thereof “12.2”;

24 On page nine, by striking out 11a.3 and inserting in lieu
25 thereof “12.3”;

26 On page nine, by striking out 11a.3.a and inserting in
27 lieu thereof “12.3.a”;

28 On page nine, by striking out 11a.3.b and inserting in
29 lieu thereof “12.3.b”;

30 On page nine, by striking out 11a.3.c and inserting in
31 lieu thereof “12.3.c”;

32 On page nine, by striking out 11a.4 and inserting in
33 lieu thereof “12.4”;

34 On page nine, after subsection 11a.4 by adding a new
35 subsection to read as follows:

36 “12.5. The applicant, or by contract, the promoter, shall
37 pay for any medical testing required in this section:
38 *Provided*, That the applicant is responsible to be tested
39 timely pursuant to the applicable rules of the Commission.”
40 and by renumbering the remaining sections;

41 On page eleven, subsection 25.1, by striking out the
42 words “shall neither” and inserting in lieu thereof the words
43 “may not”;

44 On page thirteen, subsection 30.2, by striking out the
45 word “provision” and inserting in lieu thereof the word
46 “section”;

47 On page twenty-one, in the section heading, by striking
48 out “45a” and inserting in lieu thereof “47”;

49 On page twenty-one, by striking out “45a.1” and
50 inserting in lieu thereof “47.1”;

51 On page twenty-one, by striking out “45a.2” and
52 inserting in lieu thereof “47.2”;

53 On page twenty-one, by striking out “45a.2.a” and
54 inserting in lieu thereof “47.2.a”;

55 On page twenty-one, by striking out “45a.2.a.1” and
56 inserting in lieu thereof “47.2.a.1”;

57 On page twenty-one, by striking out “45a.2.a.2” and
58 inserting in lieu thereof “47.2.a.2”;

59 On page twenty-one, by striking out “45a.2.a.3” and
60 inserting in lieu thereof “47.2.a.3”;

61 On page twenty-one, by striking out “45a.2.a.4” and
62 inserting in lieu thereof “47.2.a.4”;

63 On page twenty-one, by striking out “45a.2.a.5” and
64 inserting in lieu thereof “47.2.a.5”;

65 On page twenty-one, by striking out “45a.2.b” and
66 inserting in lieu thereof “47.2.b”;

67 On page twenty-one, by striking out “45a.2.b.1” and
68 inserting in lieu thereof “47.2.b.1”;

69 On page twenty-one, by striking out “45a.2.b.2” and
70 inserting in lieu thereof “47.2.b.2”;

71 On page twenty-one, in paragraph “45a.2.a.2,” after the
72 words “wear foot pads” by adding the words “or shin guard
73 instep pads”;

74 On page twenty-one, in paragraph “45a.2.a.2,” after the
75 word “Footpads” by adding the words “or shin guard instep
76 pads”;

77 On page twenty-one, by striking out “45a.2.b.3” and
78 inserting in lieu thereof “47.2.b.3”;

79 On page twenty-one, by striking out “45a.2.b.4” and
80 inserting in lieu thereof “47.2.b.4”;

81 On page twenty-two, by striking out “45a.2.c” and
82 inserting in lieu thereof “47.2.c”;

83 On page twenty-two, by striking out “45a.2.c.1” and
84 inserting in lieu thereof “47.2.c.1”;

85 On page twenty-two, by striking out “45a.2.c.2” and
86 inserting in lieu thereof “47.2.c.2”;

87 On page twenty-two, by striking out “45a.2.c.3” and
88 inserting in lieu thereof “47.2.c.3”;

89 On page twenty-two, by striking out “45a.2.c.4” and
90 inserting in lieu thereof “47.2.c.4”;

91 On page twenty-two, by striking out “45a.2.c.5” and
92 inserting in lieu thereof “47.2.c.5”;

93 On page twenty-two, paragraph 45a.2.c.5., after the
94 sentence ending with the words “two (2) minutes’ duration.”
95 by striking out the remainder of the paragraph;

96 On page twenty-two, after 45a.2.c.5., by adding a new
97 paragraph to read as follows:

98 “47.2.c.6. An amateur contestant’s fourth and each
99 subsequent amateur bout shall consist of three (3) rounds
100 and three (3) minutes duration.”;

101 On page twenty-two, by striking out “45a.3” and
102 inserting in lieu thereof “47.3”;

103 On page twenty-two, by striking out “45a.3.a” and
104 inserting in lieu thereof “47.3.a”;

105 On page twenty-two, by striking out “45a.3.a.1” and
106 inserting in lieu thereof “47.3.a.1”;

107 On page twenty-two, by striking out “45a.3.a.2” and
108 inserting in lieu thereof “47.3.a.2”;

109 On page twenty-two, by striking out “45a.3.a.3” and
110 inserting in lieu thereof “47.3.a.3”;

111 On page twenty-two, by striking out “45a.3.b” and
112 inserting in lieu thereof “47.3.b”;

113 On page twenty-two, by striking out “45a.3.b.1” and
114 inserting in lieu thereof “47.3.b.1”;

115 On page twenty-two, by striking out “45a.3.b.2” and
116 inserting in lieu thereof “47.3.b.2”;

117 On page twenty-two, by striking out “45a.3.b.3” and
118 inserting in lieu thereof “47.3.b.3”;

119 On page twenty-two, by striking out “45a.3.b.4” and
120 inserting in lieu thereof “47.3.b.4”;

121 On page twenty-two, by striking out “45a.3.b.5” and
122 inserting in lieu thereof “47.3.b.5”;

123 On page twenty-two, by striking out “45a.3.b.6” and
124 inserting in lieu thereof “47.3.b.6”;

125 On page twenty-two, by striking out “45a.3.b.7” and
126 inserting in lieu thereof “47.3.b.7”;

127 On page twenty-three, by striking out “45a.3.c” and
128 inserting in lieu thereof “47.3.c”;

129 On page twenty-three, by striking out “45a.3.c.1” and
130 inserting in lieu thereof “47.3.c.1”;

131 On page twenty-three, by striking out “45a.3.c.2” and
132 inserting in lieu thereof “47.3.c.2”;

133 On page twenty-three, by striking out “45a.3.c.3” and
134 inserting in lieu thereof “47.3.c.3” and by renumbering the
135 remaining sections;

136 On page twenty three, paragraph 45a.3.c.3., after the
137 sentence ending with the words “two (2) minutes duration.”
138 by striking out the remainder of the paragraph;

139 And,

140 On page twenty-three, after 45a.3.c.3., by adding a new
141 paragraph to read as follows:

142 “47.3.c.4. An amateur contestant’s fourth and each
143 subsequent amateur bout shall consist of three (3) rounds
144 and three (3) minutes’ duration.”

145 (b) The legislative rule filed in the State Register on
146 August 24, 2016, authorized under the authority of section
147 twenty-four, article five-a, chapter twenty-nine of this code,
148 modified by the Athletic Commission to meet the objections
149 of the Legislative Rule-Making Review Committee and
150 refiled in the State Register on December 20, 2016, relating
151 to the Athletic Commission (regulation of mixed martial
152 arts, 177 CSR 02), is authorized.

§64-9-4. Auditor’s Office.

1 (a) The legislative rule filed in the State Register on
2 August 26, 2016, authorized under the authority of section
3 ten, article three, chapter twelve of this code, modified by
4 the Auditor’s Office to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on September 21, 2016, relating to the
7 Auditor’s Office (standards for requisitions for payment
8 issued by state officers on the Auditor, 155 CSR 01), is
9 authorized with the following amendment:

10 On page eleven, by striking subdivision 10.1.e in its
11 entirety.

12 (b) The legislative rule filed in the State Register on
13 August 26, 2016, authorized under the authority of section
14 nine, article eight, chapter eleven of this code, modified by
15 the Auditor's Office to meet the objections of the
16 Legislative Rule-Making Review Committee and refiled in
17 the State Register on September 21, 2016, relating to the
18 Auditor's Office (procedure for local levying bodies to
19 apply for permission to extend time to meet as levying body,
20 155 CSR 08), is authorized.

§64-9-5. Board of Barbers and Cosmetologists.

1 (a) The legislative rule filed in the State Register on
2 August 24, 2016, authorized under the authority of section
3 six, article twenty-seven, chapter thirty of this code,
4 modified by the Board of Barbers and Cosmetologists to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on January 25,
7 2017, relating to the Board of Barbers and Cosmetologists
8 (qualifications, training, examination and certification of
9 instructors in barbering and cosmetology, 3 CSR 02), is
10 authorized.

11 (b) The legislative rule filed in the State Register on
12 August 19, 2016, authorized under the authority of section
13 six, article twenty-seven, chapter thirty of this code, relating
14 to the Board of Barbers and Cosmetologists (licensing
15 schools of barbering, cosmetology, nail technology and
16 aesthetics, 3 CSR 03), is authorized.

17 (c) The legislative rule filed in the State Register on
18 August 24, 2016, authorized under the authority of section
19 six, article twenty-seven, chapter thirty of this code,
20 modified by the Board of Barbers and Cosmetologists to
21 meet the objections of the Legislative Rule-Making Review
22 Committee and refiled in the State Register on January 26,
23 2017, relating to the Board of Barbers and Cosmetologists
24 (operational standards for schools of barbering,
25 cosmetology, hair styling, nail technology and aesthetics, 3
26 CSR 04), is authorized with the following amendment:

27 On page three, by striking out all of subdivision 3.1.r. in
28 its entirety;

29 On page three, subdivision 3.2.d. by striking out the
30 sentence “Theory classes shall be taught at least 12 hours
31 per week.”;

32 And,

33 On page three, by striking out all of subdivision 3.2.s. in
34 its entirety.

35 (d) The legislative rule filed in the State Register on
36 August 24, 2016, authorized under the authority of section
37 six, article twenty-seven, chapter thirty of this code,
38 modified by the Board of Barbers and Cosmetologists to
39 meet the objections of the Legislative Rule-Making Review
40 Committee and refiled in the State Register on January 19,
41 2017, relating to the Board of Barbers and Cosmetologists
42 (operation of barber, beauty, nail and aesthetic shops/salons
43 and schools of barbering and beauty culture, 3 CSR 05), is
44 authorized.

45 (e) The legislative rule filed in the State Register on
46 August 24, 2016, authorized under the authority of section
47 six, article twenty-seven, chapter thirty of this code,
48 modified by the Board of Barbers and Cosmetologists to
49 meet the objections of the Legislative Rule-Making Review
50 Committee and refiled in the State Register on January 19,
51 2017, relating to the Board of Barbers and Cosmetologists
52 (schedule of fees, 3 CSR 06), is authorized.

53 (f) The legislative rule filed in the State Register on
54 August 24, 2016, authorized under the authority of section
55 six, article twenty-seven, chapter thirty of this code,
56 modified by the Board of Barbers and Cosmetologists to
57 meet the objections of the Legislative Rule-Making Review
58 Committee and refiled in the State Register on January 19,
59 2017, relating to the Board of Barbers and Cosmetologists

60 (continuing education, 3 CSR 11), is authorized with the
61 following amendments:

62 On page one, subsection 1.1 to read as follows:

63 *Scope.* – The legislative rule establishes requirements
64 for continuing education to practice hair styling, barbering,
65 cosmetology, manicuring/nail technology, and aesthetics.
66 All persons licensed by the Board to practice beauty culture
67 must earn a minimum of four (4) hours of continuing
68 education credits annually. Licensees who have been
69 licensed for twenty (20) years or more are exempt from the
70 continuing education requirements but must take a three (3)
71 hour sanitation class every other year.

72 And;

73 On page three, subsection 4.4 to read as follows:

74 4.4 Licensees who have been licensed for twenty (20)
75 years or more are exempt from the continuing education
76 requirements but must take a three (3) hour sanitation class
77 every other year.

78 (g) The legislative rule filed in the State Register on
79 August 24, 2016, authorized under the authority of section
80 eight-a, article twenty-seven, chapter thirty of this code,
81 modified by the Board of Barbers and Cosmetologists to
82 meet the objections of the Legislative Rule-Making Review
83 Committee and refiled in the State Register on January 19,
84 2017, relating to the Board of Barbers and Cosmetologists
85 (barber apprenticeship, 3 CSR 13), is authorized.

86 (h) The legislative rule filed in the State Register on
87 August 24, 2016, authorized under the authority of section
88 six, article twenty-seven, chapter thirty of this code, relating
89 to the Board of Barbers and Cosmetologists (waxing
90 specialist, 3 CSR 14), is authorized.

§64-9-6. Board of Examiners in Counseling.

1 (a) The legislative rule filed in the State Register on
2 August 26, 2016, authorized under the authority of section
3 six, article thirty-one, chapter thirty of this code, modified
4 by the Board of Examiners in Counseling to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on January 25,
7 2017, relating to the Board of Examiners in Counseling
8 (licensed professional counselor fees, 27 CSR 02), is
9 authorized.

10 (b) The legislative rule filed in the State Register on
11 August 26, 2016, authorized under the authority of section
12 six, article thirty-one, chapter thirty of this code, modified
13 by the Board of Examiners in Counseling to meet the
14 objections of the Legislative Rule-making Review
15 Committee and refiled in the State Register on January 25,
16 2017, relating to the Board of Examiners in Counseling
17 (licensed professional counselor license renewal and
18 continuing professional education requirements, 27 CSR
19 03), is authorized.

20 (c) The legislative rule filed in the State Register on
21 August 26, 2016, authorized under the authority of section
22 six, article thirty-one, chapter thirty of this code, modified
23 by the Board of Examiners in Counseling to meet the
24 objections of the Legislative Rule-Making Review
25 Committee and refiled in the State Register on January 25,
26 2017, relating to the Board of Examiners in Counseling
27 (marriage and family therapist fees, 27 CSR 09), is
28 authorized.

29 (d) The legislative rule filed in the State Register on
30 August 26, 2016, authorized under the authority of section
31 six, article thirty-one, chapter thirty of this code, modified
32 by the Board of Examiners in Counseling to meet the
33 objections of the Legislative Rule-Making Review
34 Committee and refiled in the State Register on January 25,
35 2017, relating to the Board of Examiners in Counseling
36 (marriage and family therapist license renewal and

37 continuing professional education requirements, 27 CSR
38 10), is authorized with the following amendment:

39 On page four, subdivision 4.1.b. after the words
40 “continuing education” by unstriking the stricken words “on
41 a biennium basis beginning”;

42 And,

43 On page four, subdivision 4.1.b. after the words “license
44 renewal” by unstriking the words “on or after”.

§64-9-7. Dangerous Wild Animal Board.

1 The legislative rule filed in the State Register on
2 February 11, 2016, authorized under the authority of section
3 three, article thirty-four, chapter nineteen of this code,
4 modified by the Dangerous Wild Animal Board to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on August 31,
7 2016, relating to the Dangerous Wild Animal Board
8 (dangerous wild animals, 74 CSR 01), is authorized.

§64-9-8. Board of Dentistry.

1 The legislative rule filed in the State Register on July
2 26, 2016, authorized under the authority of section six,
3 article four, chapter thirty of this code, modified by the
4 Board of Dentistry to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on September 2, 2016, relating to the Board of
7 Dentistry (rule for the West Virginia Board of Dentistry, 5
8 CSR 01), is authorized with the following amendments:

9 On page one, by striking out subsection 1.5 and
10 inserting in lieu thereof a new subsection 1.5, to read as
11 follows:

12 “1.5 Sunset Date – This rule shall terminate and have no
13 further force or effect upon the expiration of 10 years from
14 its effective date.”

15 And,

16 On page four, after subsection 4.2, by inserting a new
17 subsection 4.3, to read as follows:

18 “4.3 Teaching Permits with U.S. Specialty Training.
19 The Board of Dentistry may issue a teaching permit to an
20 applicant trained in foreign dental schools, who possess a
21 certificate of completed dental specialty training from a U.
22 S. or Canadian dental school and who has received U. S.
23 Board certification. The permit shall be issued only upon
24 certification of the dean of a dental school located in this
25 state, that the applicant is a member of the staff at that
26 school. The permits are valid for one year and may be
27 reissued by the Board with a written recommendation of the
28 dental school dean. The holder of the permit may perform
29 all operations which a person licensed to practice dentistry
30 in this state may perform, but only within the confines of the
31 primary location of the dental school, or teaching hospital
32 adjacent to a dental school located within the state and as an
33 adjunct to his or her teaching functions in the dental school.”

§64-9-9. Board of Medicine.

1 (a) The legislative rule filed in the State Register on July
2 12, 2016, authorized under the authority of section seven,
3 article three, chapter thirty of this code, modified by the
4 Board of Medicine to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on September 1, 2016, relating to the Board of
7 Medicine (licensing and disciplinary procedures:
8 physicians; podiatrists, 11 CSR 1A), is authorized with the
9 following amendment:

10 On page one, by deleting subsection 1.5 and inserting a
11 new subsection 1.5, to read as follows:

12 “1.5 Sunset Date – This rule shall terminate and have no
13 further force or effect upon the expiration of 5 years from
14 its effective date.”

15 (b) The legislative rule filed in the State Register on July
16 12, 2016, authorized under the authority of section three,
17 article three-e, chapter thirty of this code, modified by the
18 Board of Medicine to meet the objections of the Legislative
19 Rule-Making Review Committee and refiled in the State
20 Register on September 1, 2016, relating to the Board of
21 Medicine (licensure, disciplinary and complaint procedures,
22 continuing education, physician assistants, 11 CSR 1B), is
23 authorized with the following amendment:

24 On page one, by deleting subsection 1.5 and inserting a
25 new subsection 1.5, to read as follows:

26 “1.5 Sunset Date – This rule shall terminate and have no
27 further force or effect upon the expiration of 5 years from
28 its effective date.”

29 (c) The legislative rule filed in the State Register on
30 August 24, 2016, authorized under the authority of section
31 seven, article three, chapter thirty of this code, modified by
32 the Board of Medicine to meet the objections of the
33 Legislative Rule-Making Review Committee and refiled in
34 the State Register on September 26, 2016, relating to the
35 Board of Medicine (dispensing of legend drugs by
36 practitioners, 11 CSR 5), is authorized with the following
37 amendment:

38 On page one, by deleting subsection 1.5 and inserting a
39 new subsection 1.5, to read as follows:

40 “1.5 Sunset Date – This rule shall terminate and have no
41 further force or effect upon the expiration of 5 years from
42 its effective date.”

§64-9-10. Board of Optometry.

1 The legislative rule filed in the State Register on August
2 26, 2016, authorized under the authority of section six,
3 article eight, chapter thirty of this code, modified by the
4 Board of Optometry to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in

6 the State Register on October 3, 2016, relating to the Board
7 of Optometry (continuing education, 14 CSR 10), is
8 authorized.

§64-9-11. Board of Osteopathic Medicine.

1 (a) The legislative rule filed in the State Register on
2 August 26, 2016, authorized under the authority of section
3 three, article three-e, chapter thirty of this code, modified by
4 the Board of Osteopathic Medicine to meet the objections
5 of the Legislative Rule-Making Review Committee and
6 refiled in the State Register on September 29, 2016, relating
7 to the Board of Osteopathic Medicine (licensing procedures
8 for osteopathic physicians, 24 CSR 01), is authorized.

9 (b) The legislative rule filed in the State Register on
10 August 29, 2016, authorized under the authority of section
11 three, article three-e, chapter thirty of this code, modified by
12 the Board of Osteopathic Medicine to meet the objections
13 of the Legislative Rule-Making Review Committee and
14 refiled in the State Register on September 29, 2016, relating
15 to the Board of Osteopathic Medicine (osteopathic
16 physician assistants, 24 CSR 02), is authorized.

§64-9-12. Board of Pharmacy.

1 (a) The legislative rule filed in the State Register on
2 August 18, 2016, authorized under the authority of section
3 seven, article five, chapter thirty of this code, modified by
4 the Board of Pharmacy to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on December 19, 2016, relating to the
7 Board of Pharmacy (licensure and practice of pharmacy, 15
8 CSR 01), is authorized.

9 (b) The legislative rule filed in the State Register on
10 August 18, 2016, authorized under the authority of section
11 seven, article five, chapter thirty of this code, modified by
12 the Board of Pharmacy to meet the objections of the
13 Legislative Rule-Making Review Committee and refiled in
14 the State Register on December 19, 2016, relating to the

15 Board of Pharmacy (mail-order and non-resident
16 pharmacies, 15 CSR 06), is authorized.

17 (c) The legislative rule effective on May 17, 2015,
18 authorized under the authority of section seven, article five,
19 chapter thirty of this code, relating to the West Virginia
20 Board of Pharmacy (registration of pharmacy technicians,
21 15 CSR 7), is authorized, with the following amendment:

22 On page one, by inserting a new subsection 1.5, to
23 read as follows:

24 “1.5 Sunset Date – This rule shall terminate and have no
25 further force or effect upon the expiration of 10 years from
26 its effective date.”

27 On page three, subsection 4.1, by striking the phrase
28 “The training program shall, at a minimum contain the
29 following:” and inserting in lieu thereof the phrase “A
30 competency based pharmacy technician education and
31 training program shall, at a minimum contain the
32 following:”

33 And,

34 On page five, subsection 4.3, by striking out
35 subdivision (a), and inserting in lieu thereof a new
36 subdivision (a), to read as follows:

37 “(a) has graduated from a high school or obtained a
38 Certificate of General Educational Development (GED) or
39 its equivalent, or is currently enrolled in a high school
40 competency based pharmacy technician education and
41 training program;”.

42 (d) The legislative rule filed in the State Register on
43 August 18, 2016, authorized under the authority of section
44 six, article nine, chapter sixty-a of this code, modified by
45 the Board of Pharmacy to meet the objections of the
46 Legislative Rule-Making Review Committee and refiled in
47 the State Register on December 19, 2016, relating to the

48 Board of Pharmacy (controlled substances monitoring
49 program, 15 CSR 08), is authorized.

§64-9-13. Board of Physical Therapy.

1 The legislative rule filed in the State Register on April
2 22, 2016, authorized under the authority of section six,
3 article twenty, chapter thirty of this code, relating to the
4 Board of Physical Therapy (fees for physical therapist and
5 physical therapist assistant, 16 CSR 04), is authorized.

§64-9-14. Public Service Commission.

1 The legislative rule filed in the State Register on August
2 26, 2016, authorized under the authority of section three,
3 article two-e, chapter twenty-four of this code, modified by
4 the Public Service Commission to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on December 13, 2016, relating to the
7 Public Service Commission (telephone conduit occupancy,
8 150 CSR 37), is authorized.

§64-9-15. Board of Examiners for Registered Professional Nurses.

1 The legislative rule filed in the State Register on July
2 29, 2016, authorized under the authority of section four,
3 article seven, chapter thirty of this code, modified by the
4 Board of Examiners for Registered Professional Nurses to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on September 1,
7 2016, relating to the Board of Examiners for Registered
8 Professional Nurses (requirements for registration and
9 licensure and conduct constituting professional misconduct,
10 19 CSR 03), is authorized with the following amendments:

11 On page one, by striking out subsection 1.5 and
12 inserting in lieu thereof a new subsection 1.5, to read as
13 follows:

14 “1.5 Sunset Date – This rule shall terminate and have no
15 further force or effect upon the expiration of 10 years from
16 its effective date.”

17 And,

18 On page sixteen, subsection 14.4, after the words “or
19 other action.” by adding “A licensee whose license has been
20 summarily suspended is entitled to a hearing not less than
21 twenty (20) days after the license was summarily
22 suspended. The licensee may waive his or her right to a
23 hearing on the summary suspension within the twenty (20)
24 day period.”

25 (b) The legislative rule filed in the State Register on
26 August 2, 2016, authorized under the authority of section
27 four, article seven, chapter thirty of this code, modified by
28 the Board of Examiners for Registered Professional Nurses
29 to meet the objections of the Legislative Rule-Making
30 Review Committee and refiled in the State Register on
31 September 1, 2016, relating to the Board of Examiners for
32 Registered Professional Nurses (limited prescriptive
33 authority for nurses in advanced practice, 19 CSR 08), is
34 authorized with the following amendment:

35 On page one, by deleting subsection 1.5 and inserting a
36 new subsection 1.5, to read as follows:

37 “1.5 Sunset Date – This rule shall terminate and have no
38 further force or effect upon the expiration of 5 years from
39 its effective date.”

§64-9-16. State Board of Sanitarians.

1 The legislative rule filed in the State Register on
2 August 11, 2016, authorized under the authority of section
3 six, article seventeen, chapter thirty of this code, modified
4 by the State Board of Sanitarians to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled
6 in the State Register on October 3, 2016, relating to the State

7 Board of Sanitarians (practice of public health sanitation, 20
8 CSR 04), is authorized.

§64-9-17. Secretary of State.

1 (a) The legislative rule filed in the State Register on
2 August 24, 2016, authorized under the authority of section
3 eleven, article two, chapter three of this code, modified by
4 the Secretary of State to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on January 17, 2017, relating to the
7 Secretary of State (voter registration at the Division of
8 Motor Vehicles, 153 CSR 03), is authorized.

9 (b) The legislative rule filed in the State Register on
10 August 24, 2016, authorized under the authority of section
11 twenty-three-a, article two, chapter three of this code,
12 modified by the Secretary of State to meet the objections of
13 the Legislative Rule-Making Review Committee and refiled
14 in the State Register on January 17, 2017, relating to the
15 Secretary of State (voter registration list maintenance by the
16 Secretary of State, 153 CSR 05), is authorized.

§64-9-18. Board of Social Work Examiners.

1 The legislative rule filed in the State Register on August
2 26, 2016, authorized under the authority of section six,
3 article thirty, chapter thirty of this code, modified by the
4 Board of Social Work Examiners to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled
6 in the State Register on September 27, 2016, relating to the
7 Board of Social Work Examiners (continuing education for
8 social workers and providers, 25 CSR 05), is authorized.

**§64-9-19. Board of Speech-Language Pathology and
Audiology.**

1 The legislative rule filed in the State Register on August
2 22, 2016, authorized under the authority of section seven,
3 article thirty-two, chapter thirty of this code, modified by
4 the Board of Speech-Language Pathology and Audiology to

5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on January 23,
7 2017, relating to the Board of Speech-Language Pathology
8 and Audiology (licensure of speech-pathology and
9 audiology, 29 CSR 01), is authorized.

§64-9-20. Treasurer's Office.

1 (a) The legislative rule filed in the State Register on
2 August 26, 2016, authorized under the authority of section
3 two, article two, chapter twelve of this code, modified by
4 the Treasurer's Office to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on October 21, 2016, relating to the
7 Treasurer's Office (procedures for deposit of moneys with
8 the State Treasurer's Office by state agencies, 112 CSR 04),
9 is authorized.

10 (b) The legislative rule filed in the State Register on
11 August 26, 2016, authorized under the authority of section
12 two, article one, chapter twelve of this code, modified by
13 the Treasurer's Office to meet the objections of the
14 Legislative Rule-Making Review Committee and refiled in
15 the State Register on October 21, 2016, relating to the
16 Treasurer's Office (selection of state depositories for
17 disbursement accounts through competitive bidding, 112
18 CSR 06), is authorized.

19 (c) The legislative rule filed in the State Register on
20 August 26, 2016, authorized under the authority of section
21 two, article one, chapter twelve of this code, modified by
22 the Treasurer's Office to meet the objections of the
23 Legislative Rule-Making Review Committee and refiled in
24 the State Register on October 21, 2016, relating to the
25 Treasurer's Office (selection of state depositories for receipt
26 accounts, 112 CSR 07), is authorized.

27 (d) The legislative rule filed in the State Register on
28 August 26, 2016, authorized under the authority of section
29 one, article three, chapter twelve of this code, modified by

30 the Treasurer's Office to meet the objections of the
31 Legislative Rule-Making Review Committee and refiled in
32 the State Register on October 21, 2016, relating to the
33 Treasurer's Office (procedures for processing payments
34 from the state treasury, 112 CSR 08), is authorized.

35 (e) The legislative rule filed in the State Register on
36 August 26, 2016, authorized under the authority of section
37 six, article three-a, chapter twelve of this code, modified by
38 the Treasurer's Office to meet the objections of the
39 Legislative Rule-Making Review Committee and refiled in
40 the State Register on October 21, 2016, relating to the
41 Treasurer's Office (procedure for fees in collections by
42 charge, credit or debit card or by electronic payment, 112
43 CSR 12), is authorized.

44 (f) The legislative rule filed in the State Register on
45 August 26, 2016, authorized under the authority of section
46 six, article three-a, chapter twelve of this code, modified by
47 the Treasurer's Office to meet the objections of the
48 Legislative Rule-Making Review Committee and refiled in
49 the State Register on October 21, 2016, relating to the
50 Treasurer's Office (procedures for providing services to
51 political subdivisions, 112 CSR 13), is authorized.

§64-9-21. Board of Veterinary Medicine.

1 The legislative rule filed in the State Register on June
2 15, 2016, authorized under the authority of section five,
3 article ten, chapter thirty of this code, modified by the Board
4 of Veterinary Medicine to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on September 28, 2016, relating to the
7 Board of Veterinary Medicine (standards of practice, 26
8 CSR 04), is authorized with the following amendment:

9 On page one, by deleting subsection 1.5 and inserting a
10 new subsection 1.5 to read as follows:

11 “1.5 Sunset Date – This rule shall terminate and have no
12 further force or affect upon the expiration of 10 years from
13 its effective date.”

CHAPTER 145

(Com. Sub. for S. B. 134 - By Senator Maynard)

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §64-10-1, §64-10-2 and §64-10-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain Department of Commerce legislative rules; authorizing certain agencies to promulgate certain legislative rules as presented to the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; repealing certain legislative rules promulgated by certain agencies and boards under the Department of Commerce which are no longer authorized or are obsolete; directing the promulgation rules by certain agencies and boards under the Department of Commerce; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the point system for the revocation of hunting – repeal; authorizing the Division of Natural Resources to promulgate a legislative rule relating to revocation of hunting and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the commercial sale of wildlife; authorizing the Division of Natural Resources to promulgate a legislative rule relating to miscellaneous permits and licenses; repealing the Division of Natural Resources legislative rule relating to litter control

grant program; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to certification, recertification and training of EMT-Miners and the certification of EMT-M instructors; and directing the Board of Coal Mine Health and Safety to promulgate a legislative rule relating to rules governing proximity detection systems and haulage safety generally.

Be it enacted by the Legislature of West Virginia:

That §64-10-1, §64-10-2 and §64-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF
COMMERCE TO PROMULGATE LEGISLATIVE
RULES.**

§64-10-1. Division of Natural Resources.

1 (a) The legislative rule filed in the State Register on
2 August 29, 2016, authorized under the authority of section
3 seven, article one, chapter twenty of this code, relating to
4 the Division of Natural Resources (point system for the
5 revocation of hunting - repeal, 58 CSR 24), is authorized.

6 (b) The legislative rule filed in the State Register on
7 August 29, 2016, authorized under the authority of section
8 seven, article one, chapter twenty of this code, modified by
9 the Division of Natural Resources to meet the objections of
10 the Legislative Rule-Making Review Committee and refiled
11 in the State Register on January 3, 2017, relating to the
12 Division of Natural Resources (revocation of hunting and
13 fishing licenses, 58 CSR 23), is authorized.

14 (c) The legislative rule filed in the State Register on
15 August 26, 2016, authorized under the authority of section
16 seven, article one, chapter twenty of this code, modified by
17 the Division of Natural Resources to meet the objections of
18 the Legislative Rule-Making Review Committee and refiled
19 in the State Register on January 3, 2017, relating to the

20 Division of Natural Resources (special waterfowl hunting,
21 58 CSR 58), is authorized.

22 (d) The legislative rule filed in the State Register on
23 August 26, 2016, authorized under the authority of section
24 eleven, article two, chapter twenty of this code, modified by
25 the Division of Natural Resources to meet the objections of
26 the Legislative Rule-Making Review Committee and refiled
27 in the State Register on January 3, 2017, relating to the
28 Division of Natural Resources (commercial sale of wildlife,
29 58 CSR 63), is authorized.

30 (e) The legislative rule filed in the State Register on
31 August 26, 2016, authorized under the authority of section
32 seven, article one, chapter twenty of this code, modified by
33 the Division of Natural Resources to meet the objections of
34 the Legislative Rule-Making Review Committee and refiled
35 in the State Register on January 3, 2017, relating to the
36 Division of Natural Resources (miscellaneous permits and
37 licenses, 58 CSR 64), is authorized.

38 (f) The legislative rule effective on April 14, 2000,
39 authorized under the authority of section 1 twenty-five,
40 article seven, chapter twenty of this code, relating to the
41 Division of Natural Resources (litter control grant program,
42 58 CSR 6), is repealed.

§64-10-2. Office of Miners' Health, Safety and Training.

1 The legislative rule filed in the State Register on July 6,
2 2016, authorized under the authority of section six-c, article
3 four-c, chapter sixteen of this code, modified by the Office
4 of Miners' Health, Safety and Training to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on September 6,
7 2016, relating to the Office of Miners' Health, Safety and
8 Training (certification, recertification and training of EMT-
9 Miners and the certification of EMT-M instructors, 56 CSR
10 22), is authorized.

§64-10-3. Board of Coal Mine Health and Safety.

1 The Legislature directs the Board of Coal Mine Health
2 and Safety, pursuant to the authority given to the board in
3 section four, article six, chapter twenty-two-a of this code,
4 to promulgate the legislative rule filed in the State Register
5 by the Board of Coal Mine Health and Safety on July 1,
6 2014, relating to rules governing proximity detection
7 systems and haulage safety generally, (36 CSR 57), with the
8 amendment set forth below:

9 On page two, subsection 4.3, by striking out the date
10 “July 1, 2017” and inserting in lieu thereof the following
11 “the timeframe set forth in the federal rule relating to
12 proximity detection systems.”

CHAPTER 146

(S. B. 554 - By Senator Weld)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §4-1-6a, relating to false swearing in a legislative proceeding; providing criminal penalty; and providing disqualification from holding office or position of honor, trust or profit, and serving as a juror.

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 §4-1-6a, to read as follows:

**ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES;
APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF
FLAGS; RECORDS; USE OF CAPITOL BUILDING;**

**PREFILING OF BILLS AND RESOLUTIONS;
STANDING COMMITTEES; INTERIM MEETINGS;
NEXT MEETING OF THE SENATE.**

§4-1-6a. False swearing in a legislative proceeding; penalty.

1 (a) A person may not willfully swear falsely, under oath or
2 affirmation lawfully administered, in a legislative proceeding
3 concerning any matter or thing material or not material, or
4 procure, or attempt to procure, another person to do so.

5 (b) A person who violates subsection (a) of this section
6 is guilty of a misdemeanor and, upon conviction, shall be
7 fined not more than \$1,000 and, in the discretion of the
8 court, be confined in jail not more than one year.

9 (c) A person convicted of violating subsection (a) of this
10 section is ineligible to hold any office or position of honor,
11 trust or profit in this state, and to serve as a juror.

CHAPTER 147

**(Com. Sub. for H. B. 2898 - By Mr. Speaker (Mr.
Armstead))**

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §4-3-6, relating to authorizing the Joint Committee on Government and Finance to request and obtain criminal background checks of employees of the Legislature.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §4-3-6, to read as follows:

**ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT
AND FINANCE.****§4-3-6. Authority to screen employees of the Legislature;
background checks.**

1 The Joint Committee on Government and Finance shall
2 create and implement a background check program to facilitate
3 the processing and analysis of the criminal history and
4 background of applicants for employment by the Legislature.
5 In the course of determining an applicant's eligibility for
6 employment with the Legislature, the legislative manager shall
7 request each applicant to submit a full set of fingerprints for
8 the purpose of conducting a criminal history record check.
9 Records shall be checked through the Criminal Identification
10 Bureau of the West Virginia State Police and the United States
11 Federal Bureau of Investigation for a national criminal history
12 record check and the results shall be made available to the
13 Director of the Division of Protective Services. If the results of
14 the criminal history check reveal an offense or offenses, the
15 Director of the Division of Protective Services shall advise the
16 President of the Senate, the Speaker of the House of Delegates
17 or the joint committee depending on the appropriate hiring
18 authority for the position sought by the applicant.

CHAPTER 148

**(Com. Sub. for H. B. 2839 - By Delegates Howell,
Frich, Dean, Hill, G. Foster, Martin, Hamrick,
Arvon, Lewis, Sypolt and Rohrbach)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §4-10-3, §4-10-6, §4-10-7, §4-10-8, §4-10-10 and §4-10-14 of the Code of West Virginia, 1931,

as amended, all relating to generally the West Virginia Performance Review Act; modifying the definition of the term “division”; modifying the timing and scope of department presentations; updating the schedules of department presentations, agency reviews and regulatory board reviews; eliminating the requirement that an agency review include an analysis of agency websites; and authorizing the joint standing committee on Government Organization to request a review of any agency or program and to recommend or propose the consolidation, termination or reassignment of the agencies or programs reviewed.

Be it enacted by the Legislature of West Virginia:

That §4-10-3, §4-10-6, §4-10-7, §4-10-8, §4-10-10 and §4-10-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

(a) “Agency” or “state agency” means a state governmental entity, including any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution, survey, position, coalition or other entity in the State of West Virginia.

(b) “Agency review” means a review performed on agencies of a department pursuant to the provisions of this article.

(c) “Committee” means the Joint Committee on Government Operations.

(d) “Compliance review” means a review for compliance with recommendations contained in a previous agency review or regulatory board review conducted pursuant to the provisions of

this article and may include further inquiry of other issues as directed by the President, the Speaker, the Legislative Auditor, the committee or the joint standing committee.

(e) “Department” means the departments created within the executive branch, headed by a secretary appointed by the Governor, as authorized by the Code of West Virginia.

(f) “Department presentation” means a presentation by a department pursuant to the provisions of this article.

(g) “Division” means the Performance Evaluation and Research Division, the Post Audit Division, or any division of the Legislative Auditor’s Office.

(h) “Joint standing committee” means the joint standing committee on Government Organization.

(i) “Privatize” means a contract to procure the services of a private vendor to provide a service that is similar to, and/or in lieu of, a service provided by a state agency.

(j) “Regulatory Board” means a board that regulates professions and occupations, created under the provisions of chapter thirty of this code.

(k) “Regulatory Board Review” means a review performed on a regulatory board pursuant to the provisions of this article.

§4-10-6. Department presentation; timing and scope.

1 (a) During the calendar year in which a department is
2 scheduled for an agency review pursuant to section eight of
3 this article, and upon notification from the joint standing
4 committee or the division, the department shall prepare and
5 present a department presentation to the joint standing
6 committee and the committee. The purpose of the
7 presentation is to inform the Legislature as to the programs,
8 activities and financial situation of the department and to
9 update and amend any information previously presented to

10 the joint standing committee or committee pursuant to this
11 section. The presentation shall include:

12 (1) A departmental chart designating each agency under
13 the purview of the department;

14 (2) An analysis of the department's internal
15 performance measures and self-assessment systems; and

16 (3) For each agency under the purview of the
17 department, the following:

18 (A) The mission, goals and functions of the agency;

19 (B) The statutory or other legal authority under which
20 the agency operates;

21 (C) The number of employees of the agency for the
22 immediate past ten years;

23 (D) The budget for the agency for the immediate past
24 ten years;

25 (E) Any potential or actual loss of revenue due to
26 operations, changes in law or any other reason;

27 (F) The extent to which the agency has operated in the
28 public interest;

29 (G) The extent to which the agency has complied with
30 state personnel practices, including affirmative action
31 requirements;

32 (H) The extent to which the agency has encouraged
33 public participation in the making of its rules and decisions
34 and has encouraged interested persons to report to it on the
35 impact of its rules and decisions on the effectiveness,
36 economy and availability of services that it has provided;

37 (I) The efficiency with which public inquiries or
38 complaints regarding the activities of the agency have been
39 processed and resolved;

40 (J) The extent to which statutory, regulatory, budgeting
41 or other changes are necessary to enable the agency to better
42 serve the interests of the public and to comply with the
43 factors enumerated in this subsection; and

44 (K) A recommendation as to whether the agency should
45 be continued, consolidated or terminated.

§4-10-7. Agency review.

1 (a) The committee and the joint standing committee
2 shall conduct agency reviews, or authorize the division to
3 conduct agency reviews as one of its duties in addition to its
4 other duties prescribed by law, in accordance with generally
5 accepted government auditing standards (GAGAS) as
6 promulgated by the U.S. Government Accountability
7 Office, on one or more of the agencies under the purview of
8 a department, during the year in which the department is
9 scheduled for review under the provisions of this article.

10 (b) The agency review may include, but is not limited
11 to:

12 (1) An identification and description of the agency
13 under review;

14 (2) The number of employees of the agency for the
15 immediate past ten years;

16 (3) The budget for the agency for the immediate past ten
17 years;

18 (4) Whether the agency is effectively and efficiently
19 carrying out its statutory duties or legal authority;

20 (5) Whether the activities of the agency duplicate or
21 overlap with those of other agencies and, if so, how these
22 activities could be consolidated;

23 (6) A cost-benefit analysis, as described in subsection
24 (e) of this section, on state services that are privatized or
25 contemplated to be privatized;

26 (7) An assessment of the utilization of information
27 technology systems within the agency, including
28 interagency and intra-agency communications;

29 (8) An analysis of any issues raised by the presentation
30 made by the department pursuant to the provisions of this
31 article;

32 (9) An analysis of any other issues as the committee or
33 the joint standing committee may direct; and

34 (10) A recommendation as to whether the agency under
35 review should be continued, consolidated or terminated.

36 (c) The committee or the joint standing committee may
37 vote on the recommendation as to whether the agency under
38 review should be continued, consolidated or terminated.
39 Recommendations of the committee or the joint standing
40 committee shall be given considerable weight in
41 determining if an agency should be continued, consolidated
42 or terminated.

43 (d) An agency may be subject to a compliance review
44 pursuant to the provisions of this article.

45 (e) A cost-benefit analysis authorized by this section
46 may include:

47 (1) The tangible benefits of privatizing the service;

48 (2) Any legal impediments that may limit or prevent
49 privatization of the service;

50 (3) The availability of multiple qualified and
51 competitive private vendors; and

52 (4) A cost comparison, including total fixed and
53 variable, direct and indirect, costs of the current
54 governmental operation and the private vendor contract.

§4-10-8. Schedule of departments for agency review.

1 (a) Each department shall make a presentation, pursuant
2 to the provisions of this article, to the joint standing
3 committee and the committee during the first interim
4 meeting after the regular session of the year in which the
5 department is to be reviewed pursuant to the schedule set
6 forth in subsection (b) of this section.

7 (b) An agency review shall be performed on one or more
8 agencies under the purview of each department at least once
9 every seven years, as follows:

10 (1) 2017: The Department of Revenue and the
11 Department of Commerce;

12 (2) 2018: The Department of Environmental Protection
13 and the Department of Military Affairs and Public Safety;

14 (3) 2019: The Department of Health and Human
15 Resources, including the Bureau of Senior Services;

16 (4) 2020: The Department of Transportation;

17 (5) 2021: The Department of Administration;

18 (6) 2022: The Department of Education, the Higher
19 Education Policy Commission and the West Virginia
20 Council for Community and Technical College Education;
21 and

22 (7) 2023: The Department of Veterans' Assistance and
23 the Department of Education and the Arts.

§4-10-10. Regulatory board review schedule.

1 (a) A regulatory board review is required for all
2 regulatory boards.

3 (b) A regulatory board review shall be performed on
4 each regulatory board at least once every twelve years,
5 commencing as follows:

6 (1) 2017: Board of Accountancy; Board of Respiratory
7 Care Practitioners; and Board of Social Work Examiners.

8 (2) 2018: Board of Examiners of Psychologists; Board
9 of Optometry; and Board of Veterinary Medicine.

10 (3) 2019: Board of Acupuncture; Board of Barbers and
11 Cosmetologists; and Board of Examiners in Counseling.

12 (4) 2020: Board of Hearing Aid Dealers; Board of
13 Licensed Dietitians; and Nursing Home Administrators
14 Board.

15 (5) 2021: Board of Dental Examiners; Board of
16 Medicine; and Board of Pharmacy.

17 (6) 2022: Board of Chiropractic Examiners; Board of
18 Osteopathy; and Board of Physical Therapy.

19 (7) 2023: Board of Occupational Therapy; Board of
20 Examiners for Speech-Language Pathology and Audiology;
21 and Medical Imaging and Radiation Therapy Board of
22 Examiners.

23 (8) 2024: Board of Professional Surveyors; Board of
24 Registration for Foresters; and Board of Registration for
25 Professional Engineers.

26 (9) 2025: Board of Examiners for Licensed Practical
27 Nurses; Board of Examiners for Registered Professional
28 Nurses; and Massage Therapy Licensure Board.

29 (10) 2026: Board of Architects; Board of Embalmers
30 and Funeral Directors; and Board of Landscape Architects;
31 and

32 (11) 2027: Board of Registration for Sanitarians; Real
33 Estate Appraiser Licensure and Certification Board; and
34 Real Estate Commission.

**§4-10-14. Provision for other reviews; consolidation,
termination and reorganization of agencies or programs.**

1 (a) The specifications of schedules for, and the scope of,
2 agency and regulatory board reviews in this article shall not
3 preclude a legislative review or reevaluation of any agency
4 or program at other times. The joint standing committee
5 may request a review of the performance, purpose,
6 efficiency and effectiveness of any agency or program any
7 time that circumstances may require, including, but not
8 limited to, the following:

9 (1) Expressed or implied statutory expiration of an
10 agency or program;

11 (2) Creation of new, or the amendment of existing,
12 federal law affecting the agency or program;

13 (3) Redundant purposes or functions in more than one
14 agency or program or within an agency;

15 (4) Completion or satisfaction of agency or program
16 objectives;

17 (5) Persistent inefficiencies in the delivery of services
18 or in the accomplishment, or lack thereof, of statutory
19 objectives;

20 (6) Fiscal constraints requiring changes in staffing,
21 resources or goals; and

22 (7) Changes in legislative policy or direction.

23 (b) Following the completion of a review by the division
24 and the joint standing committee, with responses and
25 comment from the subject agency or regulatory board, the
26 joint standing committee may recommend or propose the

27 consolidation, termination or reassignment of the agency,
28 program or regulatory board reviewed.

29 (c) Nothing in this article shall be construed as limiting
30 or interfering with the right of any member of the
31 Legislature to introduce, or of the Legislature to enact, any
32 bill that would terminate, consolidate or reorganize one or
33 more state agencies or programs without a review
34 conducted under the terms of this article.

CHAPTER 149

(Com. Sub. for S. B. 261 - By Senator Trump)

[Passed April 3, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §38-5A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-5B-2 of said code, all relating to suggestions of salary and wages of judgment debtors; removing the requirement of including the last four digits of the Social Security number of the judgment debtor in the suggestion execution in private employment; increasing the amount of salary or wages of persons from the state, a state agency or any political subdivision of the state from thirty times the federal minimum hourly wage then in effect to fifty times the federal minimum hourly wage then in effect; requiring judgment creditor to provide personal information about the judgment debtor including, to the extent available, the present address and date of birth of the judgment debtor in the suggestee execution; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §38-5A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-5B-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-3. Application for suggestee execution against salary or wages; extent of lien and continuing levy; exemption; priority among suggestee executions.

1 (a) A judgment creditor may apply to the court in which
2 the judgment was recovered or a court having jurisdiction
3 of the same, without notice to the judgment debtor, for a
4 suggestee execution against any money due or to become
5 due within one year after the issuance of such execution to
6 the judgment debtor as salary or wages arising out of any
7 private employment. If satisfactory proof shall be made, by
8 affidavit or otherwise, of such facts and the fact that the
9 amount due or to become due as salary or wages after the
10 deduction of all state and federal taxes exceeds in any week
11 fifty times the federal minimum hourly wage then in effect,
12 the court, if not a court of record, or if a court of record the
13 clerk thereof, shall issue a suggestee execution against the
14 salary or wages of the judgment debtor and upon
15 presentation of such execution by the officer to whom
16 delivered for collection to the person or persons from which
17 such salary or wages are due and owing or thereafter may
18 become due and owing to the judgment debtor, the
19 execution and the expenses thereof shall become a lien and
20 continuing levy upon the salary or wages due or to become
21 due to the judgment debtor within one year after the
22 issuance of the same, unless sooner vacated or modified as
23 hereinafter provided, to an amount equal to twenty percent
24 thereof and no more, but in no event shall the payments in
25 satisfaction of such an execution reduce the amount payable
26 to the judgment debtor to an amount per week that is less
27 than fifty times the federal minimum hourly wage then in
28 effect. Only one such execution shall be satisfied, at one
29 time, except that in the event two or more such executions

30 have been served and satisfaction of the one having priority
31 is completed without exhausting the amount of the salary or
32 wages then due and payable that is subject to suggestion
33 under this article the balance of such amount shall be paid
34 in satisfaction, in the order of their priority, of junior
35 suggestee executions against such salary or wages
36 theretofore served.

37 (b) The suggestee execution by the judgment creditor
38 provided in this section shall include, to the extent possible,
39 the present address and date of birth of the judgment debtor,
40 which information shall be made available for the purpose
41 of properly identifying the judgment debtor whose salary or
42 wages are being levied upon.

**ARTICLE 5B. SUGGESTION OF THE STATE AND
POLITICAL SUBDIVISIONS; GARNISHMENT AND
SUGGESTION OF PUBLIC OFFICERS.**

**§38-5B-2. Application for suggestee execution against money
from state, state agency or political subdivision; extent of
lien and continuing levy; priority among suggestee
executions.**

1 (a) A judgment creditor may apply to the court in which
2 the judgment was recovered or a court having jurisdiction
3 of the same, without notice to the judgment debtor, for a
4 suggestee execution against any money due or to become
5 due within one year after the issuance of the same to the
6 judgment debtor from the state, a state agency or any
7 political subdivision of the state. If satisfactory proof is
8 made, by affidavit or otherwise, of such facts and, where the
9 execution is sought against salary or wages, of the fact that
10 the amount due or to become due as salary or wages after
11 the deduction of state and federal taxes exceeds in any week
12 fifty times the federal minimum hourly wage then in effect,
13 the court, if not a court of record, or if a court of record, the
14 clerk thereof, shall issue a suggestee execution against such
15 money due or to become due to the judgment debtor, and

16 there shall be entered on the face thereof the day and hour
17 of issuance.

18 The execution and the expenses thereof shall, when
19 served by the officer to whom delivered for collection in
20 the manner hereinafter provided, upon the state, a state
21 agency or political subdivision from which such money
22 is due or may thereafter become due to the judgment
23 debtor, become a lien and continuing levy upon the sums
24 due or to become due to the judgment debtor within one
25 year after the issuance of the execution (but not to exceed
26 twenty percent of the salary or wages due to the judgment
27 debtor or reduce the amount received by him or her per
28 week to an amount less than fifty times the federal
29 minimum hourly wage then in effect) unless sooner
30 satisfied and paid, vacated or modified as hereinafter
31 provided.

32 Where more than one suggestee execution has been
33 issued pursuant to this section against the same judgment
34 debtor, they shall be satisfied in the order of priority in
35 which they are served upon the state, state agency or
36 political subdivision from which the money is due or
37 becomes due. For purposes of determining the priority,
38 the time that an execution served by mail, as hereinafter
39 provided, is received, and not the time of admission of
40 service, shall control. In the case of two or more
41 executions received in the same mail, delivery priority
42 shall be accorded the one first issued.

43 (b) The suggestee execution by the judgment creditor
44 provided in this section shall include, to the extent
45 possible, the present address and date of birth of the
46 judgment debtor, which information shall be made
47 available for the purpose of properly identifying the
48 judgment debtor whose salary or wages are being levied
49 upon.

CHAPTER 150

**(Com. Sub. for H. B. 2303 - By Delegates Phillips,
Westfall, Folk, Sobonya, Overington, Paynter,
Eldridge and R. Miller)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §22-15A-4 of the Code of West Virginia, 1931, as amended, relating to the criminal offense of littering, clarifying that no person may place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter on the private property of another, increasing criminal penalties for littering in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, increasing criminal penalties for littering in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size, modifying the penalties for littering greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes, increasing penalties for second or subsequent violations for littering in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, increasing penalties for second or subsequent violations for littering in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size and increasing civil penalties for littering, requiring magistrates or municipal court judges to consult with prosecuting attorneys before dismissing charges.

Be it enacted by the Legislature of West Virginia:

That §22-15A-4 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-4. Unlawful disposal of litter; civil and criminal
penalty; litter control fund; evidence; notice violations;
litter receptacle placement; penalty; duty to enforce
violations.**

1 (a) (1) No person may place, deposit, dump, throw or
2 cause to be placed, deposited, dumped or thrown any litter
3 as defined in section two of this article, in or upon any
4 public or private highway, road, street or alley; any private
5 property; any public property; or the waters of the state or
6 within one hundred feet of the waters of this state, except in
7 a proper litter or other solid waste receptacle.

8 (2) It is unlawful for any person to place, deposit, dump,
9 throw or cause to be placed, deposited, dumped or thrown
10 any litter from a motor vehicle or other conveyance or to
11 perform any act which constitutes a violation of the motor
12 vehicle laws contained in section fourteen, article fourteen,
13 chapter seventeen-c of this code.

14 (3) If any litter is placed, deposited, dumped,
15 discharged, thrown or caused to be placed, deposited,
16 dumped or thrown from a motor vehicle, boat, airplane or
17 other conveyance, it is prima facie evidence that the owner
18 or the operator of the motor vehicle, boat, airplane or other
19 conveyance intended to violate the provisions of this
20 section.

21 (4) Any person who violates the provisions of this
22 section by placing, depositing, dumping or throwing or
23 causing to be placed, deposited, dumped or thrown any litter
24 on his or her private property in an amount not exceeding
25 fifty pounds in weight is not subject to the criminal
26 provisions of this section.

27 (5) Any person who violates the provisions of this
28 section by placing, depositing, dumping or throwing or
29 causing to be placed, deposited, dumped or thrown any
30 litter, not collected for commercial purposes, in an amount
31 not exceeding one hundred pounds in weight or twenty-
32 seven cubic feet in size, is guilty of a misdemeanor. Upon
33 conviction, he or she is subject to a fine of not less than \$100
34 nor more than \$2,500, or in the discretion of the court,
35 sentenced to perform community service by cleaning up
36 litter from any public highway, road, street, alley or any
37 other public park or public property, or waters of the state,
38 as designated by the court, for not less than eight nor more
39 than one hundred hours, or both. If any person is convicted
40 of the misdemeanor by placing, depositing, dumping or
41 throwing litter in the waters of the state, that person shall be
42 fined \$500 to no more than \$3,000, or in the discretion of
43 the court sentenced to perform community service by
44 cleaning up litter from any waters of the state, as designated
45 by the court, for not less than twenty to no more than one
46 hundred twenty hours, or both.

47 (6) Any person who violates the provisions of this
48 section by placing, depositing, dumping or throwing or
49 causing to be placed, deposited, dumped or thrown any
50 litter, not collected for commercial purposes, in an amount
51 greater than one hundred pounds in weight or twenty-seven
52 cubic feet in size, but less than five hundred pounds in
53 weight or two hundred sixteen cubic feet in size is guilty of
54 a misdemeanor. Upon conviction he or she is subject to a
55 fine of not less than \$2,500 nor more than \$5,000, or in the
56 discretion of the court, may be sentenced to perform
57 community service by cleaning up litter from any public
58 highway, road, street, alley or any other public park or
59 public property, or waters of the state, as designated by the
60 court, for not less than sixteen nor more than two hundred
61 hours, or both. If any person is convicted of the
62 misdemeanor by placing, depositing, dumping or throwing
63 litter in the waters of the state, that person shall be fined
64 \$3,000 to no more than \$5,500, or in the discretion of the

65 court sentenced to perform community service by cleaning
66 up litter from any waters of the state, as designated by the
67 court, for not less than twenty to no more than two hundred
68 twenty hours, or both.

69 (7) Any person who violates the provisions of this
70 section by placing, depositing, dumping or throwing or
71 causing to be placed, deposited, dumped or thrown any litter
72 in an amount greater than five hundred pounds in weight or
73 two hundred sixteen cubic feet in size or any amount which
74 had been collected for commercial purposes is guilty of a
75 misdemeanor. Upon conviction, the person shall be fined
76 not less than \$2,500 or not more than \$25,000 or
77 confinement in jail for not more than one year or both. If
78 any person is convicted of the misdemeanor by placing,
79 depositing, dumping or throwing litter in the waters of the
80 state, that person shall be fined \$3,000 to no more than
81 \$11,000, or confinement in jail for not more than one year
82 or both. In addition, the violator may be guilty of creating
83 or contributing to an open dump as defined in section two,
84 article fifteen, chapter twenty-two of this code and subject
85 to the enforcement provisions of section fifteen of that
86 article.

87 (8) Any person convicted of a second or subsequent
88 violation of this section is subject to double the authorized
89 range of fines and community service for the subsection
90 violated.

91 (9) The sentence of litter clean up shall be verified by
92 environmental inspectors from the Department of
93 Environmental Protection. Any defendant receiving the
94 sentence of litter clean up shall provide, within a time to be
95 set by the court, written acknowledgment from an
96 environmental inspector that the sentence has been
97 completed and the litter has been disposed of lawfully.

98 (10) Any person who has been found by the court to
99 have willfully failed to comply with the terms of a litter
100 clean up sentence imposed by the court pursuant to this

101 section is subject to, at the discretion of the court, double
102 the amount of the original fines and community service
103 penalties originally ordered by the court.

104 (11) All law-enforcement agencies, officers and
105 environmental inspectors shall enforce compliance with this
106 section within the limits of each agency's statutory
107 authority.

108 (12) No magistrate or municipal court judge may
109 dismiss an action brought under the provisions of this
110 section without notification to the prosecuting attorney of
111 that county of his or her intention to do so and affording the
112 prosecuting attorney an opportunity to be heard.

113 (13) No portion of this section restricts an owner, renter
114 or lessee in the lawful use of his or her own private property
115 or rented or leased property or to prohibit the disposal of any
116 industrial and other wastes into waters of this state in a
117 manner consistent with the provisions of article eleven,
118 chapter twenty-two of this code. But if any owner, renter or
119 lessee, private or otherwise, knowingly permits any of these
120 materials or substances to be placed, deposited, dumped or
121 thrown in a location that high water or normal drainage
122 conditions will cause these materials or substances to wash
123 into any waters of the state, it is prima facie evidence that
124 the owner, renter or lessee intended to violate the provisions
125 of this section: *Provided*, That if a landowner, renter or
126 lessee, private or otherwise, reports any placing, depositing,
127 dumping or throwing of these substances or materials upon
128 his or her property to the prosecuting attorney, county
129 commission, the Division of Natural Resources or the
130 Department of Environmental Protection, the landowner,
131 renter or lessee will be presumed to not have knowingly
132 permitted the placing, depositing, dumping or throwing of
133 the materials or substances.

134 (b) Any indication of ownership found in litter is prima
135 facie evidence that the person identified violated the
136 provisions of this section: *Provided*, That no inference may

137 be drawn solely from the presence of any logo, trademark,
138 trade name or other similar mass reproduced things of
139 identifying character appearing on the found litter.

140 (c) Every person who is convicted of or pleads guilty to
141 disposing of litter in violation of subsection (a) of this
142 section shall pay a civil penalty of \$2,000 as costs for clean-
143 up, investigation and prosecution of the case, in addition to
144 any other court costs that the court is otherwise required by
145 law to impose upon a convicted person.

146 The clerk of the circuit court, magistrate court or
147 municipal court in which these additional costs are imposed
148 shall, on or before the last day of each month, transmit fifty
149 percent of a civil penalty received pursuant to this section to
150 the State Treasurer for deposit in the State Treasury to the
151 credit of a special revenue fund known as the Litter Control
152 Fund which was transferred to the Department of
153 Environmental Protection. Expenditures for purposes set
154 forth in this section are not authorized from collections but
155 are to be made only in accordance with appropriation and in
156 accordance with the provisions of article three, chapter
157 twelve of this code and upon fulfillment of the provisions
158 set forth in article two, chapter five-a of this code. Amounts
159 collected which are found from time to time to exceed the
160 funds needed for the purposes set forth in this article may
161 be transferred to other accounts or funds and designated for
162 other purposes by appropriation of the Legislature.

163 (d) The remaining fifty percent of each civil penalty
164 collected pursuant to this section shall be transmitted to the
165 county or regional solid waste authority in the county where
166 the litter violation occurred. Moneys shall be expended by
167 the county or regional solid waste authority for the purpose
168 of litter prevention, clean up and enforcement. The county
169 commission shall cooperate with the county or regional
170 solid waste authority serving the respective county to
171 develop a coordinated litter control program pursuant to
172 section eight, article four, chapter twenty-two-c of this code.

173 (e) The Commissioner of the Division of Motor Vehicles,
174 upon registering a motor vehicle or issuing an operator's or
175 chauffeur's license, shall issue to the owner or licensee, as the
176 case may be, a summary of this section and section fourteen,
177 article fourteen, chapter seventeen-c of the code.

178 (f) The Commissioner of the Division of Highways shall
179 cause appropriate signs to be placed at the state boundary
180 on each primary and secondary road, and at other locations
181 throughout the state, informing those entering the state of
182 the maximum penalty provided for disposing of litter in
183 violation of subsection (a) of this section.

184 (g) Any state agency or political subdivision that owns,
185 operates or otherwise controls any public area designated by
186 the secretary by rule promulgated pursuant to subdivision
187 (8), subsection (a), section three of this article shall procure
188 and place litter receptacles at its own expense upon its
189 premises and shall remove and dispose of litter collected in
190 the litter receptacles. After receiving two written warnings
191 from any law-enforcement officer or officers to comply
192 with this subsection or the rules of the secretary, any state
193 agency or political subdivision that fails to place and
194 maintain the litter receptacles upon its premises in violation
195 of this subsection or the rules of the secretary shall be fined
196 \$30 per day of the violation.

CHAPTER 151

(S. B. 658 - By Senators Maynard and Cline)

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §17A-3-12b of the Code of West Virginia, 1931, as amended, relating to establishing a

procedure whereby mobile and manufactured homes may be retitled provided certain conditions are met.

Be it enacted by the Legislature of West Virginia:

That §17A-3-12b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-12b. Canceled certificates of title for certain mobile and manufactured homes; reissuance of certificates of title; procedure.

1 (a) The commissioner may cancel a certificate of title
2 for a mobile or manufactured home affixed to the real
3 property of the owner of the mobile or manufactured home.
4 The person requesting the cancellation shall submit to the
5 commissioner an application for cancellation together with
6 the certificate of title. The application shall be on a form
7 prescribed by the commissioner. The commissioner shall
8 return one copy of the cancellation certificate to the owner
9 and shall send a copy of the cancellation certificate to the
10 clerk of the county commission to be recorded and indexed
11 in the same manner as a deed, with the owner's name being
12 indexed in the grantor index. The commissioner shall charge
13 a fee of \$10 per certificate of title canceled. The clerk shall
14 return a copy of the recorded cancellation certificate to the
15 owner, unless there is a lien attached to the mobile or
16 manufactured home, in which case the copy of the recorded
17 cancellation certificate shall be returned to the lienholder.
18 Upon its recording in the county clerk's office, the mobile
19 or manufactured home shall be treated for all purposes as an
20 appurtenance to the real estate to which it is affixed and be
21 transferred only as real estate and the ownership interest in
22 the mobile or manufactured home, together with all liens
23 and encumbrances on the home, shall be transferred to and

24 shall encumber the real property to which the mobile or
25 manufactured home has become affixed.

26 (b) The commissioner shall reinstate and reissue any
27 title for a mobile home or manufactured home which was
28 previously titled in this state and for which the title was
29 canceled pursuant to this section when the owner of the
30 mobile or manufactured home seeks to sever the home from
31 the real property and applies for a certificate of title in
32 accordance with the provisions of this section. For purposes
33 of this subsection, "owner" means the owner, secured lender
34 of foreclosed or surrendered property, owner of real
35 property who takes possession of an abandoned
36 manufactured home on the property or other person who has
37 the legal right to the manufactured home through legal
38 process.

39 (1) The owner shall file with the clerk of the county
40 commission where the real property is located an affidavit
41 that includes or provides for all of the following
42 information:

43 (A) The manufacturer and, if applicable, the model
44 name of the mobile or manufactured home;

45 (B) The vehicle identification number and serial number
46 of the mobile or manufactured home;

47 (C) The legal description of the real property on which
48 the mobile or manufactured home is or was placed, stating
49 that the owner of the mobile home or manufactured home
50 also owns the real property;

51 (D) Certification that there are no security interests in
52 the mobile home or manufactured home that have not been
53 released by the secured party; and

54 (E) A statement by the owner that the home has been or
55 will be physically severed from the real property.

56 (2) The owner must submit the following to the
57 commissioner:

58 (A) A copy of the affidavit filed in accordance with
59 subdivision (1) of this subsection; and

60 (B) Verification that the manufactured home has been
61 severed from the real property. Confirmation of severance
62 by the assessor where the real property is located is
63 acceptable evidence that the unit has been severed from the
64 real property.

65 (3) Upon receipt of the information required in
66 subdivision (2) of this subsection, together with a title
67 application and required fee, the commissioner shall issue a
68 new title for the manufactured home.

CHAPTER 152

**(Com. Sub. for H. B. 2402 - By Delegates Howell,
Frich, Eldridge and Phillips)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §17-24A-1 and §17-24A-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §17-24A-6a; and to amend and reenact §17A-4-10 of said code, all relating to abandoned motor vehicles; adding new definitions; establishing a process for automobile auctions to obtain title to and sell motor vehicles abandoned on its premises; creating a special procedure for a person to apply for and receive title to an abandoned antique motor vehicle valued at \$7,500 or less; providing for the issuance of a Vehicle Removal Certificate to remove an antique motor vehicle from private property with permission of the property owner; providing

that the Division of Motor Vehicles to search for the owner and lienholders of the motor vehicle and provide notice of the application for title to the vehicle; creating a procedure for the owner or lienholders to reclaim the vehicle within 30 days of notice of an application for title to the vehicle; establishing fees to accompany an application for title to the vehicle; establishing fees for reclamation of the vehicle by owner or lienholder; creating a misdemeanor offense of interference with a person who has acquired title to an antique motor vehicle attempting to recover the vehicle from private property and establishing penalties upon conviction thereof; directing the division to promulgate rules and forms to effectuate new procedure; allowing an insurance company to obtain a salvage certificate or a cosmetic total loss salvage certificate after paying a total loss claim on a vehicle; and creating a process by which an automobile auction may apply for and obtain a salvage certificate or a nonrepairable motor vehicle certificate for certain vehicles on its property received from an insurer who subsequently denies a claim on the vehicle or otherwise does not obtain ownership of the vehicle; and providing for indemnity by the applicant to the Division of Motor Vehicles for the erroneous issuance of such title.

Be it enacted by the Legislature of West Virginia:

That §17-24A-1 and §17-24A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be further amended by adding thereto a new section, designated §17-24A-6a; and to amend and reenact §17A-4-10 of said code, all to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 24A. DISPOSAL OF ABANDONED MOTOR VEHICLES, JUNKED MOTOR VEHICLES, AND ABANDONED OR INOPERATIVE HOUSEHOLD APPLIANCES.

§17-24A-1. Definitions.

1 Unless the context clearly indicates a different meaning,
2 as used in this article:

3 (1) “Commissioner” means the Commissioner of the
4 Division of Highways or his or her designee.

5 (2) “Abandoned household appliance” means a
6 refrigerator, freezer, range, stove, automatic dishwasher,
7 clothes washer, clothes dryer, trash compactor, television
8 set, radio, air conditioning unit, commode, bed springs,
9 mattress or other furniture, fixtures or appliances to which
10 no person claims ownership and which is not in an enclosed
11 building, a licensed salvage yard or the actual possession of
12 a demolisher.

13 (3) “Abandoned motor vehicle” means any motor
14 vehicle, or major part thereof, which is inoperative and
15 which has been abandoned on public property for any period
16 over five days, other than in an enclosed building or in a
17 licensed salvage yard or at the business establishment of a
18 demolisher; or any motor vehicle, or major part thereof,
19 which has remained on private property without consent of
20 the owner or person in control of the property for any period
21 over five days; or any motor vehicle, or major part thereof,
22 which is unattended, discarded, deserted and unlicensed and
23 is not in an enclosed building, a licensed salvage yard or the
24 actual possession of a demolisher: *Provided*, That a motor
25 vehicle, or major part thereof, is not an abandoned motor
26 vehicle if: (a) The owner of the motor vehicle is storing the
27 motor vehicle on the owner’s property; (b) the motor vehicle
28 is being stored for the purpose of using its parts on other
29 motor vehicles owned by the owner; (c) the owner owns
30 other motor vehicles similar to the motor vehicle being
31 stored; and (d) the owner is a business licensed to do
32 business in the State of West Virginia and not in the primary
33 business of offering motor vehicles or parts thereof for sale.

34 (4) “Abandoned antique motor vehicle” means a vehicle
35 that qualifies as both an abandoned motor vehicle and an
36 antique motor vehicle.

37 (5) "Antique motor vehicle" means a vehicle that was
38 manufactured more than twenty-five years before the
39 current date.

40 (6) "Demolisher" means any person licensed by the
41 Commissioner of the Division of Highways whose business,
42 to any extent or degree, is to convert a motor vehicle or any
43 part thereof or an inoperative household appliance into
44 processed scrap or scrap metal or into saleable parts or
45 otherwise to wreck or dismantle vehicles or appliances.

46 (7) The "Division" means the West Virginia Division of
47 Motor Vehicles.

48 (8) "Enclosed building" means a structure surrounded
49 by walls or one continuous wall and having a roof enclosing
50 the entire structure and includes a permanent appendage
51 thereto.

52 (9) "Enforcement agency" means any of the following
53 or any combination of the following:

54 (a) Public law-enforcement officers of this state,
55 including natural resources police officers;

56 (b) Public law-enforcement officers of any county, city
57 or town within this state; and

58 (c) The Commissioner of the Division of Highways, his
59 or her duly authorized agents and employees.

60 (10) "Inoperative household appliance" means a
61 refrigerator, freezer, range, stove, automatic dishwasher,
62 clothes washer, clothes dryer, trash compactor, television
63 set, radio, air conditioning unit, commode, bed springs,
64 mattress or other furniture, fixture or appliance which by
65 reason of mechanical or physical defects can no longer be
66 used for its intended purpose and which is either not serving
67 a functional purpose or use or is not in an enclosed building,
68 a licensed salvage yard or the actual possession of a
69 demolisher.

70 (11) “Junked motor vehicle” means a motor vehicle, or
71 any part thereof which: (a) Is discarded, wrecked, ruined,
72 scrapped or dismantled; (b) cannot pass the state inspection
73 required by article sixteen, chapter seventeen-c of this code;
74 and (c) is either not serving a functional purpose or use or is
75 not in an enclosed building, a licensed salvage yard or the
76 actual possession of a demolisher: *Provided*, That a motor
77 vehicle, or major part thereof, is not a junked motor vehicle
78 if: (a) The owner of the motor vehicle is storing the motor
79 vehicle on the owner’s property; (b) the motor vehicle is
80 being stored for the purpose of using its parts on other motor
81 vehicles owned by the owner; (c) the owner owns other
82 motor vehicles similar to the motor vehicle being stored;
83 and (d) the owner is a business licensed to do business in the
84 State of West Virginia and not in the primary business of
85 offering motor vehicles or parts thereof for sale.

86 (12) “Licensed salvage yard” means a salvage yard
87 licensed under article twenty-three of this chapter.

88 (13) “Motor vehicle” means a vehicle which is or was
89 self-propelled, including, but not limited to, automobiles,
90 trucks, buses and motorcycles.

91 (14) “Person” means a natural person, corporation, firm,
92 partnership, association or society and the plural as well as
93 the singular.

94 (15) “Vehicle Identification Number” means a unique
95 number or mark placed on a vehicle or part thereof by the
96 manufacturer so as to identify it particularly and distinguish
97 the vehicle or part from all other such vehicles or parts.

**§17-24A-4. Abandoned or junked motor vehicles; notification
to motor vehicle owner and lienholder; charges and fees;
exceptions.**

1 (a) The enforcement agency which takes into custody
2 and possession an abandoned motor vehicle or junked motor
3 vehicle shall, within fifteen days after taking custody and

4 possession thereof, notify the last-known registered owner
5 of the motor vehicle and all lienholders of record that the
6 motor vehicle has been taken into custody and possession,
7 the notification to be by registered or certified mail, return
8 receipt requested. The notice shall:

9 (1) Contain a description of the motor vehicle, including
10 the year, make, model, manufacturer's serial or
11 identification number or any other number which may have
12 been assigned to the motor vehicle by the Commissioner of
13 Motor Vehicles and any distinguishing marks;

14 (2) Set forth the location of the facility where the motor
15 vehicle is being held and the location where the motor
16 vehicle was taken into custody and possession;

17 (3) Inform the owner and any lienholders of record of
18 their right to reclaim the motor vehicle within ten days after
19 the date notice was received by the owner or lienholders,
20 upon payment of all towing, preservation and storage
21 charges resulting from taking and placing the motor vehicle
22 into custody and possession; and

23 (4) State that the failure of the owner or lienholders of
24 record to exercise their right to reclaim the motor vehicle
25 within the ten-day period shall be deemed a waiver by the
26 owner and all lienholders of record of all right, title and
27 interest in the motor vehicle and of their consent to the sale
28 or disposal of the abandoned motor vehicle or junked motor
29 vehicle at a public auction or to a licensed salvage yard or
30 demolisher.

31 (b) If the identity of the last registered owner of the
32 abandoned motor vehicle or junked motor vehicle cannot be
33 determined or if the certificate of registration or certificate
34 of title contains no address for the owner or if it is
35 impossible to determine with reasonable certainty the
36 identity and addresses of all lienholders, notice shall be
37 published as a Class I legal advertisement in compliance
38 with the provisions of article three, chapter fifty-nine of this

39 code, the publication area shall be the county wherein the
40 motor vehicle was located at the time the enforcement
41 agency took custody and possession thereof and the notice
42 shall be sufficient to meet all requirements of notice
43 pursuant to this article. Any notice by publication may
44 contain multiple listings of abandoned motor vehicles and
45 junked motor vehicles. The notice shall be published within
46 fifteen days after the motor vehicle is taken into custody and
47 possession and shall have the same contents required for a
48 notice pursuant to subsection (a) of this section, except that
49 the ten-day period shall run from the date the notice is
50 published as aforesaid.

51 (c) An enforcement agency which hires any person or
52 entity to take into custody and possession an abandoned
53 motor vehicle or junked motor vehicle pursuant to this
54 section shall notify the person or entity hired of the name
55 and address of the registered owner of the motor vehicle, if
56 known, and all lienholders of record, if any, within fifteen
57 days after the vehicle is taken into custody and possession:
58 *Provided*, That the requirements of this subsection shall not
59 apply to motor vehicles for which the registered owner
60 cannot be ascertained by due diligence or investigation.

61 (d) The person or entity hired by an enforcement agency
62 to take into custody or possession an abandoned motor
63 vehicle or junked motor vehicle shall, within thirty days
64 after the possession, notify the registered owner of the
65 vehicle and all lienholders of record, if any, as identified by
66 the enforcement agency pursuant to subsection (c) of this
67 section, by registered mail, return receipt requested, that the
68 motor vehicle has been taken into custody and possession.
69 The notice shall have the same contents required for a notice
70 pursuant to subsection (a) of this section, including the ten-
71 day period the owner or lienholder has to reclaim the motor
72 vehicle. Upon the issuance of the notice, the identified
73 owner of the motor vehicle is liable and responsible for all
74 costs for towing, preservation and storage of the motor
75 vehicle: *Provided*, That failure to issue the notice required

76 by this subsection within thirty days after possession of the
77 motor vehicle relieves the identified owner of the motor
78 vehicle of any liability for charges for towing, preservation
79 and storage in excess of the sum of the first five days of the
80 charges: *Provided, however,* That the requirements of this
81 subsection do not apply to motor vehicles for which the
82 registered owner thereof cannot be ascertained by due
83 diligence or investigation.

84 (e) For an abandoned motor vehicle or junked vehicle
85 having a loan value of \$7,500 or less, as ascertained by
86 values placed upon motor vehicles using a standard industry
87 reference book, a person or entity hired by an enforcement
88 agency to tow the abandoned motor vehicle or junked motor
89 vehicle may, if the motor vehicle is not claimed by the
90 owner or a lienholder after notice within the time set forth
91 in subsection (d) of this section or if the identity of the last
92 registered owner of the abandoned motor vehicle or junked
93 motor vehicle cannot be determined or if the certificate of
94 registration or certificate of title contains no address of the
95 owner or if it is impossible to determine with reasonable
96 certainty the identity and address of all lienholders after
97 publication as set forth in subsection (b) of this section, file
98 an application with the Division of Motor Vehicles for a
99 certificate of title and registration which, upon payment of
100 the appropriate fees, shall be issued. The person or entity
101 may then sell the motor vehicle at private sale or public
102 auction.

103 (f) A licensed motor vehicle dealer, as defined in section
104 one, article one, chapter seventeen-a of this code, a licensed
105 automobile auction as defined in section one, article six-c,
106 chapter seventeen-a of this code, or a motor vehicle repair
107 facility or a towing company registered with the Public
108 Service Commission pursuant to section two-a, article two,
109 chapter twenty-four-a of this code may file an application
110 with the Division of Motor Vehicles for a certificate of title
111 and registration for an abandoned motor vehicle or junked
112 vehicle. Upon payment of the appropriate fees, the division

113 shall deliver the certificate of title and registration to the
114 applicant, if:

115 (1) The vehicle has a loan value of \$9,500 or less, as
116 ascertained by values placed upon motor vehicles using a
117 standard industry reference book; and

118 (2) The motor vehicle is abandoned on the property or
119 place of business of the dealer, licensed automobile auction,
120 motor vehicle repair facility or towing company; and

121 (3) This amount will be increased every five years on
122 September 1 of the fifth year based on the U.S. Department
123 of Labor, Bureau of Labor Statistics most current Consumer
124 Price Index; and

125 (4) One of the following situations applies:

126 (A) The identity of the last registered owner of the
127 abandoned motor vehicle cannot be determined; or

128 (B) The certificate of registration or certificate of title
129 contains no address of the owner; or (C) It is impossible to
130 determine with reasonable certainty the identity and address
131 of all lienholders after publication as set forth in subsection
132 (b) of this section.

133 (D) The motor vehicle is not claimed by the owner or a
134 lienholder after notice within the time set forth in subsection
135 (d) of this section.

136 (g) Upon receipt of the certificate of title and
137 registration, the dealer, licensed automobile auction, motor
138 vehicle repair facility or towing company may sell the
139 vehicle at private sale or public auction.

140 (h) For purposes of this section motor vehicle repair
141 facilities and towing companies are not used motor vehicle
142 dealers as that term is defined by subdivision (2), subsection
143 (a), section one, article six, chapter seventeen-a of this code.

§17-24A-6a. Title to abandoned antique motor vehicle; special procedure; notice to owner; fees; criminal penalties.

1 (a) *Application for Title to Abandoned Antique Motor*
2 *Vehicle.* —

3 (1) A person may apply to the division for ownership
4 and title to an abandoned antique motor vehicle if that
5 person:

6 (A) Is the owner of private property on which the
7 vehicle is located; or

8 (B) Has obtained a valid Vehicle Removal Certificate
9 from the division.

10 (2) The application shall include the following:

11 (A) The name, address and other contact information of
12 the applicant;

13 (B) The year, make, model, Vehicle Identification
14 Number and any other identifying marks on the vehicle:
15 *Provided*, That if there is no Vehicle Identification Number,
16 the applicant shall provide all information available or
17 reasonably ascertainable to identify the year, make and
18 model of the vehicle; and

19 (C) Any other information required by the division.

20 (3) Upon application for title to an abandoned antique
21 motor vehicle, the applicant shall pay a fee of \$100 to the
22 division.

23 (b) *Vehicle Removal Certificate.* — In a manner
24 prescribed by the division, a person may apply for a Vehicle
25 Removal Certificate at no fee, by presenting records
26 sufficient to demonstrate to a reasonable degree of certainty
27 that the owner of the private property on which an
28 abandoned antique motor vehicle is located has given the

29 applicant written permission to remove the vehicle from the
30 private property.

31 (c) *Search for Owner and Lienholders; Notice.* —

32 (1) Upon receipt of an application for title to an
33 abandoned antique motor vehicle, the division shall initiate
34 a search for the last owner of the vehicle and any lienholders
35 of record of the vehicle, using the year, make, model,
36 Vehicle Identification Number and any other identifying
37 marks on the vehicle, and, if there is no Vehicle
38 Identification Number, the information provided on the
39 application related to the year, make and model of the motor
40 vehicle that was available to the applicant. The division
41 shall, at a minimum, search:

42 (A) Its own records;

43 (B) The records of a nationally recognized crime
44 database; and

45 (C) Records of a nationally recognized motor vehicle
46 title database for owner information.

47 (2) If, in the course of a search, the division discovers
48 that the vehicle has been reported as stolen, the division
49 shall notify the appropriate law-enforcement agency of that
50 fact.

51 (3) If the division determines the identity and address of
52 the owner and any lienholder, the division shall, by certified
53 mail with return receipt requested, notify the owner and any
54 lienholder of the application for title to the vehicle and the
55 contact information for the owner of the property on which
56 the vehicle is located. Such notice, when sent in accordance
57 with these requirements, shall be sufficient regardless of
58 whether or not it was ever received. The owner or
59 lienholder will then have the following options, which shall
60 be detailed in the division's letter of notice:

61 (A) Pay a \$100 fee to the division, \$50 of which shall
62 be awarded to the applicant, and reclaim and remove the
63 vehicle from private property within 30 days of the date of
64 receiving notice at a time and in a manner arranged with the
65 owner of the private property; or

66 (B) Waives all right, title, and interest in the motor
67 vehicle, and the right, title, and interest in the vehicle shall
68 be transferred to the applicant, free of all liens and
69 encumbrances.

70 (4) If the division performs a search pursuant to this
71 subsection and the identity and address of the owner cannot
72 be determined with reasonable certainty, the division shall
73 immediately transfer all right, title, and interest in the
74 vehicle to the applicant, free and clear of all liens and
75 encumbrances.

76 (d) *Rules and Forms.* —

77 (1) The division shall promulgate rules necessary to
78 carry out this section, and shall create the following forms:

79 (A) A form to apply for the title to an abandoned antique
80 vehicle, which shall require an applicant to provide the
81 following information:

82 (i) The applicant's legal name and contact information;

83 (ii) The Vehicle Identification Number: *Provided*, That
84 if the vehicle does not have a Vehicle Identification
85 Number, the applicant shall follow the procedure set forth
86 in subdivisions (2) and (3) of this subsection;

87 (iii) The year, make and model of the vehicle;

88 (iv) The current location of the vehicle; and

89 (v) The current contact information for the owner of the
90 private property on which the vehicle is located.

91 (B) A Vehicle Removal Certificate, which shall be
92 issued to a person who presents the records required by
93 subsection (b) of this section and shall require the following
94 information:

95 (i) The applicant's legal name and contact information;

96 (ii) The Vehicle Identification Number: *Provided*, That
97 if the vehicle does not have a Vehicle Identification
98 Number, the applicant shall follow the procedure set forth
99 in subdivisions (2) and (3) of this subsection;

100 (iii) The year, make and model of the vehicle;

101 (iv) The current location of the vehicle; and

102 (v) The current contact information for the owner of the
103 private property on which the vehicle is located.

104 (2) If an applicant or person requesting a Vehicle
105 Removal Certificate cannot, after reasonable efforts,
106 determine the Vehicle Identification Number of the vehicle,
107 the person may pay a \$100 fee to the West Virginia State
108 Police to inspect the vehicle, determine, in the sole
109 discretion of the division, the year, make and model of the
110 motor vehicle using all information available or reasonably
111 ascertainable and assign the motor vehicle a new Vehicle
112 Identification Number.

113 (3) If the West Virginia State Police cannot locate a
114 Vehicle Identification Number on an abandoned antique
115 vehicle, the West Virginia State Police shall verify in
116 writing that the vehicle has no Vehicle Identification
117 Number. The applicant may then present the written
118 verification to the division, which shall then issue a new
119 Vehicle Identification Number for the vehicle pursuant to
120 section twenty, article three, chapter seventeen-a of this
121 code.

122 (e) *Obstruction of removal of vehicle from private*
123 *property prohibited.* — No person shall knowingly interfere

124 with a person who has acquired title to an antique motor
125 vehicle and is reclaiming and removing a vehicle from
126 private property pursuant to the procedures set forth in this
127 section. Any person violating this subsection is guilty of a
128 misdemeanor and, upon conviction thereof, shall be fined
129 \$500.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 (a) In the event a motor vehicle is determined to be a
2 total loss or otherwise designated as totaled by an insurance
3 company or insurer, and upon payment of a total loss claim
4 to an insured or claimant owner for the purchase of the
5 vehicle, the insurance company or the insurer, as a condition
6 of the payment, shall require the owner to surrender the
7 certificate of title: *Provided*, That an insured or claimant
8 owner may choose to retain physical possession and
9 ownership of a total loss vehicle. If the vehicle owner
10 chooses to retain the vehicle and the vehicle has not been
11 determined to be a cosmetic total loss in accordance with
12 subsection (d) of this section, the insurance company or
13 insurer shall also require the owner to surrender the vehicle
14 registration certificate. The term total loss means a motor
15 vehicle which has sustained damages equivalent to seventy-
16 five percent or more of the market value as determined by a
17 nationally accepted used car value guide or meets the
18 definition of a flood-damaged vehicle as defined in this
19 section.

20 (b) The insurance company or insurer shall, prior to the
21 payment of the total loss claim, determine if the vehicle is
22 repairable, cosmetically damaged or nonrepairable. Except
23 as provided in subsection (p) of this section, within ten days

24 of payment of the total loss claim, the insurance company
25 or insurer shall surrender the certificate of title, a copy of
26 the claim settlement, a completed application on a form
27 prescribed by the commissioner and the registration
28 certificate if the owner has chosen to keep the vehicle to the
29 Division of Motor Vehicles.

30 (c) If the insurance company or insurer determines that
31 the vehicle is repairable, the division shall issue a salvage
32 certificate, on a form prescribed by the commissioner, in the
33 name of the insurance company, the insurer or the vehicle
34 owner if the owner has chosen to retain the vehicle. The
35 certificate shall contain, on the reverse, spaces for one
36 successive assignment before a new certificate at an
37 additional fee is required. Upon the sale of the vehicle, the
38 insurance company, insurer or vehicle owner if the owner
39 has chosen to retain the vehicle, shall complete the
40 assignment of ownership on the salvage certificate and
41 deliver it to the purchaser. The vehicle may not be titled or
42 registered for operation on the streets or highways of this
43 state unless there is compliance with subsection (h) of this
44 section. The division shall charge a fee of \$15 for each
45 salvage title issued.

46 (d) If the insurance company or insurer determines the
47 damage to a totaled vehicle is exclusively cosmetic and no
48 repair is necessary in order to legally and safely operate the
49 motor vehicle on the roads and highways of this state, the
50 insurance company or insurer shall, upon payment of the
51 claim, submit the certificate of title to the division. Neither
52 the insurance company nor the division may require the
53 vehicle owner to surrender the registration certificate in the
54 event of a cosmetic total loss settlement.

55 (1) The division shall, without further inspection, issue
56 a title branded cosmetic total loss to the insured or claimant
57 owner if the insured or claimant owner wishes to retain
58 possession of the vehicle, in lieu of a salvage certificate. The
59 division shall charge a fee of \$5 for each cosmetic total loss
60 title issued. The terms cosmetically damaged and cosmetic

61 total loss do not include any vehicle which has been
62 damaged by flood or fire. The designation cosmetic total
63 loss on a title may not be removed.

64 (2) If the insured or claimant owner elects not to take
65 possession of the vehicle and the insurance company or
66 insurer retains possession, the division shall issue a
67 cosmetic total loss salvage certificate to the insurance
68 company or insurer. The division shall charge a fee of \$15
69 for each cosmetic total loss salvage certificate issued. The
70 division shall, upon surrender of the cosmetic total loss
71 salvage certificate issued under the provisions of this
72 paragraph and payment of the five percent motor vehicle
73 sales tax on the fair market value of the vehicle as
74 determined by the commissioner, issue a title branded
75 cosmetic total loss without further inspection.

76 (e) If the insurance company or insurer determines that
77 the damage to a totaled vehicle renders it nonrepairable,
78 incapable of safe operation for use on roads and highways
79 and as having no resale value except as a source of parts or
80 scrap, the insurance company or vehicle owner shall, in the
81 manner prescribed by the commissioner, request that the
82 division issue a nonrepairable motor vehicle certificate in
83 lieu of a salvage certificate. The division shall issue a
84 nonrepairable motor vehicle certificate without charge.

85 (f) Any owner who scraps, compresses, dismantles or
86 destroys a vehicle without further transfer or sale for which
87 a certificate of title, nonrepairable motor vehicle certificate
88 or salvage certificate has been issued shall, within forty-five
89 days, surrender the certificate of title, nonrepairable motor
90 vehicle certificate or salvage certificate to the division for
91 cancellation.

92 (g) Any person who purchases or acquires a vehicle as
93 salvage or scrap, to be dismantled, compressed or destroyed,
94 shall, within forty-five days, surrender to the division the
95 certificate of title, nonrepairable motor vehicle certificate,
96 salvage certificate or a statement of cancellation signed by

97 the seller, on a form prescribed by the commissioner.
98 Subsequent purchasers of salvage or scrap are not required
99 to comply with the notification requirement.

100 (h) If the motor vehicle is a reconstructed vehicle as
101 defined in this section or section one, article one of this
102 chapter, it may not be titled or registered for operation until
103 it has been inspected by an official state inspection station
104 and by the Division of Motor Vehicles. Following an
105 approved inspection, an application for a new certificate of
106 title may be submitted to the division. The applicant is
107 required to retain all receipts for component parts,
108 equipment and materials used in the reconstruction. The
109 salvage certificate shall also be surrendered to the division
110 before a certificate of title may be issued with the
111 appropriate brand.

112 (i) The owner or title holder of a motor vehicle titled in
113 this state which has previously been branded in this state or
114 another state as salvage, reconstructed, cosmetic total loss,
115 cosmetic total loss salvage, flood, fire, an equivalent term
116 under another state's laws or a term consistent with the
117 intent of the National Motor Vehicle Title Information
118 System established pursuant to 49 U. S. C. §30502 shall,
119 upon becoming aware of the brand, apply for and receive a
120 title from the Division of Motor Vehicles on which the
121 brand "reconstructed," "salvage," "cosmetic total loss,"
122 "cosmetic total loss salvage," "flood," "fire" or other brand
123 is shown. The division shall charge a fee of \$5 for each title
124 so issued.

125 (j) If application is made for title to a motor vehicle, the
126 title to which has previously been branded reconstructed,
127 salvage, cosmetic total loss, cosmetic total loss salvage,
128 flood, fire or other brand by the Division of Motor Vehicles
129 under this section and said application is accompanied by a
130 title from another state which does not carry the brand, the
131 division shall, before issuing the title, affix the brand
132 "reconstructed," "cosmetic total loss," "cosmetic total loss
133 salvage," "flood," "fire" or other brand to the title. The

134 motor vehicle sales tax paid on a motor vehicle titled as
135 reconstructed, cosmetic total loss, flood, fire or other brand
136 under the provisions of this section shall be based on fifty
137 percent of the fair market value of the vehicle as determined
138 by a nationally accepted used car value guide to be used by
139 the commissioner.

140 (k) The division shall charge a fee of \$15 for the
141 issuance of each salvage certificate or cosmetic total loss
142 salvage certificate but shall not require the payment of the
143 five percent motor vehicle sales tax. However, upon
144 application for a certificate of title for a reconstructed,
145 cosmetic total loss, flood or fire damaged vehicle or other
146 brand, the division shall collect the five percent privilege tax
147 on the fair market value of the vehicle as determined by the
148 commissioner unless the applicant is otherwise exempt from
149 the payment of such privilege tax. A
150 wrecker/dismantler/rebuilder, licensed by the division, is
151 exempt from the payment of the five percent privilege tax
152 upon titling a reconstructed vehicle. The division shall
153 collect a fee of \$35 per vehicle for inspections of
154 reconstructed vehicles. These fees shall be deposited in a
155 special fund created in the State Treasurer's Office and may
156 be expended by the division to carry out the provisions of
157 this article: *Provided*, That on and after July 1, 2007, any
158 balance in the special fund and all fees collected pursuant to
159 this section shall be deposited in the State Road Fund.
160 Licensed wreckers/dismantlers/rebuilders may charge a fee
161 not to exceed \$25 for all vehicles owned by private
162 rebuilders which are inspected at the place of business of a
163 wrecker/dismantler/rebuilder.

164 (l) As used in this section:

165 (1) "Reconstructed vehicle" means the vehicle was
166 totaled under the provisions of this section or by the
167 provisions of another state or jurisdiction and has been
168 rebuilt in accordance with the provisions of this section or
169 in accordance with the provisions of another state or

170 jurisdiction or meets the provisions of subsection (n),
171 section one, article one of this chapter.

172 (2) "Flood-damaged vehicle" means that the vehicle
173 was submerged in water to the extent that water entered the
174 passenger or trunk compartment.

175 (3) "Other brand" means a brand consistent with the
176 intent of the National Motor Vehicle Title Information
177 System established pursuant to 49 U. S. C. §30502 and rules
178 promulgated by the United States Department of Justice to
179 alert consumers, motor vehicle dealers or the insurance
180 industry of the history of a vehicle.

181 (m) Every vehicle owner shall comply with the branding
182 requirements for a totaled vehicle whether or not the owner
183 receives an insurance claim settlement for a totaled vehicle.

184 (n) A certificate of title issued by the division for a
185 reconstructed vehicle shall contain markings in bold print
186 on the face of the title that it is for a reconstructed, flood- or
187 fire-damaged vehicle.

188 (o) Any person who knowingly provides false or
189 fraudulent information to the division that is required by this
190 section in an application for a title, a cosmetic total loss title,
191 a reconstructed vehicle title or a salvage certificate or who
192 knowingly fails to disclose to the division information
193 required by this section to be included in the application or
194 who otherwise violates the provisions of this section is
195 guilty of a misdemeanor and, upon conviction thereof, shall
196 for each incident be fined not less than \$1,000 nor more than
197 \$2,500, or imprisoned in jail for not more than one year, or
198 both fined and imprisoned.

199 (p) Notwithstanding any other provision of law and with
200 respect to a vehicle which the vehicle owner has not chosen
201 to retain, if an insurance company or insurer is unable to
202 obtain the properly endorsed certificate of title for a motor
203 vehicle within thirty days of the payment of a total loss

204 claim, the insurance company or insurer, at any time
205 thereafter, may apply to the Division of Motor Vehicles for
206 a salvage certificate, a cosmetic total loss salvage certificate
207 or a nonrepairable motor vehicle certificate, as applicable.
208 The application shall be accompanied by evidence that the
209 insurance company or insurer has paid a total loss claim on
210 the vehicle, a copy of a written request for the certificate of
211 title sent to the vehicle owner and any known lienholder by
212 the insurance company or insurer or a designee of the
213 insurance company or insurer, proof that the request was
214 sent by certified mail, return receipt requested, to the last
215 known address of the vehicle owner and any known
216 lienholder, service to be complete upon the mailing thereof,
217 and the required fee, if applicable. Upon receipt of a
218 properly completed application, the division shall issue a
219 salvage certificate, a cosmetic total loss salvage certificate
220 or a nonrepairable motor vehicle certificate, as applicable,
221 in the name of the insurance company or insurer. Such
222 salvage certificate, cosmetic total loss salvage certificate or
223 nonrepairable motor vehicle certificate shall be issued free
224 and clear of all liens and claims of ownership.

225 (q) If an insurance company or insurer requests that an
226 automobile auction take possession of a motor vehicle that
227 is the subject of an insurance claim, and subsequently the
228 insurance company denies coverage with respect to the
229 motor vehicle or otherwise does not take ownership of the
230 motor vehicle, the automobile auction may proceed as
231 follows. At any time after the automobile auction has had
232 possession of the motor vehicle for forty-five days, it may
233 apply to the division for a salvage certificate or a
234 nonrepairable motor vehicle certificate without
235 surrendering the certificate of title for the motor vehicle.
236 The application shall be accompanied by a copy of a written
237 request, on the automobile auction's letterhead, requesting
238 that, upon payment of applicable charges, the vehicle be
239 removed from the automobile auction's facility, proof that
240 the request was delivered by a nationally-recognized courier
241 service or by certified mail to the vehicle owner and any

242 known lienholder at least fifteen days before the date of the
243 application, and the required fee, if applicable. Upon receipt
244 of a properly completed application, the division shall issue
245 a salvage certificate or a nonrepairable motor vehicle
246 certificate, as applicable, in the name of the automobile
247 auction. Such salvage certificate or nonrepairable motor
248 vehicle certificate shall be issued free and clear of all liens
249 and claims of ownership.

250 (r) An applicant pursuant to subsection (p) or (q) of this
251 section shall indemnify and hold harmless the Division of
252 Motor Vehicles from any liability arising from an error or
253 misrepresentation made by such applicant in a submission
254 to the division pursuant to subsection (p) or (q) of this
255 section.

CHAPTER 153

**(Com. Sub. for H. B. 2180 - By Delegates Rodighiero,
Marcum, Eldridge, Phillips, Maynard and Westfall)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to the issuance of “In God We Trust” and “Friends of Coal” motor vehicle registration plates.

Be it enacted by the Legislature of West Virginia:

That §17A-3-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. ORIGINAL AND RENEWAL OF
REGISTRATION; ISSUANCE OF CERTIFICATES
OF TITLE.**

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

1 (a) The division upon registering a vehicle shall issue to
2 the owner one registration plate for a motorcycle, trailer,
3 semitrailer or other motor vehicle.

4 (b) Registration plates issued by the division shall meet
5 the following requirements:

6 (1) Every registration plate shall be of reflectorized
7 material and have displayed upon it the registration number
8 assigned to the vehicle for which it is issued; the name of
9 this state, which may be abbreviated; and the year number
10 for which it is issued or the date of expiration of the plate.

11 (2) Every registration plate and the required letters and
12 numerals on the plate shall be of sufficient size to be plainly
13 readable from a distance of one hundred feet during
14 daylight: *Provided*, That the requirements of this
15 subdivision shall not apply to the year number for which the
16 plate is issued or the date of expiration.

17 (3) Registration numbering for registration plates shall
18 begin with number two.

19 (c) The division may not issue, permit to be issued or
20 distribute any special registration plates except as follows:

21 (1) The Governor shall be issued two registration plates,
22 on one of which shall be imprinted the numeral one and on
23 the other the word one.

24 (2) State officials and judges may be issued special
25 registration plates as follows:

26 (A) Upon appropriate application, the division shall
27 issue to the Secretary of State, State Superintendent of
28 Schools, Auditor, Treasurer, Commissioner of Agriculture

29 and the Attorney General, the members of both houses of
30 the Legislature, including the elected officials of both
31 houses of the Legislature, the justices of the Supreme Court
32 of Appeals of West Virginia, the representatives and
33 senators of the state in the Congress of the United States, the
34 judges of the West Virginia circuit courts, active and retired
35 on senior status, the judges of the United States district
36 courts for the State of West Virginia and the judges of the
37 United States Court of Appeals for the fourth circuit, if any
38 of the judges are residents of West Virginia, a special
39 registration plate for a Class A motor vehicle and a special
40 registration plate for a Class G motorcycle owned by the
41 official or his or her spouse: *Provided*, That the division
42 may issue a Class A special registration plate for each
43 vehicle titled to the official and a Class G special
44 registration plate for each motorcycle titled to the official.

45 (B) Each plate issued pursuant to this subdivision shall
46 bear any combination of letters and numbers not to exceed
47 an amount determined by the commissioner and a
48 designation of the office. Each plate shall supersede the
49 regular numbered plate assigned to the official or his or her
50 spouse during the official's term of office and while the
51 motor vehicle is owned by the official or his or her spouse.

52 (C) The division shall charge an annual fee of \$15 for
53 every registration plate issued pursuant to this subdivision,
54 which is in addition to all other fees required by this chapter.

55 (3) The division may issue members of the National
56 Guard forces special registration plates as follows:

57 (A) Upon receipt of an application on a form prescribed
58 by the division and receipt of written evidence from the
59 chief executive officer of the Army National Guard or Air
60 National Guard, as appropriate, or the commanding officer
61 of any United States Armed Forces reserve unit that the
62 applicant is a member thereof, the division shall issue to any
63 member of the National Guard of this state or a member of
64 any reserve unit of the United States Armed Forces a special

65 registration plate designed by the commissioner for any
66 number of Class A motor vehicles owned by the member.
67 Upon presentation of written evidence of retirement status,
68 retired members of this state's Army or Air National Guard,
69 or retired members of any reserve unit of the United States
70 Armed Forces, are eligible to purchase the special
71 registration plate issued pursuant to this subdivision.

72 (B) The division shall charge an initial application fee
73 of \$10 for each special registration plate issued pursuant to
74 this subdivision, which is in addition to all other fees
75 required by this chapter. Except as otherwise provided
76 herein, effective July 1, 2007, all fees currently held in the
77 special revolving fund used in the administration of this
78 section and all fees collected by the division shall be
79 deposited in the State Road Fund.

80 (C) A surviving spouse may continue to use his or her
81 deceased spouse's National Guard forces license plate until
82 the surviving spouse dies, remarries or does not renew the
83 license plate.

84 (4) Specially arranged registration plates may be issued
85 as follows:

86 (A) Upon appropriate application, any owner of a motor
87 vehicle subject to Class A registration, or a motorcycle
88 subject to Class G registration, as defined by this article,
89 may request that the division issue a registration plate
90 bearing specially arranged letters or numbers with the
91 maximum number of letters or numbers to be determined by
92 the commissioner. The division shall attempt to comply
93 with the request wherever possible.

94 (B) The commissioner shall propose rules for legislative
95 approval in accordance with the provisions of chapter
96 twenty-nine-a of this code regarding the orderly distribution
97 of the plates: *Provided*, That for purposes of this
98 subdivision, the registration plates requested and issued

99 shall include all plates bearing the numbers two through two
100 thousand.

101 (C) An annual fee of \$15 shall be charged for each
102 special registration plate issued pursuant to this subdivision,
103 which is in addition to all other fees required by this chapter.

104 (5) The division may issue honorably discharged
105 veterans special registration plates as follows:

106 (A) Upon appropriate application, the division shall
107 issue to any honorably discharged veteran of any branch of
108 the armed services of the United States a special registration
109 plate for any number of vehicles titled in the name of the
110 qualified applicant with an insignia designed by the
111 Commissioner of the Division of Motor Vehicles.

112 (B) The division shall charge a special initial application
113 fee of \$10 in addition to all other fees required by law. This
114 special fee is to compensate the Division of Motor Vehicles
115 for additional costs and services required in the issuing of
116 the special registration. All fees collected by the division
117 shall be deposited in the State Road Fund: *Provided*, That
118 nothing in this section may be construed to exempt any
119 veteran from any other provision of this chapter.

120 (C) A surviving spouse may continue to use his or her
121 deceased spouse's honorably discharged veterans license
122 plate until the surviving spouse dies, remarries or does not
123 renew the license plate.

124 (6) The division may issue disabled veterans special
125 registration plates as follows:

126 (A) Upon appropriate application, the division shall
127 issue to any disabled veteran who is exempt from the
128 payment of registration fees under the provisions of this
129 chapter a registration plate for a vehicle titled in the name
130 of the qualified applicant which bears the letters "DV" in
131 red and also the regular identification numerals in red.

132 (B) A surviving spouse may continue to use his or her
133 deceased spouse's disabled veterans license plate until the
134 surviving spouse dies, remarries or does not renew the
135 license plate.

136 (C) A qualified disabled veteran may obtain a second
137 disabled veterans license plate as described in this section
138 for use on a passenger vehicle titled in the name of the
139 qualified applicant. The division shall charge a one-time fee
140 of \$10 to be deposited into the State Road Fund, in addition
141 to all other fees required by this chapter, for the second
142 plate.

143 (7) The division may issue recipients of the
144 distinguished Purple Heart medal special registration plates
145 as follows:

146 (A) Upon appropriate application, there shall be issued
147 to any armed service person holding the distinguished
148 Purple Heart medal for persons wounded in combat a
149 registration plate for a vehicle titled in the name of the
150 qualified applicant bearing letters or numbers. The
151 registration plate shall be designed by the Commissioner of
152 Motor Vehicles and shall denote that those individuals who
153 are granted this special registration plate are recipients of
154 the Purple Heart. All letterings shall be in purple where
155 practical.

156 (B) Registration plates issued pursuant to this
157 subdivision are exempt from all registration fees otherwise
158 required by the provisions of this chapter.

159 (C) A surviving spouse may continue to use his or her
160 deceased spouse's Purple Heart medal license plate until the
161 surviving spouse dies, remarries or does not renew the
162 license plate.

163 (D) A recipient of the Purple Heart medal may obtain a
164 second Purple Heart medal license plate as described in this
165 section for use on a passenger vehicle titled in the name of

166 the qualified applicant. The division shall charge a one-time
167 fee of \$10 to be deposited into the State Road Fund, in
168 addition to all other fees required by this chapter, for the
169 second plate.

170 (8) The division may issue survivors of the attack on
171 Pearl Harbor special registration plates as follows:

172 (A) Upon appropriate application, the owner of a motor
173 vehicle who was enlisted in any branch of the armed
174 services that participated in and survived the attack on Pearl
175 Harbor on December 7, 1941, the division shall issue a
176 special registration plate for a vehicle titled in the name of
177 the qualified applicant. The registration plate shall be
178 designed by the Commissioner of Motor Vehicles.

179 (B) Registration plates issued pursuant to this
180 subdivision are exempt from the payment of all registration
181 fees otherwise required by the provisions of this chapter.

182 (C) A surviving spouse may continue to use his or her
183 deceased spouse's survivors of the attack on Pearl Harbor
184 license plate until the surviving spouse dies, remarries or
185 does not renew the license plate.

186 (D) A survivor of the attack on Pearl Harbor may obtain
187 a second survivors of the attack on Pearl Harbor license
188 plate as described in this section for use on a passenger
189 vehicle titled in the name of the qualified applicant. The
190 division shall charge a one-time fee of \$10 to be deposited
191 into the State Road Fund, in addition to all other fees
192 required by this chapter, for the second plate.

193 (9) The division may issue special registration plates to
194 nonprofit charitable and educational organizations
195 authorized under prior enactment of this subdivision as
196 follows:

197 (A) Approved nonprofit charitable and educational
198 organizations previously authorized under the prior
199 enactment of this subdivision may accept and collect

200 applications for special registration plates from owners of
201 Class A motor vehicles together with a special annual fee of
202 \$15, which is in addition to all other fees required by this
203 chapter. The applications and fees shall be submitted to the
204 Division of Motor Vehicles with the request that the
205 division issue a registration plate bearing a combination of
206 letters or numbers with the organizations' logo or emblem,
207 with the maximum number of letters or numbers to be
208 determined by the commissioner.

209 (B) The commissioner shall propose rules for legislative
210 approval in accordance with the provisions of article three,
211 chapter twenty-nine-a of this code regarding the procedures
212 for and approval of special registration plates issued
213 pursuant to this subdivision.

214 (C) The commissioner shall set an appropriate fee to
215 defray the administrative costs associated with designing
216 and manufacturing special registration plates for a nonprofit
217 charitable or educational organization. The nonprofit
218 charitable or educational organization shall collect this fee
219 and forward it to the division for deposit in the State Road
220 Fund. The nonprofit charitable or educational organization
221 may also collect a fee for marketing the special registration
222 plates.

223 (10) The division may issue specified emergency or
224 volunteer registration plates as follows:

225 (A) Any owner of a motor vehicle who is a resident of
226 the State of West Virginia and who is a certified paramedic
227 or emergency medical technician, a member of a paid fire
228 department, a member of the State Fire Commission, the
229 State Fire Marshal, the State Fire Marshal's assistants, the
230 State Fire Administrator and voluntary rescue squad
231 members may apply for a special license plate for any
232 number of Class A vehicles titled in the name of the
233 qualified applicant which bears the insignia of the
234 profession, group or commission. Any insignia shall be
235 designed by the commissioner. License plates issued

236 pursuant to this subdivision shall bear the requested insignia
237 in addition to the registration number issued to the applicant
238 pursuant to the provisions of this article.

239 (B) Each application submitted pursuant to this
240 subdivision shall be accompanied by an affidavit signed by
241 the fire chief or department head of the applicant stating that
242 the applicant is justified in having a registration with the
243 requested insignia; proof of compliance with all laws of this
244 state regarding registration and licensure of motor vehicles;
245 and payment of all required fees.

246 (C) Each application submitted pursuant to this
247 subdivision shall be accompanied by payment of a special
248 initial application fee of \$10, which is in addition to any
249 other registration or license fee required by this chapter. All
250 special fees shall be collected by the division and deposited
251 into the State Road Fund.

252 (11) The division may issue specified certified
253 firefighter registration plates as follows:

254 (A) Any owner of a motor vehicle who is a resident of
255 the State of West Virginia and who is a certified firefighter
256 may apply for a special license plate which bears the
257 insignia of the profession, for any number of Class A
258 vehicles titled in the name of the qualified applicant. Any
259 insignia shall be designed by the commissioner. License
260 plates issued pursuant to this subdivision shall bear the
261 requested insignia pursuant to the provisions of this article.
262 Upon presentation of written evidence of certification as a
263 certified firefighter, certified firefighters are eligible to
264 purchase the special registration plate issued pursuant to this
265 subdivision.

266 (B) Each application submitted pursuant to this
267 subdivision shall be accompanied by an affidavit stating that
268 the applicant is justified in having a registration with the
269 requested insignia; proof of compliance with all laws of this
270 state regarding registration and licensure of motor vehicles;

271 and payment of all required fees. The firefighter
272 certification department, section or division of the West
273 Virginia University fire service extension shall notify the
274 commissioner in writing immediately when a firefighter
275 loses his or her certification. If a firefighter loses his or her
276 certification, the commissioner may not issue him or her a
277 license plate under this subsection.

278 (C) Each application submitted pursuant to this
279 subdivision shall be accompanied by payment of a special
280 initial application fee of \$10, which is in addition to any
281 other registration or license fee required by this chapter. All
282 special fees shall be collected by the division and deposited
283 into the State Road Fund.

284 (12) The division may issue special scenic registration
285 plates as follows:

286 (A) Upon appropriate application, the commissioner
287 shall issue a special registration plate displaying a scenic
288 design of West Virginia which displays the words "Wild
289 Wonderful" as a slogan.

290 (B) The division shall charge a special one-time initial
291 application fee of \$10 in addition to all other fees required
292 by this chapter. All initial application fees collected by the
293 division shall be deposited into the State Road Fund.

294 (13) The division may issue honorably discharged
295 Marine Corps league members special registration plates as
296 follows:

297 (A) Upon appropriate application, the division shall
298 issue to any honorably discharged Marine Corps league
299 member a special registration plate for any number of
300 vehicles titled in the name of the qualified applicant with an
301 insignia designed by the Commissioner of the Division of
302 Motor Vehicles.

303 (B) The division may charge a special one-time initial
304 application fee of \$10 in addition to all other fees required

305 by this chapter. This special fee is to compensate the
306 Division of Motor Vehicles for additional costs and services
307 required in the issuing of the special registration and shall
308 be collected by the division and deposited in the State Road
309 Fund: *Provided*, That nothing in this section may be
310 construed to exempt any veteran from any other provision
311 of this chapter.

312 (C) A surviving spouse may continue to use his or her
313 deceased spouse's honorably discharged Marine Corps
314 league license plate until the surviving spouse dies,
315 remarries or does not renew the license plate.

316 (14) The division may issue military organization
317 registration plates as follows:

318 (A) The division may issue a special registration plate
319 for the members of any military organization chartered by
320 the United States Congress upon receipt of a guarantee from
321 the organization of a minimum of one hundred applicants.
322 The insignia on the plate shall be designed by the
323 commissioner.

324 (B) Upon appropriate application, the division may
325 issue members of the chartered organization in good
326 standing, as determined by the governing body of the
327 chartered organization, a special registration plate for any
328 number of vehicles titled in the name of the qualified
329 applicant.

330 (C) The division shall charge a special one-time initial
331 application fee of \$10 for each special license plate in
332 addition to all other fees required by this chapter. All initial
333 application fees collected by the division shall be deposited
334 into the State Road Fund: *Provided*, That nothing in this
335 section may be construed to exempt any veteran from any
336 other provision of this chapter.

337 (D) A surviving spouse may continue to use his or her
338 deceased spouse's military organization registration plate

339 until the surviving spouse dies, remarries or does not renew
340 the special military organization registration plate.

341 (15) The division may issue special nongame wildlife
342 registration plates and special wildlife registration plates as
343 follows:

344 (A) Upon appropriate application, the division shall
345 issue a special registration plate displaying a species of
346 West Virginia wildlife which shall display a species of
347 wildlife native to West Virginia as prescribed and
348 designated by the commissioner and the Director of the
349 Division of Natural Resources.

350 (B) The division shall charge an annual fee of \$15 for
351 each special nongame wildlife registration plate and each
352 special wildlife registration plate in addition to all other fees
353 required by this chapter. All annual fees collected for
354 nongame wildlife registration plates and wildlife
355 registration plates shall be deposited in a special revenue
356 account designated the Nongame Wildlife Fund and
357 credited to the Division of Natural Resources.

358 (C) The division shall charge a special one-time initial
359 application fee of \$10 in addition to all other fees required
360 by this chapter. All initial application fees collected by the
361 division shall be deposited in the State Road Fund.

362 (16) The division may issue members of the Silver
363 Haired Legislature special registration plates as follows:

364 (A) Upon appropriate application, the division shall
365 issue to any person who is a duly qualified member of the
366 Silver Haired Legislature a specialized registration plate
367 which bears recognition of the applicant as a member of the
368 Silver Haired Legislature.

369 (B) A qualified member of the Silver Haired Legislature
370 may obtain one registration plate described in this
371 subdivision for use on a passenger vehicle titled in the name
372 of the qualified applicant. The division shall charge an

373 annual fee of \$15, in addition to all other fees required by
374 this chapter, for the plate. All annual fees collected by the
375 division shall be deposited in the State Road Fund.

376 (17) Upon appropriate application, the commissioner
377 shall issue to a classic motor vehicle or classic motorcycle
378 as defined in section three-a, article ten of this chapter, a
379 special registration plate designed by the commissioner. An
380 annual fee of \$15, in addition to all other fees required by
381 this chapter, shall be charged for each classic registration
382 plate.

383 (18) Honorably discharged veterans may be issued
384 special registration plates for motorcycles subject to Class
385 G registration as follows:

386 (A) Upon appropriate application, there shall be issued
387 to any honorably discharged veteran of any branch of the
388 armed services of the United States a special registration
389 plate for any number of motorcycles subject to Class G
390 registration titled in the name of the qualified applicant with
391 an insignia designed by the Commissioner of the Division
392 of Motor Vehicles.

393 (B) A special initial application fee of \$10 shall be
394 charged in addition to all other fees required by law. This
395 special fee is to be collected by the division and deposited
396 in the State Road Fund: *Provided*, That nothing in this
397 section may be construed to exempt any veteran from any
398 other provision of this chapter.

399 (C) A surviving spouse may continue to use his or her
400 deceased spouse's honorably discharged veterans license
401 plate until the surviving spouse dies, remarries or does not
402 renew the license plate.

403 (19) Racing theme special registration plates:

404 (A) The division may issue a series of special
405 registration plates displaying National Association for
406 Stock Car Auto Racing themes.

407 (B) An annual fee of \$25 shall be charged for each
408 special racing theme registration plate in addition to all
409 other fees required by this chapter. All annual fees collected
410 for each special racing theme registration plate shall be
411 deposited into the State Road Fund.

412 (C) A special application fee of \$10 shall be charged at
413 the time of initial application as well as upon application for
414 any duplicate or replacement registration plate, in addition
415 to all other fees required by this chapter. All application fees
416 shall be deposited into the State Road Fund.

417 (20) The division may issue recipients of the Navy
418 Cross, Distinguished Service Cross, Distinguished Flying
419 Cross, Air Force Cross, Bronze Star, Silver Star or Air
420 Medal special registration plates as follows:

421 (A) Upon appropriate application, the division shall
422 issue to any recipient of the Navy Cross, Distinguished
423 Service Cross, Distinguished Flying Cross, Air Force Cross,
424 Silver Star, Bronze Star or Air Medal, a registration plate
425 for any number of vehicles titled in the name of the qualified
426 applicant bearing letters or numbers. A separate registration
427 plate shall be designed by the Commissioner of Motor
428 Vehicles for each award that denotes that those individuals
429 who are granted this special registration plate are recipients
430 of the Navy Cross, Distinguished Service Cross,
431 Distinguished Flying Cross, Air Force Cross, Silver Star or
432 Bronze Star, or Air Medal as applicable.

433 (B) The division shall charge a special initial application
434 fee of \$10 in addition to all other fees required by law. This
435 special fee shall be collected by the division and deposited
436 in the State Road Fund: *Provided*, That nothing in this
437 section exempts the applicant for a special registration plate
438 under this subdivision from any other provision of this
439 chapter.

440 (C) A surviving spouse may continue to use his or her
441 deceased spouse's Navy Cross, Distinguished Service

442 Cross, Distinguished Flying Cross, Air Force Cross, Silver
443 Star, Bronze Star or Air Medal special registration plate
444 until the surviving spouse dies, remarries or does not renew
445 the special registration plate.

446 (21) The division may issue honorably discharged
447 veterans special registration plates as follows:

448 (A) Upon appropriate application, the division shall
449 issue to any honorably discharged veteran of any branch of
450 the armed services of the United States with verifiable
451 service during World War II, the Korean War, the Vietnam
452 War, the Persian Gulf War or the War Against Terrorism a
453 special registration plate for any number of vehicles titled in
454 the name of the qualified applicant with an insignia
455 designed by the commissioner denoting service in the
456 applicable conflict.

457 (B) The division shall charge a special one-time initial
458 application fee of \$10 in addition to all other fees required
459 by law. This special fee shall be collected by the division
460 and deposited in the State Road Fund: *Provided*, That
461 nothing contained in this section may be construed to
462 exempt any veteran from any other provision of this chapter.

463 (C) A surviving spouse may continue to use his or her
464 deceased spouse's honorably discharged veterans
465 registration plate until the surviving spouse dies, remarries
466 or does not renew the special registration plate.

467 (22) The division may issue special volunteer firefighter
468 registration plates as follows:

469 (A) Any owner of a motor vehicle who is a resident of
470 West Virginia and who is a volunteer firefighter may apply
471 for a special license plate for any Class A vehicle titled in
472 the name of the qualified applicant which bears the insignia
473 of the profession in white letters on a red background. The
474 insignia shall be designed by the commissioner and shall

475 contain a fireman's helmet insignia on the left side of the
476 license plate.

477 (B) Each application submitted pursuant to this
478 subdivision shall be accompanied by an affidavit signed by
479 the applicant's fire chief, stating that the applicant is a
480 volunteer firefighter and justified in having a registration
481 plate with the requested insignia. The applicant must
482 comply with all other laws of this state regarding
483 registration and licensure of motor vehicles and must pay all
484 required fees.

485 (C) Each application submitted pursuant to this
486 subdivision shall be accompanied by payment of a special
487 one-time initial application fee of \$10, which is in addition
488 to any other registration or license fee required by this
489 chapter. All application fees shall be deposited into the State
490 Road Fund.

491 (23) The division may issue special registration plates
492 which reflect patriotic themes, including the display of any
493 United States symbol, icon, phrase or expression which
494 evokes patriotic pride or recognition. The division shall also
495 issue registration plates with the words "In God We Trust".

496 (A) Upon appropriate application, the division shall
497 issue to an applicant a registration plate of the applicant's
498 choice, displaying a patriotic theme as provided in this
499 subdivision, for a vehicle titled in the name of the applicant.
500 A series of registration plates displaying patriotic themes
501 shall be designed by the Commissioner of Motor Vehicles
502 for distribution to applicants.

503 (B) The division shall charge a special one-time initial
504 application fee of \$10 in addition to all other fees required
505 by law. This special fee shall be collected by the division
506 and deposited in the State Road Fund.

507 (C) The provisions of subsection (d) of this section are
508 not applicable for the issuance of the license plates
509 designated by this subdivision.

510 (24) Special license plates bearing the American flag
511 and the logo "9/11/01".

512 (A) Upon appropriate application, the division shall
513 issue special registration plates which shall display the
514 American flag and the logo "9/11/01".

515 (B) An annual fee of \$15 shall be charged for each plate
516 in addition to all other fees required by this chapter.

517 (C) A special application fee of \$10 shall be charged at
518 the time of initial application as well as upon application for
519 any duplicate or replacement registration plate, in addition
520 to all other fees required by this chapter. All application fees
521 shall be deposited into the State Road Fund.

522 (25) The division may issue a special registration plate
523 celebrating the centennial of the 4-H youth development
524 movement and honoring the Future Farmers of America
525 organization as follows:

526 (A) Upon appropriate application, the division may
527 issue a special registration plate depicting the symbol of the
528 4-H organization which represents the head, heart, hands
529 and health as well as the symbol of the Future Farmers of
530 America organization which represents a cross section of an
531 ear of corn for any number of vehicles titled in the name of
532 the qualified applicant.

533 (B) The division shall charge a special initial application
534 fee of \$10 in addition to all other fees required by law. This
535 special fee shall be collected by the division and deposited
536 in the State Road Fund.

537 (C) The division shall charge an annual fee of \$15 for
538 each special 4-H Future Farmers of America registration
539 plate in addition to all other fees required by this chapter.

540 (26) The division may issue special registration plates
541 to educators in the state's elementary and secondary schools
542 and in the state's institutions of higher education as follows:

543 (A) Upon appropriate application, the division may
544 issue a special registration plate designed by the
545 commissioner for any number of vehicles titled in the name
546 of the qualified applicant.

547 (B) The division shall charge a special initial application
548 fee of \$10 in addition to all other fees required by law. This
549 special fee shall be collected by the division and deposited
550 in the State Road Fund.

551 (C) The division shall charge an annual fee of \$15 for
552 each special educator registration plate in addition to all
553 other fees required by this chapter.

554 (27) The division may issue special registration plates
555 to members of the Nemesis Shrine as follows:

556 (A) Upon appropriate application, the division may
557 issue a special registration plate designed by the
558 commissioner for any number of vehicles titled in the name
559 of the qualified applicant. Persons desiring the special
560 registration plate shall offer sufficient proof of membership
561 in Nemesis Shrine.

562 (B) The division shall charge a special initial application
563 fee of \$10 in addition to all other fees required by law. This
564 special fee shall be collected by the division and deposited
565 in the State Road Fund.

566 (C) An annual fee of \$15 shall be charged for each plate
567 in addition to all other fees required by this chapter.

568 (D) Notwithstanding the provisions of subsection (d) of
569 this section, the time period for the Nemesis Shrine to
570 comply with the minimum one hundred prepaid applications
571 is hereby extended to January 15, 2005.

572 (28) The division may issue volunteers and employees
573 of the American Red Cross special registration plates as
574 follows:

575 (A) Upon appropriate application, the division shall
576 issue to any person who is a duly qualified volunteer or
577 employee of the American Red Cross a specialized
578 registration plate which bears recognition of the applicant
579 as a volunteer or employee of the American Red Cross for
580 any number of vehicles titled in the name of the qualified
581 applicant.

582 (B) The division shall charge a special initial application
583 fee of \$10 in addition to all other fees required by law. This
584 special fee shall be collected by the division and deposited
585 in the State Road Fund.

586 (C) An annual fee of \$15 shall be charged for each plate
587 in addition to all other fees required by this chapter.

588 (29) The division shall issue special registration plates
589 to individuals who have received either the Combat Infantry
590 Badge or the Combat Medic Badge as follows:

591 (A) Upon appropriate application, the division shall
592 issue a special registration plate designed by the
593 commissioner for any number of vehicles titled in the name
594 of the qualified applicant. Persons desiring the special
595 registration plate shall offer sufficient proof that they have
596 received either the Combat Infantry Badge or the Combat
597 Medic Badge.

598 (B) The division shall charge a special initial application
599 fee of \$10 in addition to all other fees required by law. This
600 special fee shall be collected by the division and deposited
601 in the State Road Fund.

602 (30) The division may issue special registration plates
603 to members of the Knights of Columbus as follows:

604 (A) Upon appropriate application, the division shall
605 issue a special registration plate designed by the
606 commissioner for any number of vehicles titled in the name
607 of the qualified applicant. Persons desiring the special
608 registration plate shall offer sufficient proof of membership
609 in the Knights of Columbus.

610 (B) The division shall charge a special initial application
611 fee of \$10 in addition to all other fees required by law. This
612 special fee shall be collected by the division and deposited
613 in the State Road Fund.

614 (C) An annual fee of \$15 shall be charged for each plate
615 in addition to all other fees required by this chapter.

616 (D) Notwithstanding the provisions of subsection (d) of
617 this section, the time period for the Knights of Columbus to
618 comply with the minimum one hundred prepaid applications
619 is hereby extended to January 15, 2007.

620 (31) The division may issue special registration plates
621 to former members of the Legislature as follows:

622 (A) Upon appropriate application, the division shall
623 issue a special registration plate designed by the
624 commissioner for any number of vehicles titled in the name
625 of the qualified applicant. Persons desiring the special
626 registration plate shall offer sufficient proof of former
627 service as an elected or appointed member of the West
628 Virginia House of Delegates or the West Virginia Senate.

629 (B) The division shall charge a special initial application
630 fee of \$10 in addition to all other fees required by law. This
631 special fee shall be collected by the division and deposited
632 in the State Road Fund. The design of the plate shall indicate
633 total years of service in the Legislature.

634 (C) An annual fee of \$15 shall be charged for each plate
635 in addition to all other fees required by this chapter.

636 (32) Democratic state or county executive committee
637 member special registration plates:

638 (A) The division shall design and issue special
639 registration plates for use by democratic state or county
640 executive committee members. The design of the plates
641 shall include an insignia of a donkey and shall differentiate
642 by wording on the plate between state and county executive
643 committee members.

644 (B) An annual fee of \$25 shall be charged for each
645 democratic state or county executive committee member
646 registration plate in addition to all other fees required by this
647 chapter. All annual fees collected for each special plate
648 issued under this subdivision shall be deposited into the
649 State Road Fund.

650 (C) A special application fee of \$10 shall be charged at
651 the time of initial application as well as upon application for
652 any duplicate or replacement registration plate, in addition
653 to all other fees required by this chapter. All application fees
654 shall be deposited into the State Road Fund.

655 (D) The division shall not begin production of a plate
656 authorized under the provisions of this subdivision until the
657 division receives at least one hundred completed
658 applications from the state or county executive committee
659 members, including all fees required pursuant to this
660 subdivision.

661 (E) Notwithstanding the provisions of subsection (d) of
662 this section, the time period for the democratic executive
663 committee to comply with the minimum one hundred
664 prepaid applications is hereby extended to January 15, 2005.

665 (33) The division may issue honorably discharged
666 female veterans special registration plates as follows:

667 (A) Upon appropriate application, there shall be issued
668 to any female honorably discharged veteran, of any branch
669 of the armed services of the United States, a special

670 registration plate for any number of vehicles titled in the
671 name of the qualified applicant with an insignia designed by
672 the Commissioner of the Division of Motor Vehicles to
673 designate the recipient as a woman veteran.

674 (B) A special initial application fee of \$10 shall be
675 charged in addition to all other fees required by law. This
676 special fee shall be collected by the division and deposited
677 in the State Road Fund: *Provided*, That nothing in this
678 section may be construed to exempt any veteran from any
679 other provision of this chapter.

680 (C) A surviving spouse may continue to use his
681 deceased spouse's honorably discharged veterans license
682 plate until the surviving spouse dies, remarries or does not
683 renew the license plate.

684 (34) The division may issue special registration plates
685 bearing the logo, symbol, insignia, letters or words
686 demonstrating association with West Liberty State College
687 to any resident owner of a motor vehicle. Resident owners
688 may apply for the special license plate for any number of
689 Class A vehicles titled in the name of the applicant. The
690 special registration plates shall be designed by the
691 commissioner. Each application submitted pursuant to this
692 subdivision shall be accompanied by payment of a special
693 initial application fee of \$15, which is in addition to any
694 other registration or license fee required by this chapter. The
695 division shall charge an annual fee of \$15 for each special
696 registration plate in addition to all other fees required by this
697 chapter. All special fees shall be collected by the division
698 and deposited into the State Road Fund.

699 (35) The division may issue special registration plates
700 to members of the Harley Owners Group as follows:

701 (A) Upon appropriate application, the division may
702 issue a special registration plate designed by the
703 commissioner for any number of vehicles titled in the name
704 of the qualified applicant. Persons desiring the special

705 registration plate shall offer sufficient proof of membership
706 in the Harley Owners Group.

707 (B) The division shall charge a special initial application
708 fee of \$10 in addition to all other fees required by law. This
709 special fee shall be collected by the division and deposited
710 in the State Road Fund.

711 (C) An annual fee of \$15 shall be charged for each plate
712 in addition to all other fees required by this chapter.

713 (36) The division may issue special registration plates
714 for persons retired from any branch of the armed services of
715 the United States as follows:

716 (A) Upon appropriate application, there shall be issued
717 to any person who has retired after service in any branch of
718 the armed services of the United States, a special
719 registration plate for any number of vehicles titled in the
720 name of the qualified applicant with an insignia designed by
721 the Commissioner of the Division of Motor Vehicles to
722 designate the recipient as retired from the armed services of
723 the United States.

724 (B) A special initial application fee of \$10 shall be
725 charged in addition to all other fees required by law. This
726 special fee shall be collected by the division and deposited
727 in the State Road Fund: *Provided*, That nothing in this
728 section may be construed to exempt any registrants from
729 any other provision of this chapter.

730 (C) A surviving spouse may continue to use his or her
731 deceased spouse's retired military license plate until the
732 surviving spouse dies, remarries or does not renew the
733 license plate.

734 (37) The division may issue special registration plates
735 bearing the logo, symbol, insignia, letters or words
736 demonstrating association with or support for Fairmont
737 State College as follows:

738 (A) Upon appropriate application, the division may
739 issue a special registration plate designed by the
740 commissioner for any number of vehicles titled in the name
741 of the qualified applicant.

742 (B) The division shall charge a special initial application
743 fee of \$10 in addition to all other fees required by law. This
744 special fee shall be collected by the division and deposited
745 in the State Road Fund.

746 (C) An annual fee of \$15 shall be charged for each plate
747 in addition to all other fees required by this chapter.

748 (38) The division may issue special registration plates
749 honoring the farmers of West Virginia as follows:

750 (A) Any owner of a motor vehicle who is a resident of
751 West Virginia may apply for a special license plate
752 depicting a farming scene or other apt reference to farming,
753 whether in pictures or words, at the discretion of the
754 commissioner.

755 (B) The division shall charge a special initial application
756 fee of \$10. This special fee shall be collected by the division
757 and deposited in the State Road Fund.

758 (C) An annual fee of \$15 shall be charged for each plate
759 in addition to all other fees required by this chapter.

760 (39) The division shall issue special registration plates
761 promoting education as follows:

762 (A) Upon appropriate application, the division shall
763 issue a special registration plate displaying a children's
764 education-related theme as prescribed and designated by the
765 commissioner and the State Superintendent of Schools.

766 (B) The division shall charge a special initial application
767 fee of \$10 in addition to all other fees required by law. This
768 special fee shall be collected by the division and deposited
769 in the State Road Fund.

770 (C) An annual fee of \$15 shall be charged for each plate
771 in addition to all other fees required by this chapter.

772 (40) The division may issue members of the 82nd
773 Airborne Division Association special registration plates as
774 follows:

775 (A) The division may issue a special registration plate
776 for members of the 82nd Airborne Division Association
777 upon receipt of a guarantee from the organization of a
778 minimum of one hundred applicants. The insignia on the
779 plate shall be designed by the commissioner.

780 (B) Upon appropriate application, the division may
781 issue members of the 82nd Airborne Division Association
782 in good standing, as determined by the governing body of
783 the organization, a special registration plate for any number
784 of vehicles titled in the name of the qualified applicant.

785 (C) The division shall charge a special one-time initial
786 application fee of \$10 for each special license plate in
787 addition to all other fees required by this chapter. All initial
788 application fees collected by the division shall be deposited
789 into the State Road Fund: *Provided*, That nothing in this
790 section may be construed to exempt the applicant from any
791 other provision of this chapter.

792 (D) A surviving spouse may continue to use his or her
793 deceased spouse's special 82nd Airborne Division
794 Association registration plate until the surviving spouse
795 dies, remarries or does not renew the special registration
796 plate.

797 (41) The division may issue special registration plates
798 to survivors of wounds received in the line of duty as a
799 member with a West Virginia law enforcement agency.

800 (A) Upon appropriate application, the division shall
801 issue to any member of a municipal police department,
802 sheriff's department, the State Police or the law
803 enforcement division of the Division of Natural Resources

804 who has been wounded in the line of duty and awarded a
805 Purple Heart in recognition thereof by the West Virginia
806 Chiefs of Police Association, the West Virginia Sheriffs'
807 Association, the West Virginia Troopers Association or the
808 Division of Natural Resources a special registration plate
809 for one vehicle titled in the name of the qualified applicant
810 with an insignia appropriately designed by the
811 commissioner.

812 (B) Registration plates issued pursuant to this
813 subdivision are exempt from the registration fees otherwise
814 required by the provisions of this chapter.

815 (C) A surviving spouse may continue to use his or her
816 deceased spouse's special registration plate until the
817 surviving spouse dies, remarries or does not renew the plate.

818 (D) Survivors of wounds received in the line of duty as
819 a member with a West Virginia law-enforcement agency
820 may obtain a license plate as described in this section for
821 use on a passenger vehicle titled in the name of the qualified
822 applicant. The division shall charge a one-time fee of \$10 to
823 be deposited into the State Road Fund, in addition to all
824 other fees required by this chapter, for the second plate.

825 (42) The division may issue a special registration plate
826 for persons who are Native Americans and residents of this
827 state.

828 (A) Upon appropriate application, the division shall
829 issue to an applicant who is a Native American resident of
830 West Virginia a registration plate for a vehicle titled in the
831 name of the applicant with an insignia designed by the
832 Commissioner of the Division of Motor Vehicles to
833 designate the recipient as a Native American.

834 (B) The division shall charge a special one-time initial
835 application fee of \$10 in addition to all other fees required
836 by law. This special fee shall be collected by the division
837 and deposited in the State Road Fund.

838 (C) An annual fee of \$15 shall be charged for each plate
839 in addition to all other fees required by this chapter.

840 (43) The division may issue special registration plates
841 commemorating the centennial anniversary of the creation
842 of Davis and Elkins College as follows:

843 (A) Upon appropriate application, the division may
844 issue a special registration plate designed by the
845 commissioner to commemorate the centennial anniversary
846 of Davis and Elkins College for any number of vehicles
847 titled in the name of the applicant.

848 (B) The division shall charge a special initial application
849 fee of \$10. This special fee shall be collected by the division
850 and deposited in the State Road Fund.

851 (C) An annual fee of \$15 shall be charged for each plate
852 in addition to all other fees required by this chapter.

853 (44) The division may issue special registration plates
854 recognizing and honoring breast cancer survivors.

855 (A) Upon appropriate application, the division may
856 issue a special registration plate designed by the
857 commissioner to recognize and honor breast cancer
858 survivors, such plate to incorporate somewhere in the design
859 the “pink ribbon emblem”, for any number of vehicles titled
860 in the name of the applicant.

861 (B) The division shall charge a special initial application
862 fee of \$10. This special fee shall be deposited in the State
863 Road Fund.

864 (C) An annual fee of \$15 shall be charged for each plate
865 in addition to all other fees required by this chapter.

866 (45) The division may issue special registration plates
867 to members of the Knights of Pythias or Pythian Sisters as
868 follows:

869 (A) Upon appropriate application, the division may
870 issue a special registration plate designed by the
871 commissioner for any number of vehicles titled in the name
872 of the qualified applicant. Persons desiring the special
873 registration plate shall offer sufficient proof of membership
874 in the Knights of Pythias or Pythian Sisters.

875 (B) The division shall charge a special initial application
876 fee of \$10 in addition to all other fees required by law. This
877 special fee shall be collected by the division and deposited
878 in the State Road Fund.

879 (C) An annual fee of \$15 shall be charged for each plate
880 in addition to all other fees required by this chapter.

881 (46) The commissioner may issue special registration
882 plates for whitewater rafting enthusiasts as follows:

883 (A) Upon appropriate application, the division may
884 issue a special registration plate designed by the
885 commissioner for any number of vehicles titled in the name
886 of the qualified applicant.

887 (B) The division shall charge a special initial application
888 fee of \$10 in addition to all other fees required by law. This
889 special fee shall be collected by the division and deposited
890 in the State Road Fund.

891 (C) The division shall charge an annual fee of \$15 for
892 each special registration plate in addition to all other fees
893 required by this chapter.

894 (47) The division may issue special registration plates
895 to members of Lions International as follows:

896 (A) Upon appropriate application, the division may
897 issue a special registration plate designed by the
898 commissioner in consultation with Lions International for
899 any number of vehicles titled in the name of the qualified
900 applicant. Persons desiring the special registration plate

901 shall offer sufficient proof of membership in Lions
902 International.

903 (B) The division shall charge a special initial application
904 fee of \$10 in addition to all other fees required by law. This
905 special fee shall be collected by the division and deposited
906 in the State Road Fund.

907 (C) An annual fee of \$15 shall be charged for each plate
908 in addition to all other fees required by this chapter.

909 (48) The division may issue special registration plates
910 supporting organ donation as follows:

911 (A) Upon appropriate application, the division may
912 issue a special registration plate designed by the
913 commissioner which recognizes, supports and honors organ
914 and tissue donors and includes the words "Donate Life".

915 (B) The division shall charge a special initial application
916 fee of \$10 in addition to all other fees required by law. This
917 special fee shall be collected by the division and deposited
918 in the State Road Fund.

919 (C) An annual fee of \$15 shall be charged for each plate
920 in addition to all other fees required by this chapter.

921 (49) The division may issue special registration plates
922 to members of the West Virginia Bar Association as
923 follows:

924 (A) Upon appropriate application, the division may
925 issue a special registration plate designed by the
926 commissioner in consultation with the West Virginia Bar
927 Association for any number of vehicles titled in the name of
928 the qualified applicant. Persons desiring the special
929 registration plate shall offer sufficient proof of membership
930 in the West Virginia Bar Association.

931 (B) The division shall charge a special initial application
932 fee of \$10 in addition to all other fees required by law. This

933 special fee shall be collected by the division and deposited
934 in the State Road Fund.

935 (C) An annual fee of \$15 shall be charged for each plate
936 in addition to all other fees required by this chapter.

937 (50) The division may issue special registration plates
938 bearing an appropriate logo, symbol or insignia combined
939 with the words "SHARE THE ROAD" designed to promote
940 bicycling in the state as follows:

941 (A) Upon appropriate application, the division may
942 issue a special registration plate designed by the
943 commissioner for any number of vehicles titled in the name
944 of the applicant.

945 (B) The division shall charge a special initial application
946 fee of \$10 in addition to all other fees required by law. This
947 special fee shall be collected by the division and deposited
948 in the State Road Fund.

949 (C) An annual fee of \$15 shall be charged for each plate
950 in addition to all other fees required by this chapter.

951 (51) The division may issue special registration plates
952 honoring coal miners and the coal industry as follows:

953 (A) Upon appropriate application, the division shall
954 issue a special registration plate depicting and displaying
955 coal miners in mining activities as prescribed and
956 designated by the commissioner and the board of the
957 National Coal Heritage Area Authority. The division may
958 also issue registration plates with the words "Friends of
959 Coal".

960 (B) The division shall charge a special initial application
961 fee of \$10 in addition to all other fees required by law. This
962 special fee shall be collected by the division and deposited
963 in the State Road Fund.

964 (C) An annual fee of \$15 shall be charged for each plate
965 in addition to all other fees required by this chapter.

966 (D) The provisions of subsection (d) of this section are
967 not applicable for the issuance of the license plates
968 designated by this subdivision.

969 (52) The division may issue special registration plates
970 to present and former Boy Scouts as follows:

971 (A) Upon appropriate application, the division may
972 issue a special registration plate designed by the
973 commissioner for any number of vehicles titled in the name
974 of the qualified applicant. Persons desiring the special
975 registration plate shall offer sufficient proof of present or
976 past membership in the Boy Scouts as either a member or a
977 leader.

978 (B) The division shall charge a special initial application
979 fee of \$10 in addition to all other fees required by law. This
980 special fee shall be collected by the division and deposited
981 in the State Road Fund.

982 (C) An annual fee of \$15 shall be charged for each plate
983 in addition to all other fees required by this chapter.

984 (53) The division may issue special registration plates
985 to present and former Boy Scouts who have achieved Eagle
986 Scout status as follows:

987 (A) Upon appropriate application, the division may
988 issue a special registration plate designed by the
989 commissioner for any number of vehicles titled in the name
990 of the qualified applicant. Persons desiring the special
991 registration plate shall offer sufficient proof of achievement
992 of Eagle Scout status.

993 (B) The division shall charge a special initial application
994 fee of \$10 in addition to all other fees required by law. This
995 special fee shall be deposited in the State Road Fund.

996 (C) An annual fee of \$15 shall be charged for each plate
997 in addition to all other fees required by this chapter.

998 (54) The division may issue special registration plates
999 recognizing and memorializing victims of domestic
1000 violence.

1001 (A) Upon appropriate application, the division may
1002 issue a special registration plate designed by the
1003 commissioner to recognize and memorialize victims of
1004 domestic violence, such plate to incorporate somewhere in
1005 the design the “purple ribbon emblem”, for any number of
1006 vehicles titled in the name of the applicant.

1007 (B) The division shall charge a special initial application
1008 fee of \$10. This special fee shall be deposited in the State
1009 Road Fund.

1010 (C) An annual fee of \$15 shall be charged for each plate
1011 in addition to all other fees required by this chapter.

1012 (55) The division may issue special registration plates
1013 bearing the logo, symbol, insignia, letters or words
1014 demonstrating association with or support for the University
1015 of Charleston as follows:

1016 (A) Upon appropriate application, the division may
1017 issue a special registration plate designed by the
1018 commissioner for any number of vehicles titled in the name
1019 of the qualified applicant.

1020 (B) The division shall charge a special initial application
1021 fee of \$10 in addition to all other fees required by law. This
1022 special fee shall be collected by the division and deposited
1023 in the State Road Fund.

1024 (C) An annual fee of \$15 shall be charged for each plate
1025 in addition to all other fees required by this chapter.

1026 (56) The division may issue special registration plates
1027 to members of the Sons of the American Revolution as
1028 follows:

1029 (A) Upon appropriate application, the division may
1030 issue a special registration plate designed by the
1031 commissioner in consultation with the Sons of the American
1032 Revolution for any number of vehicles titled in the name of
1033 the qualified applicant. Persons desiring the special
1034 registration plate shall offer sufficient proof of membership
1035 in the Sons of the American Revolution.

1036 (B) The division shall charge a special initial application
1037 fee of \$10 in addition to all other fees required by law. This
1038 special fee shall be collected by the division and deposited
1039 in the State Road Fund.

1040 (C) An annual fee of \$15 shall be charged for each plate
1041 in addition to all other fees required by this chapter.

1042 (57) The commissioner may issue special registration
1043 plates for horse enthusiasts as follows:

1044 (A) Upon appropriate application, the division may
1045 issue a special registration plate designed by the
1046 commissioner for any number of vehicles titled in the name
1047 of the qualified applicant.

1048 (B) The division shall charge a special initial application
1049 fee of \$10 in addition to all other fees required by law. This
1050 special fee shall be collected by the division and deposited
1051 in the State Road Fund.

1052 (C) The division shall charge an annual fee of \$15 for
1053 each special registration plate in addition to all other fees
1054 required by this chapter.

1055 (58) The commissioner may issue special registration
1056 plates to the next of kin of a member of any branch of the
1057 armed services of the United States killed in combat as
1058 follows:

1059 (A) Upon appropriate application, the division shall
1060 issue a special registration plate for any number of vehicles
1061 titled in the name of a qualified applicant depicting the Gold
1062 Star awarded by the United States Department of Defense
1063 as prescribed and designated by the commissioner.

1064 (B) The next of kin shall provide sufficient proof of
1065 receiving a Gold Star lapel button from the United States
1066 Department of Defense in accordance with Public Law 534,
1067 89th Congress, and criteria established by the United States
1068 Department of Defense, including criteria to determine next
1069 of kin.

1070 (C) The division shall charge a special initial application
1071 fee of \$10 in addition to all other fees required by law. This
1072 special fee shall be collected by the division and deposited
1073 in the State Road Fund.

1074 (D) The provisions of subsection (d) of this section are
1075 not applicable for the issuance of the special license plates
1076 designated by this subdivision.

1077 (59) The commissioner may issue special registration
1078 plates for retired or former Justices of the Supreme Court of
1079 Appeals of West Virginia as follows:

1080 (A) Upon appropriate application, the division may
1081 issue a special registration plate designed by the
1082 commissioner for any number of vehicles titled in the name
1083 of the qualified applicant.

1084 (B) The division shall charge a special initial application
1085 fee of \$10 in addition to all other fees required by law. This
1086 special fee shall be collected by the division and deposited
1087 in the State Road Fund.

1088 (C) The division shall charge an annual fee of \$15 for
1089 each special registration plate in addition to all other fees
1090 required by this chapter.

1091 (D) The provisions of subsection (d) of this section are
1092 not applicable for the issuance of the special license plates
1093 designated by this subdivision.

1094 (60) Upon approval by the commissioner of an
1095 appropriate application, and upon all requirements of this
1096 subdivision being satisfied, the division may issue special
1097 registration plates for class A and class G motor vehicles to
1098 members of an organization for which a special registration
1099 plate has not been issued pursuant to any other subdivision
1100 in this subsection prior to January 1, 2010, in accordance
1101 with the provisions of this subdivision.

1102 (A) An organization desiring to create a special
1103 registration plate must comply with the following
1104 requirements to be eligible to apply for the creation and
1105 issuance of a special registration plate:

1106 (i) The organization must be a nonprofit organization
1107 organized and existing under Section 501(c)(3) of Title 26
1108 of the Internal Revenue Code and based, headquartered or
1109 have a chapter in West Virginia;

1110 (ii) The organization may be organized for, but may not
1111 be restricted to, social, civic, higher education or
1112 entertainment purposes;

1113 (iii) The organization may not be a political party and
1114 may not have been created or exist primarily to promote a
1115 specific political or social belief, as determined by the
1116 commissioner in his or her sole discretion;

1117 (iv) The organization may not have as its primary
1118 purpose the promotion of any specific faith, religion,
1119 religious belief or antireligion;

1120 (v) The name of the organization may not be the name
1121 of a special product or brand name, and may not be
1122 construed, as determined by the commissioner, as
1123 promoting a product or brand name; and

1124 (vi) The organization's lettering, logo, image or
1125 message to be placed on the registration plate, if created,
1126 may not be obscene, offensive or objectionable as
1127 determined by the commissioner in his or her sole
1128 discretion.

1129 (B) Beginning July 1, 2010, an organization requesting
1130 the creation and issuance of a special registration plate may
1131 make application with the division. The application shall
1132 include sufficient information, as determined by the
1133 commissioner, to determine whether the special registration
1134 plate requested and the organization making the application
1135 meet all of the requirements set forth in this subdivision
1136 (60). The application shall also include a proposed design,
1137 including lettering, logo, image or message to be placed on
1138 the registration plate. The commissioner shall notify the
1139 organization of the commissioner's approval or disapproval
1140 of the application.

1141 (C)(i) The commissioner may not begin the design or
1142 production of any license plates authorized and approved
1143 pursuant to this subdivision (60), subsection (c) of this
1144 section until the organization which applied for the special
1145 registration plate has collected and submitted collectively to
1146 the division applications completed by at least two hundred
1147 fifty persons and collectively deposited with the division all
1148 fees necessary to cover the first year's basic registration,
1149 one-time design and manufacturing costs and to cover the
1150 first year additional annual fee for all of the applications
1151 submitted.

1152 (ii) If the organization fails to submit the required
1153 number of applications and fees within six months of the
1154 effective date of the approval of the application for the plate
1155 by the commissioner, the plate will not be produced until a
1156 new application is submitted and is approved by the
1157 commissioner: *Provided*, That an organization that is
1158 unsuccessful in obtaining the minimum number of
1159 applications may not make a new application for a special

1160 plate until at least two years have passed since the approval
1161 of the previous application of the organization.

1162 (D) The division shall charge a special initial
1163 application fee of \$25 for each special license plate in
1164 addition to all other fees required by law. This special fee
1165 shall be collected by the division and deposited in the State
1166 Road Fund.

1167 (E) The division shall charge an annual fee of \$15 for
1168 each special registration plate in addition to all other fees
1169 required by this chapter.

1170 (F) Upon appropriate application, the division may issue
1171 a special registration plate designed by the commissioner in
1172 consultation with the organization for any number of
1173 vehicles titled in the name of a qualified registration plate
1174 applicant. Persons desiring the special registration plate
1175 shall offer sufficient proof of membership in the
1176 organization.

1177 (G) The commissioner shall discontinue the issuance or
1178 renewal of the registration of any special plate issued
1179 pursuant to this subdivision (60) if:

1180 (i) The number of valid registrations for the specialty
1181 plate falls below two hundred fifty plates for at least twelve
1182 consecutive months; or

1183 (ii) The organization no longer exists or no longer meets
1184 the requirements of this subdivision.

1185 (d) The minimum number of applications required prior
1186 to design and production of a special license plate shall be
1187 as follows:

1188 (1) The commissioner may not begin the design or
1189 production of any license plates for which eligibility is
1190 based on membership or affiliation with a particular private
1191 organization until at least one hundred persons complete an
1192 application and deposit with the organization a check to

1193 cover the first year's basic registration, one-time design and
1194 manufacturing costs and to cover the first year additional
1195 annual fee. If the organization fails to submit the required
1196 number of applications with attached checks within six
1197 months of the effective date of the original authorizing
1198 legislation, the plate will not be produced and will require
1199 legislative reauthorization: *Provided*, That an organization
1200 or group that is unsuccessful in obtaining the minimum
1201 number of applications may not request reconsideration of
1202 a special plate until at least two years have passed since the
1203 effective date of the original authorization: *Provided*,
1204 *however*, That the provisions of this subdivision (1) are not
1205 applicable to the issuance of plates authorized pursuant to
1206 subdivision (60), subsection (c) of this section.

1207 (2) The commissioner may not begin the design or
1208 production of any license plates authorized by this section
1209 for which membership or affiliation with a particular
1210 organization is not required until at least two hundred fifty
1211 registrants complete an application and deposit a fee with
1212 the division to cover the first year's basic registration fee,
1213 one-time design and manufacturing fee and additional
1214 annual fee if applicable. If the commissioner fails to receive
1215 the required number of applications within six months of the
1216 effective date of the original authorizing legislation, the
1217 plate will not be produced and will require legislative
1218 reauthorization: *Provided*, That if the minimum number of
1219 applications is not satisfied within the six months of the
1220 effective date of the original authorizing legislation, a
1221 person may not request reconsideration of a special plate
1222 until at least two years have passed since the effective date
1223 of the original authorization.

1224 (e) (1) Nothing in this section requires a charge for a
1225 free prisoner of war license plate or a free recipient of the
1226 Congressional Medal of Honor license plate for a vehicle
1227 titled in the name of the qualified applicant as authorized by
1228 other provisions of this code.

1229 (2) A surviving spouse may continue to use his or her
1230 deceased spouse's prisoner of war license plate or
1231 Congressional Medal of Honor license plate until the
1232 surviving spouse dies, remarries or does not renew the
1233 license plate.

1234 (3) Qualified former prisoners of war and recipients of
1235 the Congressional Medal of Honor may obtain a second
1236 special registration plate for use on a passenger vehicle
1237 titled in the name of the qualified applicant. The division
1238 shall charge a one-time fee of \$10 to be deposited into the
1239 State Road Fund, in addition to all other fees required by
1240 this chapter, for the second special plate.

1241 (f) The division may issue special ten-year registration
1242 plates as follows:

1243 (1) The commissioner may issue or renew for a period
1244 of no more than ten years any registration plate exempted
1245 from registration fees pursuant to any provision of this
1246 code or any restricted use antique motor vehicle license
1247 plate authorized by section three-a, article ten of this
1248 chapter: *Provided*, That the provisions of this subsection
1249 do not apply to any person who has had a special
1250 registration suspended for failure to maintain motor
1251 vehicle liability insurance as required by section three,
1252 article two-a, chapter seventeen-d of this code or failure
1253 to pay personal property taxes as required by section
1254 three-a of this article.

1255 (2) An initial nonrefundable fee shall be charged for
1256 each special registration plate issued pursuant to this
1257 subsection, which is the total amount of fees required by
1258 section fifteen, article ten of this chapter, section three,
1259 article three of this chapter or section three-a, article ten of
1260 this chapter for the period requested.

1261 (g) The provisions of this section may not be construed
1262 to exempt any registrant from maintaining motor vehicle

1263 liability insurance as required by section three, article two-
1264 a, chapter seventeen-d of this code or from paying personal
1265 property taxes on any motor vehicle as required by section
1266 three-a of this article.

1267 (h) The commissioner may, in his or her discretion,
1268 issue a registration plate of reflectorized material suitable
1269 for permanent use on motor vehicles, trailers and
1270 semitrailers, together with appropriate devices to be
1271 attached to the registration to indicate the year for which
1272 the vehicles have been properly registered or the date of
1273 expiration of the registration. The design and expiration
1274 of the plates shall be determined by the commissioner.
1275 The commissioner shall, whenever possible and cost
1276 effective, implement the latest technology in the design,
1277 production and issuance of registration plates, indices of
1278 registration renewal and vehicle ownership documents,
1279 including, but not limited to, offering Internet renewal of
1280 vehicle registration and the use of bar codes for instant
1281 identification of vehicles by scanning equipment to
1282 promote the efficient and effective coordination and
1283 communication of data for improving highway safety,
1284 aiding law enforcement and enhancing revenue
1285 collection.

1286 (i) Any license plate issued or renewed pursuant to
1287 this chapter which is paid for by a check that is returned
1288 for nonsufficient funds is void without further notice to
1289 the applicant. The applicant may not reinstate the
1290 registration until the returned check is paid by the
1291 applicant in cash, money order or certified check and all
1292 applicable fees assessed as a result thereof have been
1293 paid.

CHAPTER 154

(S. B. 235 - By Senators Rucker, Azinger, Blair, Boso, Clements, Cline, Gaunch, Jeffries, Karnes, Maynard, Mullins, Smith, Swope, Takubo, Trump and Weld)

[Passed April 7, 2017; in effect from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §17A-10-3 of the Code of West Virginia, 1931, as amended, relating to requiring that the registration fee and any other fees required by this chapter for motorcycles and parking enforcement vehicles shall be for at least one year.

Be it enacted by the Legislature of West Virginia:

That §17A-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

1 The following registration fees for the classes indicated
2 shall be paid to the division for the registration of vehicles
3 subject to registration under this chapter when equipped
4 with pneumatic tires:

5 (a) Registration fees for the following classes shall be
6 paid to the division annually:

7 (1) *Class A.* — The registration fee for motor vehicles
8 of this class is \$28.50: *Provided,* That the registration fees
9 and any other fees required by this chapter for Class A
10 vehicles under the optional biennial staggered registration

11 system shall be multiplied by two and paid biennially to the
12 division.

13 No license fee may be charged for vehicles owned by
14 churches, or by trustees for churches, which are regularly
15 used for transporting parishioners to and from church
16 services. Notwithstanding the exemption, the certificate of
17 registration and license plates shall be obtained the same as
18 other cards and plates under this article.

19 (2) *Class B.* — The registration fee for all motor
20 vehicles of this class is as follows:

21 (A) For declared gross weights of ten thousand one
22 pounds to sixteen thousand pounds — \$28 plus \$5 for each
23 one thousand pounds or fraction of one thousand pounds
24 that the gross weight of the vehicle or combination of
25 vehicles exceeds ten thousand pounds.

26 (B) For declared gross weights greater than sixteen
27 thousand pounds, but less than fifty-five thousand pounds
28 — \$78.50 plus \$10 for each one thousand or fraction of one
29 thousand pounds that the gross weight of the vehicle or
30 combination of vehicles exceeds sixteen thousand pounds.

31 (C) For declared gross weights of fifty-five thousand
32 pounds or more — \$737.50 plus \$15.75 for each one
33 thousand pounds or fraction of one thousand pounds that the
34 gross weight of the vehicle or combination of vehicles
35 exceeds fifty-five thousand pounds.

36 (3) *Class G.* — The registration fee for each motorcycle
37 or parking enforcement vehicle is \$8: *Provided,* That the
38 registration fee and any other fees required by this chapter
39 for Class G vehicles shall be for at least one year from the
40 date of registration and under an optional biennial
41 registration system the annual fee shall be multiplied by two
42 and paid biennially to the division.

43 (4) *Class H.* — The registration fee for all vehicles for
44 this class operating entirely within the state is \$5; and for

45 vehicles engaged in interstate transportation of persons, the
46 registration fee is the amount of the fees provided by this
47 section for Class B, reduced by the amount that the mileage
48 of the vehicles operated in states other than West Virginia
49 bears to the total mileage operated by the vehicles in all
50 states under a formula to be established by the Division of
51 Motor Vehicles.

52 (5) *Class J.* — The registration fee for all motor vehicles
53 of this class is \$85. Ambulances and hearses used
54 exclusively as ambulances and hearses are exempt from the
55 special fees set forth in this section.

56 (6) *Class M.* — The registration fee for all vehicles of
57 this class is \$17.50.

58 (7) *Class X.* — The registration fee for all motor
59 vehicles of this class is as follows:

60 (A) For farm trucks of declared gross weights of eight
61 thousand one pounds to sixteen thousand pounds — \$30.

62 (B) For farm trucks of declared gross weights of sixteen
63 thousand one pounds to twenty-two thousand pounds —
64 \$60.

65 (C) For farm trucks of declared gross weights of twenty-
66 two thousand one pounds to twenty-eight thousand pounds
67 — \$90.

68 (D) For farm trucks of declared gross weights of twenty-
69 eight thousand one pounds to thirty-four thousand pounds
70 — \$115.

71 (E) For farm trucks of declared gross weights of thirty-
72 four thousand one pounds to forty-four thousand pounds —
73 \$160.

74 (F) For farm trucks of declared gross weights of forty-
75 four thousand one pounds to fifty-four thousand pounds —
76 \$205.

77 (G) For farm trucks of declared gross weights of fifty-
78 four thousand one pounds to eighty thousand pounds —
79 \$250: *Provided*, That the provisions of subsection (a),
80 section eight, article one, chapter seventeen-e of this code
81 do not apply if the vehicle exceeds sixty-four thousand
82 pounds and is a truck tractor or road tractor.

83 (b) Registration fees for the following classes shall be
84 paid to the division for a maximum period of three years,
85 or portion of a year based on the number of years
86 remaining in the three-year period designated by the
87 commissioner:

88 (1) *Class R.* — The annual registration fee for all
89 vehicles of this class is \$12.

90 (2) *Class T.* — The annual registration fee for all
91 vehicles of this class is \$8.

92 (c) The fees paid to the division for a multiyear
93 registration provided by this chapter shall be the same as the
94 annual registration fee established by this section and any
95 other fee required by this chapter multiplied by the number
96 of years for which the registration is issued.

97 (d) The registration fee for all Class C vehicles is \$50.
98 All Class C trailers shall be registered for the duration of the
99 owner's interest in the trailer and do not expire until either
100 sold or otherwise permanently removed from the service of
101 the owner: *Provided*, That a registrant may transfer a Class
102 C registration plate from a trailer owned less than thirty days
103 to another Class C trailer titled in the name of the registrant
104 upon payment of the transfer fee prescribed in section ten of
105 this article.

CHAPTER 155

(Com. Sub. for S. B. 173 - By Senators Blair and Sypolt)

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §17B-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-2-7b of said code; to amend said code by adding thereto a new section, designated §17C-1-69; and to amend and reenact §17C-15-44 of said code, all relating to autocycles; creating an autocycle exemption from motorcycle examination, licensing and endorsement requirements; allowing a person with a valid driver's license to operate an autocycle; creating an autocycle exemption from helmet and certain other motorcycle or motor-driven cycle safety requirements; defining terms; deleting obsolete language regarding the motorcycle safety and education committee; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §17B-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17B-2-7b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §17C-1-69; and that §17C-15-44 of said code be amended and reenacted, all to read as follows:

**CHAPTER 17B. MOTOR VEHICLE DRIVER'S
LICENSES.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17B-1-1. Definitions.

1 The following words and phrases when used in this
2 chapter, for the purpose of this chapter, have the meanings
3 respectively ascribed to them in this article:

4 *Autocycle.* — Every fully or partially enclosed
5 motorcycle that is equipped with safety belts, rollover
6 protection, a rearview mirror, automotive seating, a steering
7 wheel and equipment otherwise required on a motorcycle
8 and which has no more than three wheels in contact with the
9 roadway at any one time;

10 *Cancellation.* — Means that a driver's license is
11 annulled and terminated because of some error or defect or
12 because the licensee is no longer entitled to that license, but
13 the cancellation of a license is without prejudice and
14 application for a new license may be made at any time after
15 such cancellation;

16 *Chauffeur.* — Every person who is employed by another
17 for the principal purpose of driving a motor vehicle and
18 every person who drives a school bus transporting school
19 children or any motor vehicle when in use for the
20 transportation of persons or property for compensation;

21 *Commissioner.* — The Commissioner of Motor
22 Vehicles of this state;

23 *Division.* — The Division of Motor Vehicles of this
24 state acting directly or through its duly authorized officers
25 or agents;

26 *Driver.* — Means any person who drives, operates or is
27 in physical control of a motor vehicle, in any place open to
28 the general public for purposes of vehicular traffic, or who
29 is required to hold a driver's license;

30 *Driver's license.* — Means any permit or license issued
31 by this state to a person which authorizes the person to drive
32 a motor vehicle of a specific class or classes subject to any
33 restriction or endorsement contained thereon;

34 *Farm tractor.* — Every motor vehicle designed and
35 used primarily as a farm implement for drawing plows,
36 mowing machines and other implements of husbandry;

37 *Motorcycle.* — Every motor vehicle having a seat or
38 saddle for the use of the rider and designed to travel on not
39 more than three wheels in contact with the ground, but
40 excluding a farm tractor as defined herein, a moped as
41 defined in section five-a, article one, chapter seventeen-c of
42 this code, a snowmobile as defined in subsection (mm),
43 section one, article one, chapter seventeen-a of this code and
44 an all-terrain vehicle as defined in subsection (ii), section
45 one of this article;

46 *Motor vehicle.* — Every vehicle which is self-propelled
47 and every vehicle which is propelled by electric power
48 obtained from overhead trolley wires, but not operated upon
49 rails;

50 *9-1-1 system.* — Means an emergency telephone system
51 or enhanced emergency telephone system as defined in
52 section two, article six, chapter twenty-four of this code;

53 *Nonresident.* — Every person who is not a resident of
54 this state;

55 *Operator.* — Every person, other than a chauffeur, who
56 drives or is in actual physical control of a motor vehicle
57 upon a highway or who is exercising control over or steering
58 a vehicle being towed by a motor vehicle;

59 *Owner.* — A person who holds the legal title of a
60 vehicle or in the event a vehicle is the subject of an
61 agreement for the conditional sale or lease thereof with the
62 right of purchase upon performance of the conditions stated
63 in the agreement and with an immediate right of possession
64 vested in the conditional vendee or lessee, or if a mortgagor
65 of a vehicle is entitled to possession, then the conditional
66 vendee or lessee or mortgagor is the owner for the purpose
67 of this chapter;

68 *Person.* — Every natural person, firm, copartnership,
69 association or corporation;

70 *Revocation.* — Means that the driver's license and
71 privilege to drive a motor vehicle on the public highways
72 are terminated and shall not be renewed or restored, except
73 that an application for a new license may be presented and
74 acted upon by the division after the expiration of at least one
75 year after the date of revocation, except as otherwise
76 provided in section two, article five-a, chapter seventeen-c
77 of this code;

78 *School bus.* — Every motor vehicle owned by a public
79 governmental agency and operated for the transportation of
80 children to or from school or privately owned and operated
81 for compensation for the transportation of children to or
82 from school;

83 *Street or highway.* — The entire width between the
84 boundary lines of every way publicly maintained when any
85 part thereof is open to the use of the public for purposes of
86 vehicular travel;

87 *Suspension.* — Suspension means that the driver's
88 license and privilege to drive a motor vehicle on the public
89 highways are temporarily withdrawn but only during the
90 period of the suspension;

91 *Vehicle.* — Every device in, upon or by which any
92 person or property is or may be transported or drawn upon
93 a public highway, excepting devices moved by human
94 power or used exclusively upon stationary rails or tracks;

95 *Wireless communication device.* — Means a handheld
96 device used to access a wireless telephone service or a text
97 messaging device.

ARTICLE 2. ISSUANCE OF LICENSE; EXPIRATION AND RENEWAL.

§17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.

1 (a) The State Police shall administer a separate
2 motorcycle examination for applicants for a license valid for
3 operation of a motorcycle. On and after July 1, 2000, the
4 Division of Motor Vehicles shall administer the
5 examination provided for in this section. Any applicant for
6 a license valid for operation of a motorcycle shall be
7 required to successfully complete the motorcycle
8 examination, which is in addition to the examination
9 administered pursuant to section seven of this article and, if
10 under the age of eighteen, shall be required to complete the
11 requirements for a level two intermediate driver's license
12 set forth in paragraphs (B), (C) and (D), subdivision (1),
13 subsection (j), section three-a of this article: *Provided*, That
14 the commissioner may exempt an applicant for a motorcycle
15 driver's license or endorsement from all or part of the
16 motorcycle license examination as provided in section six,
17 article one-d of this chapter. The motorcycle examination
18 shall test the applicant's knowledge of the operation of a
19 motorcycle and of any traffic laws specifically relating to
20 the operation of a motorcycle and shall include an actual
21 demonstration of the ability to exercise ordinary and
22 reasonable control in the operation of a motorcycle. An
23 applicant for a license valid for the operation of only a
24 motorcycle shall be tested as provided in this section and in
25 section seven of this article, but need not demonstrate actual
26 driving ability in any vehicle other than a motorcycle. The
27 examination provided in this section may not be made a
28 condition upon the renewal of the license of any person
29 under this section. For an applicant who successfully
30 completes the motorcycle examination, upon payment of
31 the required fee, the division shall issue a motorcycle
32 endorsement on the driver's license of the applicant, or shall
33 issue a special motorcycle-only license if the applicant does
34 not possess a driver's license: *Provided, however*, That any
35 holder of a motorcycle-only license under the age of
36 eighteen is subject to the provisions of paragraphs (A), (B),

37 (E), (F), (G) and (H), subdivision (2), subsection (j), section
38 three-a of this article.

39 Every person, including those holding a valid driver's
40 license, is required to take the examination specified in this
41 section to obtain a motorcycle license or endorsement,
42 unless exempted under subsection (b) of this section.

43 (b) Notwithstanding any provision of this code to the
44 contrary, a person with a valid driver's license who is
45 operating an autocycle is exempt from the motorcycle
46 examination, licensing and endorsement requirements set
47 forth in this article.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-69. Autocycle.

1 "Autocycle" means a fully or partially enclosed
2 motorcycle that is equipped with safety belts, rollover
3 protection, a rearview mirror, automotive seating, a steering
4 wheel and equipment otherwise required on a motorcycle
5 and which has no more than three wheels in contact with the
6 roadway at any one time.

ARTICLE 15. EQUIPMENT.

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and education committee.

1 (a) No person may operate or be a passenger on any
2 motorcycle or motor-driven cycle unless the person is
3 wearing securely fastened on his or her head by either a neck
4 or chin strap a protective helmet designed to deflect blows,
5 resist penetration and spread impact forces. Any helmet
6 worn by an operator or passenger shall meet the current
7 performance specifications established by the American

8 National Standards Institute Standard, Z 90.1, the United
9 States Department of Transportation Federal Motor Vehicle
10 Safety Standard No. 218 or Snell Safety Standards for
11 Protective Headgear for Vehicle Users.

12 (b) No person may operate or be a passenger on any
13 motorcycle or motor-driven cycle unless the person is
14 wearing safety, shatter-resistant eyeglasses, excluding
15 contact lenses, or eye goggles or face shield that complies
16 with the performance specifications established by the
17 American National Standards Institute for Head, Eye and
18 Respiratory Protection, Z 2.1. In addition, if any
19 motorcycle, motor-driven cycle or moped is equipped with
20 a windshield or windscreen, the windshield or windscreen
21 shall be constructed of safety, shatter-resistant material that
22 complies with the performance specifications established by
23 Department of Transportation Federal Motor Vehicle Safety
24 Standard No. 205 and American National Standards
25 Institute, Safety Glazing Materials for Glazing Motor
26 Vehicles Operated on Land Highways, Standard Z 26.1.

27 (c) No person may operate a motorcycle, motor-driven
28 cycle or moped on which the handlebars or grips are more
29 than fifteen inches higher than the uppermost part of the
30 operator's seat when the seat is not depressed in any
31 manner.

32 (d) A person operating a motorcycle, motor-driven
33 cycle or moped shall ride in a seated position facing forward
34 and only upon a permanent operator's seat attached to the
35 vehicle. No operator may carry any other person nor may
36 any other person ride on the vehicle unless the vehicle is
37 designed to carry more than one person, in which event a
38 passenger may ride behind the operator upon the permanent
39 operator's seat if it is designed for two persons, or upon
40 another seat firmly attached to the vehicle to the rear of the
41 operator's seat and equipped with footrests designed and
42 located for use by the passenger or in a sidecar firmly
43 attached to the vehicle. No person may ride side saddle on a
44 seat. An operator may carry as many passengers as there are

45 seats and footrests to accommodate those passengers.
46 Additional passengers may be carried in a factory-produced
47 sidecar provided that there is one passenger per seat.
48 Passengers riding in a sidecar shall be restrained by safety
49 belts.

50 (e) Every motorcycle, motor-driven cycle and moped
51 shall be equipped with a rearview mirror affixed to the
52 handlebars or fairings and adjusted so that the operator has
53 a clear view of the road and condition of traffic behind him
54 or her for a distance of at least two hundred feet.

55 (f) Notwithstanding any provision of this code to the
56 contrary, a person with a valid driver's license who is
57 operating a fully enclosed auticycle, as defined in section
58 sixty-nine, article one of this chapter, is exempt from the
59 provisions of this section.

CHAPTER 156

**(Com. Sub. for S. B. 631 - By Senators Palumbo,
Jeffries and Takubo)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §8-12-13 and §8-12-16 of the Code of West Virginia, 1931, as amended, all relating generally to municipal ordinances and procedures; creating a procedure for misdemeanor prosecutions of violations of municipal ordinances; defining terms; providing for the designation of enforcement agencies; providing a procedure for code enforcement agency officials to enter premises for investigation or inspection of a structure, dwelling or building; granting plenary power to the governing body of every municipality to adopt an ordinance providing for the

vacating, closing, removal or demolition of specific dwellings, structures or buildings by a municipality in the absence of owner agreement or court order with specific requirements; providing for notice to the owner of the right to apply to the circuit court for a temporary injunction or other similar relief; requiring a hearing to be held within twenty days if the owner makes such application to the circuit court; requiring an owner to pay a bond into court if the owner seeks a continuance of the hearing seeking a temporary injunction or other similar relief; allowing for the disbursement of moneys paid into court by an owner if a court finds that the property is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; permitting a governing body of a municipality to file a lien against the real property for an amount that reflects all costs incurred by a municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building; permitting a municipality to institute a civil action in circuit court against a landowner or other responsible party to obtain an order to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and permitting a municipality to recover all reasonable costs and expenses incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action; providing for service of notices of violations; and providing for a procedure to prosecute ordinances adopted under the section pertaining to regulating the repair, alteration, improvement, closing, demolition, etc., of structures, dwelling or buildings that are unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.

Be it enacted by the Legislature of West Virginia:

That §8-12-13 and §8-12-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

**§8-12-13. Building regulation; general and special codes; state
building code.**

1 (a) The governing body of every municipality shall have
2 plenary power and authority by ordinance or a code of
3 ordinances to:

4 (1) Regulate the erection, construction, repair or
5 alteration of structures of every kind within the corporate
6 limits of the municipality, prohibit, within specified
7 territorial limits, the erection, construction, repair or
8 alteration of structures of wood or other combustible
9 material, and regulate excavations upon private property;

10 (2) Regulate electric wiring by prescribing minimum
11 specifications to be followed in the installation, alteration or
12 repair; and

13 (3) Regulate plumbing by prescribing the minimum
14 specifications to be followed in the installation, alteration or
15 repair of plumbing, including equipment, water and sewer
16 pipe, traps, drains, cesspools and septic tanks.

17 (b) Notwithstanding the provisions of subsection (a) of
18 this section, all existing municipal building codes are void
19 one year after the promulgation of a state building code by
20 the State Fire Commission as provided under section five-
21 b, article three, chapter twenty-nine of this code.

22 Upon the voidance of the municipality's existing
23 building code, if the municipality votes to adopt a building
24 code, it must be the state building code promulgated under
25 section five-b, article three, chapter twenty-nine of this
26 code.

27 (c) The governing body of every municipality shall have
28 plenary power and authority by ordinance or a code of
29 ordinances to adopt such state building code promulgated
30 by the State Fire Commission.

31 (d) Unless otherwise authorized by state law, any
32 misdemeanor prosecution of a violation of an ordinance
33 adopted under this section before a municipal judge or other
34 municipal official lawfully authorized to hear and determine
35 violations of municipal code shall be initiated by a
36 complaint presented to and sworn or affirmed before a
37 municipal judge or other municipal official with lawful
38 authority to hear and determine violations of municipal code
39 in the municipality where the offense is alleged to have
40 occurred. Unless otherwise provided by statute, the
41 presentation and oath or affirmation shall be made by a code
42 enforcement department official or municipal attorney
43 showing reason to have reliable information and belief. If
44 the municipal judge or other municipal official with lawful
45 authority to hear and determine violations of municipal code
46 finds probable cause, the complaint becomes the charging
47 instrument initiating a criminal proceeding.

48 A complaint lawfully authorized by this subsection
49 together with a summons setting forth the date, time and
50 place of appearance before a municipal judge or other
51 municipal official with lawful authority to hear and
52 determine violations of municipal code, shall be served in
53 accordance with the law of the State of West Virginia
54 concerning the service of process in civil actions, except
55 that personal service of a summons and complaint may be
56 made by a code enforcement department official. If service
57 is made by certified mail under Rule 4(d)(1)(D) of the West
58 Virginia Rules of Civil Procedure and delivery of the
59 summons and complaint is refused, the code enforcement
60 department official, promptly upon the receipt of the notice
61 of the refusal, shall mail to the person or entity being
62 noticed, by first class mail, postage prepaid, a copy of the
63 summons and complaint. If the first class mailing is not

64 returned as undeliverable by the U. S. Postal Service,
65 service of the summons and complaint is presumed to have
66 been effectuated. Upon service of the summons and
67 complaint consistent with this subsection, the violation may
68 be prosecuted consistent with state and local law.

§8-12-16. Ordinances regulating the repair, alteration, improvement, closing, demolition, etc., of structures, dwellings or buildings that are unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; procedures.

1 (a) For the purposes of this section:

2 (1) “Code enforcement agency” means either a code
3 enforcement department as defined by 87 CSR 7-2, as may
4 be amended, or an enforcement agency as permitted by
5 subsection (c) of this section.

6 (2) “Code enforcement agency official” means any
7 lawful agent of a code enforcement agency.

8 (3) “Owner” or “landowner” means a person who
9 individually or jointly with others:

10 (A) Has legal title to the property, with or without actual
11 possession of the property;

12 (B) Has charge, care or control of the property as owner
13 or agent of the owner;

14 (C) Is an executor, administrator, trustee or guardian of
15 the estate of the owner;

16 (D) Is the agent of the owner for the purpose of
17 managing, controlling or collecting rents; or

18 (E) May control or direct the management or disposition
19 of the property.

20 (4) “Unsafe, unsanitary, dangerous or detrimental to the
21 public safety or welfare” means:

22 (A) Any door, aisle, passageway, stairway, exit or other
23 means of egress that does not conform to the approved
24 building or fire code of the jurisdiction as related to the
25 requirements for existing buildings;

26 (B) The walking surface of any aisle, passageway,
27 stairway, exit or other means of egress is so warped, worn
28 loose, torn or otherwise unsafe as to not provide safe and
29 adequate means of egress;

30 (C) Any portion of a dwelling, building, structure or
31 appurtenance that has been damaged by fire, earthquake, wind,
32 flood, deterioration, neglect, abandonment, vandalism or by
33 any other cause to an extent that it is likely to partially or
34 completely collapse, or to become detached or dislodged;

35 (D) Any portion of a structure or building, or any
36 member, appurtenance or ornamentation on the exterior that
37 is not of sufficient strength or stability, or is not so anchored,
38 attached or fastened in place so as to be capable of resisting
39 natural or artificial loads of one and one-half the original
40 designed value;

41 (E) The dwelling, building or structure, or part of the
42 building or structure, because of dilapidation, deterioration,
43 decay, faulty construction, the removal or movement of
44 some portion of the ground necessary for the support, or for
45 any other reason, is likely to partially or completely
46 collapse, or some portion of the foundation or underpinning
47 of the building or structure is likely to fail or give way;

48 (F) The dwelling, building or structure, or any portion,
49 is clearly unsafe for its use;

50 (G) The dwelling, building or structure is neglected,
51 damaged, dilapidated, unsecured or abandoned so as to
52 become an attractive nuisance to children, becomes a harbor
53 for vagrants, criminals, criminal activity or enables persons
54 to resort to the dwelling, building or structure for
55 committing a nuisance or an unlawful act;

56 (H) Any dwelling, building or structure constructed,
57 exists or maintained in violation of any specific requirement
58 or prohibition applicable to any dwelling, building or
59 structure provided by the approved building or fire code of
60 the jurisdiction or of any law or ordinance that presents
61 either a substantial risk of fire, building collapse or any
62 other threat to life and safety;

63 (I) A dwelling, building or structure, used or intended to
64 be used for dwelling purposes, because of inadequate
65 maintenance, dilapidation, decay, contamination by any
66 hazardous substance or material including, but not limited
67 to, substance resulting from the illegal manufacture of
68 drugs, damage, faulty construction or arrangement,
69 inadequate light, ventilation, mechanical or plumbing
70 system, or otherwise, is determined by the code
71 enforcement agency to be unsanitary, unfit for human
72 habitation or in such a condition that is likely to cause
73 sickness or disease;

74 (J) Any dwelling, building or structure, because of a
75 lack of sufficient or proper fire resistance-rated
76 construction, fire protection systems, electrical system, fuel
77 connections, mechanical system, plumbing system or other
78 cause, is determined by the code official to be a threat to life
79 or health; or

80 (K) Any portion of a building that remains on a site after
81 the demolition or destruction of the building or structure, or
82 whenever any building or structure is abandoned.

83 (b) Plenary power and authority are hereby conferred
84 upon every municipality to adopt ordinances regulating the
85 repair, alteration or improvement, or the vacating and
86 closing or removal or demolition, or any combination, of
87 any structure, dwelling or building, whether used for human
88 habitation or not, that is unsafe, unsanitary, dangerous or
89 detrimental to the public safety or welfare.

90 (c) The governing body in formally adopting any
91 ordinance under this section shall designate the enforcement
92 agency, which shall consist of the code enforcement agency
93 as provided by the state building code and authorized by
94 section five-b, article three, chapter twenty-nine of this code
95 and section thirteen, article twelve, chapter eight of this
96 code; or municipal officials as may otherwise be authorized
97 by this code; or municipal officials or agents as authorized
98 by rules promulgated by the State Fire Commission and
99 approved by the Legislature; or municipal officials or agents
100 as may otherwise be authorized by the State Fire
101 Commission. Notwithstanding any provision of this code
102 to the contrary, for the purposes of this section any
103 municipality that has not adopted the state building code
104 may designate an enforcement agency consisting of the
105 mayor, the municipal engineer or building inspector and one
106 member at large, to be selected by and to serve at the will
107 and pleasure of the mayor, and the ranking health officer
108 and fire chief who shall serve as ex officio members of the
109 enforcement agency.

110 (d) Any ordinance adopted under the provisions of this
111 section must provide fair and equitable rules of procedure
112 and any other procedures required by law or necessary and
113 appropriate to guide the code enforcement agency, or its
114 officials, in the investigation of any structure, dwelling or
115 building conditions, and in any corrective action taken by
116 the code enforcement agency.

117 (e) When a code enforcement agency official enters the
118 premises of the property for investigating or inspecting any
119 structure, dwelling or building, the investigation shall be
120 performed to minimize the inconvenience to the owner or
121 persons in possession and shall be consistent with the
122 following:

123 (1) Except in exigent circumstances and as permitted by
124 law, the enforcement agency shall provide reasonable
125 advance notice to the owner and request permission from
126 the owner to enter the property.

127 (2) If the owner cannot be located after reasonable
128 inquiry by the code enforcement agency as required by this
129 section, or if the owner refuses entry, the code enforcement
130 agency may obtain an administrative search warrant from
131 either the municipal court or the magistrate court located in
132 the jurisdiction of the municipality or county where the
133 structure, dwelling or building is located. Before obtaining
134 an administrative search warrant, a code enforcement
135 agency official is required to make a sworn statement and
136 prima facie case showing that the code enforcement agency
137 was unable to gain access to the structure, dwelling or
138 building after reasonable and good faith efforts, and that
139 there is a legitimate and substantial safety concern involving
140 the structure, dwelling or building that supports the
141 requested entry.

142 (3) If granted by the court, and if the owner can be
143 located, the code enforcement agency shall provide the
144 owner a copy of the administrative search warrant five days
145 before entering the property. If applicable, the code
146 enforcement agency shall also provide the same notice to
147 any tenant or other person in possession of the structure,
148 dwelling or building.

149 (4) Entry is for the sole purpose of inspection of the
150 structure, dwelling or building for unsafe or unsanitary
151 conditions and not for the purpose of criminal prosecution
152 or gathering evidence for use in any criminal charge or
153 proceeding unrelated to the unsafe or unsanitary condition
154 of the structure, dwelling or building.

155 (f) The governing body of every municipality has
156 plenary power and authority to adopt an ordinance
157 providing for the vacating, closing, removal or demolition
158 of any dwelling, structure or building by the municipality in
159 the absence of owner agreement or court order: *Provided*,
160 That the ordinance requires the code enforcement agency to
161 provide lawful notice to and undertake reasonable efforts to
162 seek agreement from the owner before taking any action

163 permitted by this section and shall comply with the
164 requirements set forth in this subsection:

165 (1) Any ordinance adopted under this subsection applies
166 only to dwellings, structures or buildings which meet the
167 definition of unsafe, unsanitary, dangerous or detrimental to
168 the public safety or welfare as set forth in:

169 (A) Paragraph (C), (E) or (H), subdivision (4),
170 subsection (a) of this section; or

171 (B) Paragraph (F), (G), (I) or (K), subdivision (4),
172 subsection (a) of this section: *Provided*, That the dwelling,
173 building or structure is vacant, abandoned or has been
174 lawfully declared unfit for human habitation; and the
175 reasonable estimated cost of repair, rehabilitation or
176 corrective action exceeds the fair market value of the
177 dwelling, building or structure.

178 (2) Any ordinance adopted under this subsection must
179 provide for the following:

180 (A) The code enforcement agency shall produce a
181 written notice containing the date of the last inspection, the
182 name of the inspector, a reasonable description of the
183 unsafe, unsanitary, dangerous, or detrimental condition(s),
184 the corrective measures required, the allotted time to correct
185 the substandard condition(s) and the allotted time the owner
186 has to apply to the circuit court for a temporary injunction
187 or other similar relief restraining action by the enforcement
188 agency.

189 (B) The notice shall be served upon the owner or
190 landowner by conspicuously posting and attaching a copy
191 of the notice to the subject property, and by serving the
192 notice on the owner or landowner in the same manner as
193 service of a complaint as set forth in subsection (j) of this
194 section.

195 (C) If the code enforcement agency cannot effect
196 personal service on the owner, a code enforcement agency

197 official shall subscribe a written affidavit, to be maintained
198 for a minimum of two years, that demonstrates the structure,
199 dwelling or building falls within one of the categories set
200 forth in paragraph (A) or (B), subdivision (1), subsection (f)
201 of this section sets forth the basis in reasonable detail
202 including documentation of same, and memorializes the
203 code enforcement agency official's efforts to contact or get
204 permission for entry and corrective action from the owner;
205 and the code enforcement agency shall publish notice of its
206 intent to enter the property for the purpose of demolition or
207 correction, along with the address of the property, the name
208 of the owner(s) and the date of the proposed action, as a
209 Class II legal advertisement consistent with the
210 requirements of section two, article three, chapter fifty-nine
211 of this code, the first of which shall run at least thirty days
212 before the date of the proposed action by the enforcement
213 agency, and the last being no later than twenty days before
214 the date of the proposed action by the enforcement agency.

215 (D) If there is no response to the notice by the owner or
216 landowner in the time specified in the notice, then the
217 municipality shall have the authority to proceed in
218 correction or demolition of the subject dwelling, building or
219 structure.

220 (3) It shall be an absolute defense to any civil action by
221 an owner, landowner or tenant for damages resulting from
222 the closure, demolition or other corrective action taken by a
223 municipality under this section: *Provided*, That the
224 municipality acted in good faith, can demonstrate that the
225 structure, dwelling or building falls within one of the
226 categories set forth in paragraph (A) or (B), subdivision (1),
227 subsection (f) of this section, the municipality followed the
228 procedures set forth in this subsection and the municipality
229 had adopted the state building code at the time of the
230 closure, demolition or other corrective action occurred.

231 (4) Any ordinance adopted under this subsection must
232 also provide for notice to the owner of the right of the owner
233 to apply to the circuit court for a temporary injunction or

234 other similar relief restraining correction or demolition by
235 the enforcement agency. If the application is made by the
236 owner, a hearing shall be had within twenty days of the
237 application, or as soon as reasonably possible.

238 (A) Continuances of the hearing provided for in this
239 subdivision may be made for cause only. If a continuance
240 is granted upon request by the owner, the owner is required
241 to pay into court, in the form of a bond, any reasonable and
242 necessary costs related to the property likely to be incurred
243 by the municipality during the continuance.

244 (B) At the conclusion of a hearing held under this
245 subdivision, if the court finds that the property is unsafe,
246 unsanitary, dangerous, or detrimental to the public safety or
247 welfare, the court shall make and enter an order granting the
248 relief as requested by the municipality. The court may
249 disburse any moneys paid into court by the owner in
250 accordance with this section.

251 (g) The governing body of every municipality has
252 plenary power and authority to adopt an ordinance requiring
253 the owner of any dwelling or building under determination
254 of the State Fire Marshal, as provided in section twelve,
255 article three, chapter twenty-nine of this code, or under
256 order of the code enforcement agency of the municipality,
257 to pay for the costs of repairing, altering or improving, or of
258 vacating and closing, removing or demolishing any
259 dwelling or building and may file a lien against the real
260 property in question for an amount that reflects all costs
261 incurred by the municipality for repairing, altering or
262 improving, or of vacating and closing, removing or
263 demolishing any dwelling or building.

264 (h) Every municipality may also institute a civil action
265 in circuit court against the landowner or other responsible
266 party to get an order to take corrective action up to and
267 including demolition of any structure, dwelling or building
268 that is unsafe, unsanitary, dangerous or detrimental to the
269 public safety or welfare; and to recover all reasonable costs

270 and expenses incurred by the municipality with respect to
271 the property and for reasonable attorney fees and court costs
272 incurred in the prosecution of the action:

273 (1) No fewer than ten days before instituting a civil
274 action as provided in this subsection, the municipality shall
275 send notice to the landowner by certified mail, return receipt
276 requested, advising the landowner of the governing body's
277 intention to institute such action.

278 (2) The notice shall be sent to the most recent address of
279 the landowner of record in the office of the assessor of the
280 county where the subject property is located and to any other
281 address for the landowner as may exist on record with the
282 municipality. If, for any reason, such certified mail is
283 returned without evidence of proper receipt, the
284 municipality shall resend the notice(s) by first class mail,
285 postage prepaid, and shall also post notice on the front door
286 or other conspicuous location on the subject property.

287 (i) To the extent not otherwise authorized by state law,
288 all notices of violation or correction for violations that do
289 not fall within one of the categories set forth in paragraph
290 (A) or (B), subdivision (1), subsection (f) of this section
291 issued by the enforcement agency of a municipality that has
292 adopted the state building code shall be served in
293 accordance with the process set forth in the state building
294 code. All notices of violation or correction orders for
295 violations that do not fall within one of the categories set
296 forth in paragraph (A) or (B), subdivision (1), subsection (f)
297 of this section issued by a code enforcement agency of a
298 municipality that has not adopted the state building code
299 shall be served in accordance with the law of this state
300 concerning the service of process in civil actions, except
301 that personal service may be made by a code enforcement
302 agency official and the method of service effectuated by
303 mail by the clerk of a court as permitted by Rule 4(d)(1)(D)
304 of the West Virginia Rules of Civil Procedure is effectuated
305 by mailing by a code enforcement agency official and shall

306 be posted in a conspicuous place on the property that is the
307 subject of the notice of violation or correction.

308 (j) Any violation of an ordinance adopted under this
309 section, may be prosecuted by the municipality consistent with
310 state and local laws. Unless otherwise authorized by state law,
311 prosecution of a violation shall be initiated by a complaint
312 presented to and sworn or affirmed before a municipal judge
313 or other municipal official with lawful authority to hear and
314 determine violations of municipal code in the municipality
315 where the offense is alleged to have occurred. Unless
316 otherwise provided by statute, the presentation and oath or
317 affirmation shall be made by a code enforcement agency
318 official or municipal attorney showing reason to have reliable
319 information and belief. If from the facts stated in the complaint
320 the municipal judge or other municipal official with lawful
321 authority to hear and determine violations of municipal code
322 finds probable cause, the complaint becomes the charging
323 instrument initiating a criminal proceeding. A complaint
324 lawfully authorized by this subsection along with a summons
325 setting forth the date, time and place of appearance before a
326 municipal judge and or other municipal official with lawful
327 authority to hear and determine violations of municipal code
328 shall be served in accordance with the law of the State of West
329 Virginia concerning the service of process in civil actions,
330 except that personal service of a summons and complaint may
331 be made by a code enforcement agency official. If service is
332 made by certified mail under Rule 4(d)(1)(D) of the West
333 Virginia Rules of Civil Procedure and delivery of the
334 summons and complaint is refused, the code enforcement
335 agency official, promptly upon the receipt of the notice of the
336 refusal, shall mail to the person or entity being noticed, by first
337 class mail, postage prepaid, a copy of the summons and
338 complaint. If the first class mailing is not returned as
339 undeliverable by the U. S. Postal Service, service of the
340 summons and complaint is presumed to have been effectuated.
341 Upon service of the summons and complaint consistent with
342 this subsection, the violation may be prosecuted consistent
343 with state and local law.

CHAPTER 157

**(Com. Sub. for H. B. 2603 - By Delegates Walters,
Folk, Anderson, Hamilton, O'Neal, E. Evans and
Pethtel)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT to amend and reenact §8-22-20 of the Code of West Virginia, 1931, as amended, relating to municipal policemen's or firemen's pension and relief funds that are funded at one hundred and twenty-five percent or more; and authorizing certain costs not be paid.

Be it enacted by the Legislature of West Virginia:

That §8-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§8-22-20. Actuary; actuarial valuation report; minimum standards for annual municipality contributions to the fund; definitions; actuarial review and audit.

- 1 (a) The West Virginia Municipal Pensions Oversight
- 2 Board shall contract with or employ a qualified actuary to
- 3 annually prepare an actuarial valuation report on each
- 4 pension and relief fund. The selection of contract vendors to
- 5 provide actuarial services, including the reviewing actuary
- 6 as provided in subsection (c) of this section, shall be by

7 competitive bid process but is specifically exempt from
8 purchasing provisions of article three, chapter five-a of this
9 code. The expense of the actuarial report shall be paid from
10 moneys in the Municipal Pensions Security Fund. Uses of
11 the actuarial valuations from the qualified actuary shall
12 include, but not be limited to, determining a municipal
13 policemen's or firemen's pension and relief fund's
14 eligibility to receive state money and to provide
15 supplemental benefits.

16 (b) The actuarial valuation report provided pursuant to
17 subsection (a) of this section shall consist of, but is not
18 limited to, the following disclosures: (1) The financial
19 objective of the fund and how the objective is to be attained;
20 (2) the progress being made toward realization of the
21 financial objective; (3) recent changes in the nature of the
22 fund, benefits provided or actuarial assumptions or
23 methods; (4) the frequency of actuarial valuation reports
24 and the date of the most recent actuarial valuation report;
25 (5) the method used to value fund assets; (6) the extent to
26 which the qualified actuary relies on the data provided and
27 whether the data was certified by the funds Auditor or
28 examined by the qualified actuary for reasonableness; (7) a
29 description and explanation of the actuarial assumptions and
30 methods; (8) an evaluation of each plan using the alternative
31 funding method, to assess advantages of changing to other
32 funding methods as provided in this article; and (9) any
33 other information required in section twenty-a of this article
34 or that the qualified actuary feels is necessary or would be
35 useful in fully and fairly disclosing the actuarial condition
36 of the fund.

37 (c)(1) Except as provided in subsections (e) and (f) of
38 this section, beginning June 30, 1991, and thereafter, the
39 financial objective of each municipality shall not be less
40 than to contribute to the fund annually an amount which,
41 together with the contributions from the members and the
42 allocable portion of the Municipal Pensions and Protection
43 Fund for municipal pension and relief funds established
44 under section fourteen-d, article three, chapter thirty-three

45 of this code or a municipality's allocation from the
46 Municipal Pensions Security Fund created in section
47 eighteen-b of this article and other income sources as
48 authorized by law will be sufficient to meet the normal cost
49 of the fund and amortize any actuarial deficiency over a
50 period of not more than forty years beginning from July 1,
51 1991: *Provided*, That in the fiscal year ending June 30,
52 1991, the municipality may elect to make its annual
53 contribution to the fund using an alternative contribution in
54 an amount not less than: (i) One hundred seven percent of
55 the amount contributed for the fiscal year ending June 30,
56 1990; or (ii) an amount equal to the average of the
57 contribution payments made in the five highest fiscal years
58 beginning with the fiscal year ending 1984, whichever is
59 greater: *Provided, however*, That contribution payments in
60 subsequent fiscal years under this alternative contribution
61 method may not be less than one hundred seven percent of
62 the amount contributed in the prior fiscal year: *Provided*
63 *further*, That in order to avoid penalizing municipalities and
64 to provide flexibility when making contributions,
65 municipalities using the alternative contribution method
66 may exclude a one-time additional contribution made in any
67 one year in excess of the minimum required by this section:
68 *And provided further*, That the governing body of any
69 municipality may elect to provide an employer continuing
70 contribution of one percent more than the municipality's
71 required minimum under the alternative contribution plan
72 authorized in this subsection: *And provided further*, That if
73 any municipality decides to contribute an additional one
74 percent, then that municipality may not reduce the
75 additional contribution until the respective pension and
76 relief fund no longer has any actuarial deficiency: *And*
77 *provided further*, That any decision and any contribution
78 payment by the municipality is not the liability of the State
79 of West Virginia: *And provided further*, That if any
80 municipality or any pension fund board of trustees makes a
81 voluntary election and thereafter fails to contribute the
82 voluntarily increase as provided in this section and in
83 subsection (c), section nineteen of this article, then the board

84 of trustees is not eligible to receive funds allocated under
85 section fourteen-d, article three, chapter thirty-three of this
86 code: *And provided further*, That prior to using this
87 alternative contribution method the actuary of the fund shall
88 certify in writing that the fund is projected to be solvent
89 under the alternative contribution method for the next
90 consecutive fifteen-year period. For purposes of
91 determining this minimum financial objective: (i) The value
92 of the fund's assets shall be determined on the basis of any
93 reasonable actuarial method of valuation which takes into
94 account fair market value; and (ii) all costs, deficiencies,
95 rate of interest and other factors under the fund shall be
96 determined on the basis of actuarial assumptions and
97 methods which, in aggregate, are reasonable (taking into
98 account the experience of the fund and reasonable
99 expectations) and which, in combination, offer the qualified
100 actuary's best estimate of anticipated experience under the
101 fund: *And provided further*, That any municipality which
102 elected the alternative funding method under this section
103 and which has an unfunded actuarial liability of not more
104 than twenty-five percent of fund assets, may, beginning
105 September 1, 2003, elect to revert to the standard funding
106 method, which is to contribute to the fund annually an
107 amount which is not less than an amount which, together
108 with the contributions from the members and the allocable
109 portion of the Municipal Pensions and Protection Fund for
110 municipal pension and relief funds established under section
111 fourteen-d, article three, chapter thirty-three of this code and
112 other income sources as authorized by law, will be sufficient
113 to meet the normal cost of the fund and amortize any
114 actuarial deficiency over a period of not more than forty
115 years, beginning from July 1, 1991.

116 (2) No municipality may anticipate or use in any manner
117 any state funds accruing to the police or fireman's pension
118 fund to offset the minimum required funding amount for any
119 fiscal year.

120 (3) Notwithstanding any other provision of this section
121 or article to the contrary, each municipality shall contribute
122 annually to its policemen's pension and relief fund and its
123 firemen's pension and relief fund an amount which may not
124 be less than the normal cost, as determined by the annual
125 actuarial valuation report required by this section: *Provided,*
126 That in any fiscal year in which the actuarial valuation
127 report determines that a municipality's policemen's pension
128 and relief fund or firemen's pension and relief fund is
129 funded at one hundred and twenty-five percent or higher and
130 the Municipal Pensions Oversight Board's actuary provides
131 an actuarial recommendation that the normal cost does not
132 need to be paid by the employer for that fiscal year, that
133 municipality may elect to make no contribution for that
134 fiscal year. A municipality's election not to contribute the
135 normal cost in any year does not affect the payments
136 required by section nineteen of this article by members to a
137 pension and relief fund and these payments are to continue
138 as required by that section.

139 (4) The actuarial process, which includes the selection
140 of methods and assumptions, shall be reviewed by the
141 qualified actuary no less than once every five years.
142 Furthermore, the qualified actuary shall provide a report to
143 the oversight board with recommendations on any changes
144 to the actuarial process.

145 (5) The oversight board shall hire an independent
146 reviewing actuary to perform an actuarial audit of the work
147 performed by the qualified actuary no less than once every
148 seven years.

149 (d) For purposes of this section, the term "qualified
150 actuary" means only an actuary who is a member of the
151 Society of Actuaries or the American Academy of
152 Actuaries. The qualified actuary shall be designated a
153 fiduciary and shall discharge his or her duties with respect
154 to a fund solely in the interest of the members and members'
155 beneficiaries of that fund. In order for the standards of this
156 section to be met, the qualified actuary shall certify that the

157 actuarial valuation report is complete and accurate and that
158 in his or her opinion the technique and assumptions used are
159 reasonable and meet the requirements of this section.

160 (e)(1) Beginning January 1, 2010, municipalities may
161 choose the optional method of financing municipal
162 policemen's or firemen's pension and relief funds as
163 outlined in this subsection in lieu of the standard or
164 alternative methods as provided in subdivision (1),
165 subsection (c) of this section.

166 (2) For those municipalities choosing the optional method
167 of finance, the minimum standard for annual municipality
168 contributions to each policemen's or firemen's pension and
169 relief fund shall be an amount which, together with the
170 contributions from the members and allocable portion of the
171 Municipal Pensions and Protection Fund or Municipal
172 Pensions Security Fund created in section eighteen-b of this
173 article, and other income sources as authorized by law, will be
174 sufficient to meet the normal cost of the fund and amortize any
175 actuarial deficiency over a period of not more than forty years
176 beginning January 1, 2010: *Provided*, That those
177 municipalities using the standard method of financing in 2009
178 shall continue to amortize their actuarial deficiencies over a
179 period of not more than forty years beginning July 1, 1991. The
180 required contribution shall be determined each plan year as
181 described above by the actuary retained by the oversight board,
182 based on an actuarial valuation reflecting actual demographic
183 and investment experience and consistent with the Actuarial
184 Standards of Practice published by the Actuarial Standards
185 Board.

186 (3) A municipality choosing the optional method of
187 financing a policemen's or firemen's pension and relief fund
188 as provided in this subsection shall close the fund to police
189 officers or fire fighters newly hired on or after January 1, 2010,
190 and provide for those employees to be members of the
191 Municipal Police Officers and Firefighters Retirement System
192 as established in article twenty-two-a of this chapter.

193 (f)(1) Beginning April 1, 2011, any municipality using the
194 alternative method of financing may choose a conservation
195 method of financing its municipal policemen's and firemen's
196 pension and relief funds as outlined in this subsection, in lieu
197 of the alternative method as provided in subdivision (1),
198 subsection (c), or the optional method as provided in
199 subsection (e) of this section.

200 (2) For those municipalities choosing the conservation
201 method of finance, until a plan is funded at one hundred
202 percent, a part of each plan member's employee contribution
203 to the fund equal to one and one-half percent of the employee's
204 compensation, shall be deposited into and remain in the trust
205 and accumulate investment return. In addition, until a plan is
206 funded at one hundred percent, an actuarially determined
207 portion of the premium tax allocation to each fund provided in
208 accordance with section fourteen-d, article three, and section
209 seven, article twelve-c of chapter thirty-three of this code shall
210 also be deposited into and remain in the trust and accumulate
211 investment return. This variable percentage of premium tax
212 allocation to be retained in each fund shall be determined
213 annually by the qualified actuary provided pursuant to
214 subsection (a) of this section to be an amount required, along
215 with other assets of the fund as necessary to reach a funded
216 level of one hundred percent in thirty-five years from the time
217 of adoption of the conservation financing method. The variable
218 percentage shall be calculated using a prospective four-year
219 rolling average.

220 (3) Upon adoption of the conservation method of finance,
221 the municipality shall close its pension and relief funds to new
222 members and shall place police officers and firefighters newly
223 hired after adoption of the conservation method into the
224 Municipal Police Officers and Firefighters Retirement System
225 created in article twenty-two-a of this chapter.

226 (4) Upon adoption of the conservation method of
227 financing, the minimum standard for annual municipality
228 contributions to each policemen's or firemen's pension and
229 relief fund shall be an amount which, together with member

230 contributions and premium tax proceeds not required to be
231 retained in the trust pursuant to this subsection, and other
232 income sources as authorized by law, is sufficient to meet
233 the annual benefit and administrative expense payments
234 from the funds on a pay-as-you-go basis: *Provided*, That at
235 the time the actuarial report required by this section
236 indicates no actuarial deficiency in the municipal
237 policemen's or firemen's pension and relief fund, the
238 minimum annual required contribution of the municipality
239 may not be less than an amount which together with all
240 member contributions and other income authorized by law,
241 is sufficient to pay normal cost.

CHAPTER 158

**(Com. Sub. for H. B. 2601 - By Delegates Walters,
Folk, Anderson, Hamilton, O'Neal, E. Evans and
Pethtel)**
[By Request of the Municipal Pensions Oversight Board]

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §8-22-27a and §8-22-27b, all relating to administration of municipal pensions; establishing procedures to correct errors in the administration of municipal pensions; making the act of fraud in relation to a record of a municipal pension a misdemeanor; and providing for 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 two new sections, designated §8-22-27a and §8-22-27b, all to read as follows:

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

**§8-22-27a. Correction of errors; underpayments;
overpayments.**

1 (a) *General rule.* — Upon learning of errors, the
2 municipal policemen's pension and relief fund board of
3 trustees or the municipal firemen's pension and relief fund
4 board of trustees shall correct errors in the plan in a timely
5 manner whether the individual, municipality or board of
6 trustees was at fault for the error with the intent of placing
7 the affected individual, municipality and pension board of
8 trustees in the position each would have been in had the
9 error not occurred. Should the municipal policemen's or
10 firemen's pension and relief fund board of trustees fail to
11 correct discovered errors, the Municipal Pensions Oversight
12 Board shall have the authority to order the pension fund
13 board of trustees to correct such errors. Any order issued
14 by the Municipal Pensions Oversight Board shall be
15 enforceable by an action at law.

16 (b) *Underpayments to the plan.* — Any error resulting
17 in an underpayment to the plan may be corrected by the
18 member or retirant remitting the required employee
19 contribution or underpayment and the municipality
20 remitting the required municipality contribution or
21 underpayment. The rate of interest applicable to employer
22 error payments in a Municipal Policemen's or Municipal
23 Firemen's Pension and Relief Fund shall be the actuarial
24 interest rate assumption as approved by the Municipal
25 Pensions Oversight Board for completing the Actuarial
26 Valuation for the plan year immediately preceding the first
27 day of the plan year in which the employer error payment is
28 made, compounded per annum. Any accumulating interest
29 owed on the employee and employer contributions or

30 underpayments resulting from an employer error shall be
31 the responsibility of the employer. The employer may remit
32 total payment and the employee reimburse the employer
33 through payroll deduction over a period equivalent to the
34 time period during which the employer error occurred. If the
35 correction of an error involving an underpayment to the plan
36 will result in the plan correcting an erroneous underpayment
37 from the plan, the correction of the underpayment from the
38 plan shall be made only after the board of trustees receives
39 full payment of all required employee and employer
40 contributions or underpayments, including interest.

41 (c) *Overpayments to the plan by an employee.* — When
42 mistaken or excess employee contributions or
43 overpayments have been made to the plan, the Municipal
44 Policemen's or Municipal Firemen's Pension and Relief
45 Fund board of trustees shall have sole authority for
46 determining the means of return, offset or credit to or for the
47 benefit of the individual making the mistaken or excess
48 employee contribution of the amounts, and may use any
49 means authorized or permitted under the provisions of
50 section 401(a), *et seq.* of the Internal Revenue Code and
51 guidance issued thereunder applicable to governmental
52 plans. Alternatively, in its full and complete discretion, the
53 Municipal Policemen's or Municipal Firemen's Pension
54 and Relief Fund board of trustees may require the
55 municipality employing the individual to pay the individual
56 the amounts as wages, with the board of trustees crediting
57 the employer with a corresponding amount to offset against
58 its future contributions to the plan. If the municipality has
59 no future liability for municipality contributions to the plan,
60 the board of trustees shall refund said amount directly to the
61 municipality: *Provided*, That the wages paid to the
62 individual shall not be considered compensation for any
63 purposes of this article. Earnings or interest shall not be
64 returned, offset, or credited under any of the means used by
65 the board of trustees for returning employee overpayments.

66 (d) *Overpayments from the plan.* — If any error results
67 in any member, retirant, beneficiary, entity or other
68 individual receiving from the plan more than he would have
69 been entitled to receive had the error not occurred the board
70 of trustees after learning of the error shall correct the error
71 in a timely manner. If correction of the error occurs after
72 annuity payments to a retirant or beneficiary have
73 commenced, the board of trustees shall prospectively adjust
74 the payment of the benefit to the correct amount. In addition,
75 the member, retirant, beneficiary, entity or other person who
76 received the overpayment from the plan shall repay the
77 amount of any overpayment to the municipal policemen's
78 pension fund or municipal firemen's pension fund in any
79 manner permitted by the board of trustees of that fund.
80 Interest shall not accumulate on any corrective payment
81 made to the plan pursuant to this subsection.

82 (e) *Underpayments from the plan.* — If any error results
83 in any member, retirant, beneficiary, entity or other
84 individual receiving from the plan less than he would have
85 been entitled to receive had the error not occurred, the board
86 of trustees, upon learning of the error, shall correct the error
87 in a timely manner. If correction of the error occurs after
88 annuity payments to a retirant or beneficiary have
89 commenced, the board of trustees shall prospectively adjust
90 the payment of the benefit to the correct amount. In addition,
91 the board of trustees shall pay the amount of such
92 underpayment to the member, retirant, beneficiary or other
93 individual in a lump sum. Interest shall not be paid on any
94 corrective payment made by the municipal policemen's
95 pension fund or municipal firemen's pension fund pursuant
96 to this subsection.

§8-22-27b. Fraud; penalties; and repayment.

1 Any person who knowingly makes any false statement
2 or who falsifies or permits to be falsified any record of a
3 municipal policemen's or municipal firemen's pension and
4 relief fund in any attempt to defraud that system is guilty of
5 a misdemeanor and, upon conviction thereof, shall be fined

6 not more than \$1,000 or confined in jail not more than one
7 year, or both fined and confined. Any increased benefit
8 received by any person as a result of the falsification or
9 fraud shall be returned to the fund on demand by the board
10 of trustees or by demand of the Municipal Pensions
11 Oversight Board.

CHAPTER 159

(S. B. 392 - By Senator Gaunch)

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §8-22A-2, §8-22A-17 and §8-22A-18 of the Code of West Virginia, 1931, as amended, all relating to the Municipal Police Officers and Firefighters Retirement System; defining the term “vested”; clarifying factors determining duty/nonduty disability payouts; and requiring ten or more years of contributory service as a municipal police officer or municipal firefighter for a member to be eligible to receive benefits for nonduty disability.

Be it enacted by the Legislature of West Virginia:

That §8-22A-2, §8-22A-17 and §8-22A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-2. Definitions.

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

4 (a) “Accrued benefit” means on behalf of any member
5 two and six-tenths percent per year of the member’s final
6 average salary for the first twenty years of credited service.
7 Additionally, two percent per year for twenty-one through
8 twenty-five years and one percent per year for twenty-six
9 through thirty years will be credited with a maximum
10 benefit of sixty-seven percent of a member’s final average
11 salary. A member’s accrued benefit may not exceed the
12 limits of Section 415 of the Internal Revenue Code and is
13 subject to the provisions of section ten of this article.

14 (b) “Accumulated contributions” means the sum of all
15 retirement contributions deducted from the compensation of
16 a member, or paid on his or her behalf as a result of covered
17 employment, together with regular interest on the deducted
18 amounts.

19 (c) “Active military duty” means full-time duty in the
20 active military service of the United States Army, Navy, Air
21 Force, Coast Guard or Marine Corps. The term does not
22 include regularly required training or other duty performed
23 by a member of a reserve component or National Guard
24 unless the member can substantiate that he or she was called
25 into the full-time active military service of the United States
26 and has received no compensation during the period of that
27 duty from any board or employer other than the armed
28 forces.

29 (d) “Actuarial equivalent” means a benefit of equal
30 value computed on the basis of the mortality table and
31 interest rates as set and adopted by the board in accordance
32 with the provisions of this article: *Provided*, That when used
33 in the context of compliance with the federal maximum
34 benefit requirements of Section 415 of the Internal Revenue
35 Code, “actuarial equivalent” shall be computed using the

36 mortality tables and interest rates required to comply with
37 those requirements.

38 (e) “Annual compensation” means the wages paid to
39 the member during covered employment within the
40 meaning of Section 3401(a) of the Internal Revenue Code,
41 but determined without regard to any rules that limit the
42 remuneration included in wages based on the nature or
43 location of employment or services performed during the
44 plan year plus amounts excluded under Section 414(h)(2) of
45 the Internal Revenue Code and less reimbursements or other
46 expense allowances, cash or noncash fringe benefits, or
47 both, deferred compensation and welfare benefits. Annual
48 compensation for determining benefits during any
49 determination period may not exceed the maximum
50 compensation allowed as adjusted for cost-of-living in
51 accordance with section seven, article ten-d, chapter five of
52 this code and Section 401(a) (17) of the Internal Revenue
53 Code.

54 (f) “Annual leave service” means accrued annual
55 leave.

56 (g) “Annuity starting date” means the first day of the
57 month for which an annuity is payable after submission of a
58 retirement application or the required beginning date, if
59 earlier. For purposes of this subsection, if retirement income
60 payments commence after the normal retirement age,
61 “retirement” means the first day of the month following or
62 coincident with the latter of the last day the member worked
63 in covered employment or the member’s normal retirement
64 age and after completing proper written application for
65 retirement on an application supplied by the board.

66 (h) “Board” means the Consolidated Public
67 Retirement Board.

68 (i) “Covered employment” means either: (1)
69 Employment as a full-time municipal police officer or
70 firefighter and the active performance of the duties required

71 of that employment; or (2) the period of time during which
72 active duties are not performed but disability benefits are
73 received under this article; or (3) concurrent employment by
74 a municipal police officer or firefighter in a job or jobs in
75 addition to his or her employment as a municipal police
76 officer or firefighter in this plan where the secondary
77 employment requires the police officer or firefighter to be a
78 member of another retirement system which is administered
79 by the Consolidated Public Retirement Board pursuant to
80 this code: *Provided*, That the police officer or firefighter
81 contributes to the fund created in this article the amount
82 specified as the member's contribution in section eight of
83 this article.

84 (j) "Credited service" means the sum of a member's
85 years of service, active military duty and disability service.

86 (k) "Dependent child" means either: (1) An unmarried
87 person under age eighteen who is: (A) A natural child of the
88 member; (B) a legally adopted child of the member; (C) a
89 child who at the time of the member's death was living with
90 the member while the member was an adopting parent
91 during any period of probation; or (D) a stepchild of the
92 member residing in the member's household at the time of
93 the member's death; or (2) Any unmarried child under age
94 twenty-three: (A) Who is enrolled as a full-time student in
95 an accredited college or university; (B) who was claimed as
96 a dependent by the member for federal income tax purposes
97 at the time of the member's death; and (C) whose
98 relationship with the member is described in paragraph (A),
99 (B) or (C), subdivision (1) of this subsection.

100 (l) "Dependent parent" means the father or mother of
101 the member who was claimed as a dependent by the member
102 for federal income tax purposes at the time of the member's
103 death.

104 (m) "Disability service" means service credit received
105 by a member, expressed in whole years, fractions thereof,
106 or both, equal to one half of the whole years, fractions

107 thereof, or both, during which time a member receives
108 disability benefits under this article.

109 (n) "Effective date" means January 1, 2010.

110 (o) "Final average salary" means the average of the
111 highest annual compensation received for covered
112 employment by the member during any five consecutive
113 plan years within the member's last ten years of service
114 while employed, prior to any disability payment. If the
115 member did not have annual compensation for the five full
116 plan years preceding the member's attainment of normal
117 retirement age and during that period the member received
118 disability benefits under this article, then "final average
119 salary" means the average of the monthly compensation
120 which the member was receiving in the plan year prior to
121 the initial disability. "Final average salary" does not include
122 any lump sum payment for unused, accrued leave of any
123 kind or character.

124 (p) "Full-time employment" means permanent
125 employment of an employee by a participating municipality
126 in a position which normally requires twelve months per
127 year service and requires at least one thousand forty hours
128 per year service in that position.

129 (q) "Fund" means the West Virginia Municipal Police
130 Officers and Firefighters Retirement Fund created by this
131 article.

132 (r) "Hour of service" means: (1) Each hour for which
133 a member is paid or entitled to payment for covered
134 employment during which time active duties are performed.
135 These hours shall be credited to the member for the plan
136 year in which the duties are performed; and (2) each hour
137 for which a member is paid or entitled to payment for
138 covered employment during a plan year but where no duties
139 are performed due to vacation, holiday, illness, incapacity
140 including disability, layoff, jury duty, military duty, leave
141 of absence or any combination thereof and without regard

142 to whether the employment relationship has terminated.
143 Hours under this subdivision shall be calculated and
144 credited pursuant to West Virginia Division of Labor rules.
145 A member will not be credited with any hours of service for
146 any period of time he or she is receiving benefits under
147 section seventeen or eighteen of this article; and (3) each
148 hour for which back pay is either awarded or agreed to be
149 paid by the employing municipality, irrespective of
150 mitigation of damages. The same hours of service shall not
151 be credited both under subdivision (1) or (2) of this
152 subsection and under this subdivision. Hours under this
153 paragraph shall be credited to the member for the plan year
154 or years to which the award or agreement pertains, rather
155 than the plan year in which the award, agreement or
156 payment is made.

157 (s) “Member” means, except as provided in sections
158 thirty-two or thirty-three of this article, a person hired as a
159 municipal police officer or municipal firefighter, as defined
160 in this section, by a participating municipal employer on or
161 after January 1, 2010. A member shall remain a member
162 until the benefits to which he or she is entitled under this
163 article are paid or forfeited.

164 (t) “Monthly salary” means the W-2 reportable
165 compensation received by a member during the month.

166 (u) “Municipality” has the meaning ascribed to it in
167 this code.

168 (v)(1) “Municipal police officer” means an individual
169 employed as a member of a paid police department by a
170 West Virginia municipality or municipal subdivision which
171 has established and maintains a municipal policemen’s
172 pension and relief fund, and who is not a member of, and
173 not eligible for membership in, a municipal policemen’s
174 pension and relief fund as provided in section sixteen,
175 article twenty-two of this chapter: *Provided*, That municipal
176 police officer also means an individual employed as a
177 member of a paid police department by a West Virginia

178 municipality or municipal subdivision which is authorized
179 to elect to participate in the plan pursuant to section thirty-
180 three of this article. Paid police department does not mean a
181 department whose employees are paid nominal salaries or
182 wages or are paid only for services actually rendered on an
183 hourly basis.

184 (2) “Municipal firefighter” means an individual
185 employed as a member of a paid fire department by a West
186 Virginia municipality or municipal subdivision which has
187 established and maintains a municipal firemen’s pension
188 and relief fund, and who is not a member of, and not eligible
189 for membership in, a municipal firemen’s pension and relief
190 fund as provided in section sixteen, article twenty-two of
191 this chapter: *Provided*, That municipal firefighter also
192 means an individual employed as a member of a paid fire
193 department by a West Virginia municipality or municipal
194 subdivision which is authorized to elect to participate in the
195 plan pursuant to section thirty-three of this article. Paid fire
196 department does not mean a department whose employees
197 are paid nominal salaries or wages or are paid only for
198 services actually rendered on an hourly basis.

199 (w) “Municipal subdivision” means any separate
200 corporation or instrumentality established by one or more
201 municipalities, as permitted by law; and any public
202 corporation charged by law with the performance of a
203 governmental function and whose jurisdiction is
204 coextensive with one or more municipalities.

205 (x) “Normal form” means a monthly annuity which is
206 one twelfth of the amount of the member’s accrued benefit
207 which is payable for the member’s life. If the member dies
208 before the sum of the payments he or she receives equals his
209 or her accumulated contributions on the annuity starting
210 date, the named beneficiary shall receive in one lump sum
211 the difference between the accumulated contributions at the
212 annuity starting date and the total of the retirement income
213 payments made to the member.

214 (y) “Normal retirement age” means the first to occur
215 of the following: (1) Attainment of age fifty years and the
216 completion of twenty or more years of regular contributory
217 service; (2) while still in covered employment, attainment
218 of at least age fifty years and when the sum of current age
219 plus regular contributory service equals or exceeds seventy
220 years; (3) while still in covered employment, attainment of
221 at least age sixty years and completion of ten years of
222 regular contributory service; or (4) attainment of age sixty-
223 two years and completion of five or more years of regular
224 contributory service.

225 (z) “Plan” means the West Virginia Municipal Police
226 Officers and Firefighters Retirement System established by
227 this article.

228 (aa) “Plan year” means the twelve-month period
229 commencing on January 1 of any designated year and
230 ending the following December 31.

231 (bb) “Qualified public safety employee” means any
232 employee of a participating state or political subdivision
233 who provides police protection, firefighting services or
234 emergency medical services for any area within the
235 jurisdiction of the state or political subdivision, or such
236 other meaning given to the term by Section 72(t) (10) (B) of
237 the Internal Revenue Code or by Treasury Regulation
238 §1.401(a)-1(b) (2) (v) as they may be amended from time to
239 time.

240 (cc) “Regular contributory service” means a member’s
241 credited service excluding active military duty, disability
242 service and accrued annual and sick leave service.

243 (dd) “Regular interest” means the rate or rates of
244 interest per annum, compounded annually, as the board
245 adopts in accordance with the provisions of this article

246 (ee) “Required beginning date” means April 1 of the
247 calendar year following the later of: (1) The calendar year

248 in which the member attains age seventy and one-half; or
249 (2) the calendar year in which he or she retires or otherwise
250 separates from covered employment.

251 (ff) "Retirement income payments" means the
252 monthly retirement income payments payable under the
253 plan.

254 (gg) "Spouse" means the person to whom the member
255 is legally married on the annuity starting date.

256 (hh) "Surviving spouse" means the person to whom
257 the member was legally married at the time of the member's
258 death and who survived the member.

259 (ii) "Totally disabled" means a member's inability to
260 engage in substantial gainful activity by reason of any
261 medically determined physical or mental impairment that
262 can be expected to result in death or that has lasted or can
263 be expected to last for a continuous period of not less than
264 twelve months. For purposes of this subsection: (1) A
265 member is totally disabled only if his or her physical or
266 mental impairment or impairments is so severe that he or
267 she is not only unable to perform his or her previous work
268 as a police officer or firefighter but also cannot, considering
269 his or her age, education and work experience, engage in
270 any other kind of substantial gainful employment which
271 exists in the state regardless of whether: (A) The work exists
272 in the immediate area in which the member lives; (B) a
273 specific job vacancy exists; or (C) the member would be
274 hired if he or she applied for work. For purposes of this
275 article, substantial gainful employment is the same
276 definition as used by the United States Social Security
277 Administration; and (2) "Physical or mental impairment" is
278 an impairment that results from an anatomical,
279 physiological or psychological abnormality that is
280 demonstrated by medically accepted clinical and laboratory
281 diagnostic techniques. The board may require submission of
282 a member's annual tax return for purposes of monitoring the
283 earnings limitation.

284 (jj) “Vested” means eligible for retirement income
 285 payments after completion of five or more years of regular
 286 contributory service.

287 (kk) “Year of service” means a member shall, except
 288 in his or her first and last years of covered employment, be
 289 credited with years of service credit based on the hours of
 290 service performed as covered employment and credited to
 291 the member during the plan year based on the following
 292 schedule:

293	Hours of Service	Year of Service Credited
294	Less than 500.....	0
295	500 to 999.....	1/3
296	1,000 to 1,499.....	2/3
297	1,500 or more.....	1

298 During a member’s first and last years of covered
 299 employment, the member shall be credited with one twelfth
 300 of a year of service for each month during the plan year in
 301 which the member is credited with an hour of service for
 302 which contributions were received by the fund. A member
 303 is not entitled to credit for years of service for any time
 304 period during which he or she received disability payments
 305 under section seventeen or eighteen of this article.

**§8-22A-17. Awards and benefits for disability — duty related;
 exception during early period.**

1 (a) Except as provided in subsection (a), section nine of
 2 this article, any member who after the effective date of this
 3 article and during covered employment: (1) Has been or
 4 becomes totally disabled by injury, illness or disease; and (2)
 5 the disability is a result of an occupational risk or hazard
 6 inherent in or peculiar to the services required of members; or
 7 (3) the disability was incurred while performing police officer
 8 or firefighter functions during either scheduled work hours or
 9 at any other time; and (4) in the opinion of two physicians after

10 medical examination, at least one of whom shall be named by
11 the board, the member is by reason of the disability not only
12 unable to perform his or her previous work as a police officer
13 or firefighter but also cannot, considering his or her age,
14 education and work experience, engage in any other kind of
15 substantial gainful employment which exists in the state
16 regardless of whether: (A) The work exists in the immediate
17 area in which the member lives; (B) a specific job vacancy
18 exists; or (C) the member would be hired if he or she applied
19 for work, is entitled to receive and shall be paid from the fund
20 in monthly installments during the lifetime of the member or,
21 if sooner, until the member attains normal retirement age or
22 until the disability sooner terminates, the compensation under
23 this section. For purposes of this article, substantial gainful
24 employment is the same definition as used by the United States
25 Social Security Administration.

26 (b) If the member is totally disabled, the member shall
27 receive ninety percent of his or her average monthly
28 compensation for months in which full compensation was
29 received for the twelve-month contributory period
30 preceding the member's disability or the shorter period if
31 the member has not worked twelve months.

32 (c) If the member remains totally disabled until attaining
33 sixty-five years of age, the member shall then receive the
34 retirement benefit provided in sections fourteen and fifteen
35 of this article.

§8-22A-18. Awards and benefits for disability — due to other causes; exception during early period.

1 (a) Except as provided in subsection (a), section nine of
2 this article, any municipal police officer or municipal
3 firefighter with ten or more years of contributory service
4 who, after the effective date of this article and during covered
5 employment: (1) Has been or becomes totally disabled from
6 any cause other than those set forth in section seventeen of
7 this article and not due to vicious habits, intemperance or
8 willful misconduct on his or her part; and (2) in the opinion
9 of two physicians after medical examination, at least one of
10 whom shall be named by the board, he or she is by reason of

11 the disability not only unable to perform his or her previous
12 work as a police officer or firefighter but also cannot,
13 considering his or her age, education and work experience,
14 engage in any other kind of substantial gainful employment
15 which exists in the state regardless of whether: (A) The work
16 exists in the immediate area in which the member lives; (B)
17 a specific job vacancy exists; or (C) the member would be
18 hired if he or she applied for work, is entitled to receive and
19 shall be paid from the fund in monthly installments during
20 the lifetime of the member or, if sooner, until the member
21 attains normal retirement age or until the disability sooner
22 terminates, the compensation set forth in, either subsection
23 (b) or (c) of this section.

24 (b) If the member is totally disabled, he or she shall
25 receive sixty-six and two-thirds percent of his or her average
26 monthly compensation for months in which full
27 compensation was received for the twelve-month
28 contributory period preceding the disability.

29 (c) If the member remains totally disabled until
30 attaining sixty years of age, then the member shall receive
31 the retirement benefit provided in sections fourteen and
32 fifteen of this article.



CHAPTER 160

**(Com. Sub. for H. B. 2709 - By Delegates Nelson,
Lane, Byrd, Walters, N. Foster, Rowe, Robinson,
White, Pushkin, Capito and Mr. Speaker (Mr.
Armstead))**

[Passed April 6, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §8-38-9 of the Code of West Virginia, 1931, as amended, relating to the Legislature's

authorizing the City of South Charleston to levy a special district excise tax for the benefit of the South Charleston Park Place Economic Opportunity Development District.

Be it enacted by the Legislature of West Virginia:

That §8-38-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§8-38-9. Authorization to levy special district excise tax.

1 (a) *General.* — Municipalities have no inherent authority to
2 levy taxes and have only that authority expressly granted to
3 them by the Legislature. The Legislature is specifically
4 extended, and intends by this article to exercise certain relevant
5 powers expressed in section six-a, article X of the Constitution
6 of this state as follows: (1) The Legislature may appropriate state
7 funds for use in matching or maximizing grants-in-aid for public
8 purposes from the United States or any department, bureau,
9 commission or agency thereof, or any other source, to any
10 county, municipality or other political subdivision of the state,
11 under such circumstances and subject to such terms, conditions
12 and restrictions as the Legislature may prescribe by law; and (2)
13 the Legislature may impose a state tax or taxes or dedicate a state
14 tax or taxes or any portion thereof for the benefit of and use by
15 counties, municipalities or other political subdivisions of the
16 state for public purposes, the proceeds of any such imposed or
17 dedicated tax or taxes or portion thereof to be distributed to such
18 counties, municipalities or other political subdivisions of the
19 state under such circumstances and subject to such terms,
20 conditions and restrictions as the Legislature may prescribe.

21 Because a special district excise tax would have the effect
22 of diverting, for a specified period of years, tax dollars which
23 to the extent, if any, are not essentially incremental to tax
24 dollars currently paid into the General Revenue Fund of the
25 state, the Legislature finds that in order to substantially ensure
26 that such special district excise taxes will not adversely impact

27 the current level of the General Revenue Fund of the state, it is
28 necessary for the Legislature to separately consider and act
29 upon each and every economic development district which is
30 proposed, including the unique characteristics of location,
31 current condition and activity of and within the area included
32 in such proposed economic opportunity development district
33 and that for such reasons a statute more general in ultimate
34 application is not feasible for accomplishment of the intention
35 and purpose of the Legislature in enacting this article.
36 Therefore, no economic opportunity development district
37 excise tax may be levied by a municipality until after the
38 Legislature expressly authorizes the municipality to levy a
39 special district excise tax on sales of tangible personal property
40 and services made within district boundaries approved by the
41 Legislature.

42 (b) *Authorizations.* — The Legislature authorizes the
43 following municipalities to levy special district excise taxes
44 on sales of tangible personal property and services made
45 from business locations in the following economic
46 opportunity development districts.

47 The City of South Charleston may levy a special district
48 excise tax for the benefit of the South Charleston Park Place
49 Economic Opportunity Development District which comprises
50 up to two thousand one hundred contiguous acres of land.

CHAPTER 161

(Com. Sub. for H. B. 3096 - By Delegate Espinosa)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to repeal §8-16-19 of the Code of West Virginia, 1931,
as amended; to amend and reenact §16-13A-8 and §16-13A-9

of said code; to amend and reenact §24-1-1b of said code; to amend and reenact §24-2-1, §24-2-3, §24-2-4b and §24-2-11 of said code, all relating to the operation and regulation of utilities and services generally; modifying procedures and requirements for the operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state; eliminating reference to appeals to the Public Service Commission from actions of municipal boards that are not subject to the jurisdiction of the Public Service Commission; prohibiting Public Service Commission jurisdiction of Internet protocol-enabled service and voice-over Internet protocol-enabled service; defining the terms “Internet protocol-enabled service” and “Voice-over Internet protocol service”; limiting Public Service Commission jurisdiction of certain telephone company transactions; relating to the authority of county commissions to modify proposed rates for certain water and sewer utilities and providing for complaints to be filed with the circuit courts pertaining to rates and charges enacted as proposed, modified or rejected by the county commission; eliminating Public Service Commission authority regarding stormwater utilities; providing time limits for the filing of requests for investigations pertaining to political subdivisions providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more; clarifying the authority of the Public Service Commission to resolve complaints of customers of water and sewer utilities operated by a political subdivision of the state having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more; clarifying the jurisdiction of the Public Service Commission relating to rates for municipal water and/or sewer utilities having less than four thousand five hundred customers or annual combined gross revenues of less than \$3 million; revising the notice and procedure provisions for construction projects for political subdivisions of this state providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more; and

providing procedures for a public service district or a customer satisfying certain requirements to file a complaint in circuit court to contest the action or inaction of a county commission regarding rate proposals and construction projects that are not in the ordinary course of business.

Be it enacted by the Legislature of West Virginia:

That §8-16-19 of the Code of West Virginia, 1931, as amended, be repealed; that §16-13A-8 and §16-13A-9 of said code be amended and reenacted; that §24-1-1b of said code be amended and reenacted; that §24-2-1, §24-2-3, §24-2-4b and §24-2-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

1 The board may acquire any publicly or privately owned
2 public service properties located within the boundaries of
3 the district regardless of whether or not all or any part of
4 such properties are located within the corporate limits of any
5 city, incorporated town or other municipal corporation
6 included within the district and may purchase and acquire
7 all rights and franchises and any and all property within or
8 outside the district necessary or incidental to the purpose of
9 the district.

10 The board may construct any public service properties
11 within or outside the district necessary or incidental to its
12 purposes and each such district may acquire, construct,
13 maintain and operate any such public service properties
14 within the corporate limits of any city, incorporated town or
15 other municipal corporation included within the district or
16 in any unincorporated territory within ten miles of the
17 territorial boundaries of the district: *Provided*, That if any
18 incorporated city, town or other municipal corporation

19 included within the district owns and operates either water
20 facilities, sewer facilities, stormwater facilities or gas
21 facilities or all of these, then the district may not acquire,
22 construct, establish, improve or extend any public service
23 properties of the same kind within such city, incorporated
24 towns or other municipal corporations or the adjacent
25 unincorporated territory served by such cities, incorporated
26 towns or other municipal corporations, except upon, the
27 consent of such cities, incorporated towns or other
28 municipal corporations and in conformity and compliance
29 with the rights of the holders of any revenue bonds or
30 obligations theretofore issued by such cities, incorporated
31 towns or other municipal corporations then outstanding and
32 in accordance with the ordinance, resolution or other
33 proceedings which authorize the issuance of such revenue
34 bonds or obligations.

35 Whenever such district has constructed, acquired or
36 established water facilities, sewer facilities, a stormwater
37 system, stormwater management program or gas facilities
38 for water, sewer, stormwater or gas services within any city,
39 incorporated town or other municipal corporation included
40 within a district, then such city, incorporated town or other
41 municipal corporation may not thereafter construct, acquire
42 or establish any facilities of the same kind within such city,
43 incorporated town or other municipal corporation without
44 the consent of such district.

45 For the purpose of acquiring any public service
46 properties or lands, rights or easements deemed necessary
47 or incidental for the purposes of the district, each such
48 district has the right of eminent domain to the same extent
49 and to be exercised in the same manner as now or
50 hereafter provided by law for such right of eminent
51 domain by cities, incorporated towns and other municipal
52 corporations: *Provided*, That the power of eminent domain
53 provided in this section does not extend to highways, road
54 and drainage easements, or stormwater facilities
55 constructed, owned or operated by the West Virginia

56 division of highways without the express agreement of the
57 commissioner of highways: *Provided, however,* That such
58 board may not acquire all or any substantial part of a
59 privately owned waterworks system unless and until
60 authorized so to do by the public service commission of
61 West Virginia, and that this section shall not be construed
62 to authorize any district to acquire through condemnation
63 proceedings either in whole or substantial part an existing
64 privately owned waterworks plant or system or gas facilities
65 located in or furnishing water or gas service within such
66 district or extensions made or to be made by it in territory
67 contiguous to such existing plant or system, nor may any
68 such board construct or extend its public service properties
69 to supply its services into areas served by or in competition
70 with existing waterworks or gas facilities or extensions
71 made or to be made in territory contiguous to such existing
72 plant or system by the owner thereof.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

1 (a) (1) The board may make, enact and enforce all
2 needful rules in connection with the acquisition,
3 construction, improvement, extension, management,
4 maintenance, operation, care, protection and the use of any
5 public service properties owned or controlled by the district.
6 The board shall establish, in accordance with this article,
7 rates, fees and charges for the services and facilities it
8 furnishes, which shall be sufficient at all times,
9 notwithstanding the provisions of any other law or laws, to
10 pay the cost of maintenance, operation and depreciation of
11 the public service properties and principal of and interest on
12 all bonds issued, other obligations incurred under the
13 provisions of this article and all reserve or other payments
14 provided for in the proceedings which authorized the
15 issuance of any bonds under this article. The schedule of the
16 rates, fees and charges may be based upon:

17 (A) The consumption of water or gas on premises
18 connected with the facilities, taking into consideration
19 domestic, commercial, industrial and public use of water and
20 gas;

21 (B) The number and kind of fixtures connected with the
22 facilities located on the various premises;

23 (C) The number of persons served by the facilities;

24 (D) Any combination of paragraphs (A), (B) and (C) of
25 this subdivision; or

26 (E) Any other basis or classification which the board may
27 determine to be fair and reasonable, taking into consideration
28 the location of the premises served and the nature and extent
29 of the services and facilities furnished. However, no rates, fees
30 or charges for stormwater services may be assessed against
31 highways, road and drainage easements or stormwater
32 facilities constructed, owned or operated by the West Virginia
33 Division of Highways.

34 (2) The board of a public service district with at least four
35 thousand five hundred customers and annual combined gross
36 revenue of \$3 million or more from its separate or combined
37 water and sewer services may make, enact and enforce all
38 needful rules in connection with the enactment or amendment
39 of rates, fees and charges of the district. At a minimum, these
40 rules shall provide for:

41 (A) Adequate prior public notice of the contemplated rates,
42 fees and charges by causing a notice of intent to effect such a
43 change to be provided to the customers of the district for the
44 month immediately preceding the month in which the
45 contemplated change is to be considered at a hearing by the
46 board. Such notice shall include a statement that a change in
47 rates, fees and charges is being considered, the time, date and
48 location of the hearing of the board at which the change will
49 be considered and that the proposed rates, fees and charges are
50 on file at the office of the District for review during regular

51 business hours. Such notice shall be printed on, or mailed with,
52 the monthly billing statement, or provided in a separate
53 mailing.

54 (B) Adequate prior public notice of the contemplated rates,
55 fees and charges by causing to be published, after the first
56 reading and approval of a resolution of the board considering
57 such revised rates, fees and charges but not less than one week
58 prior to the public hearing of the board on such resolution, as
59 a Class I legal advertisement, of the proposed action, in
60 compliance with the provisions of article three, chapter fifty-
61 nine of the code. The publication area for publication shall be
62 all territory served by the district. If the district provides
63 service in more than one county, publication shall be made in
64 a newspaper of general circulation in each county that the
65 district provides service.

66 (C) The public notice of the proposed action shall
67 summarize the current rates, fees and charges and the proposed
68 changes to said rates, fees and charges; the date, time and place
69 of; the public hearing on the resolution approving such revised
70 rates, fees and charges and the place or places within the
71 district where the proposed resolution approving the revised
72 rates, fees and charges may be inspected by the public. A
73 reasonable number of copies of the proposed resolution shall
74 be kept at the place or places and be made available for public
75 inspection. The notice shall also advise that interested parties
76 may appear at the public hearing before the board and be heard
77 with respect to the proposed revised rates, fees and charges.

78 (D) The resolution proposing the revised rates, fees and
79 charges shall be read at two meetings of the board with at least
80 two weeks intervening between each meeting. The public
81 hearing may be conducted by the board prior to, or at, the
82 meeting at which the resolution is considered for adoption on
83 the second reading.

84 (E) Rates, fees and charges approved by resolution of the
85 board shall be forwarded in writing to the county commission
86 with the authority to appoint the members of the board. The

87 county commission shall publish notice of the proposed
88 revised rates, fees and charges by a Class I legal advertisement
89 in compliance with the provisions of article three, chapter fifty-
90 nine of the code. Within forty-five days of receipt of the
91 proposed rates, fees and charges, the county commission shall
92 take action to approve, modify, or reject the proposed rates,
93 fees and charges, in its sole discretion. If, after forty-five days,
94 the county commission has not taken final action to approve,
95 modify or reject the proposed rates, fees and charges, as
96 presented to the county commission, shall be effective with no
97 further action by the board or county commission. In any
98 event, this 45-day period shall be mandatory unless extended
99 by the official action of both the board proposing the rates, fees
100 and charges, and the appointing county commission.

101 (F) Enactment of the proposed or modified rates, fees and
102 charges shall follow an affirmative vote by the county
103 commission and shall be effective no sooner than forty-five
104 days following action. The 45-day waiting period may be
105 waived by public vote of the county commission only if the
106 commission finds and declares the district to be in financial
107 distress such that the 45-day waiting period would be
108 detrimental to the ability of the district to deliver continued and
109 compliant public services.

110 (G) The public service district, or a customer aggrieved by
111 the changed rates or charges who presents to the circuit court
112 a petition signed by at least 750 customers or twenty-five
113 percent of the customers served by the public service district,
114 whichever is fewer, when dissatisfied by the approval,
115 modification, or rejection by the county commission of the
116 proposed rates, fees and charges under the provisions of this
117 subdivision (2) may file a complaint regarding the rates, fees
118 and charges resulting from the action of, or failure to act by,
119 the county commission in the circuit court of the county in
120 which the county commission sits: *Provided*, That any
121 complaint or petition filed hereunder shall be filed within thirty
122 days of the county commission's final action approving,
123 modifying or rejecting such rates, fees and charges, or the

124 expiration of the forty-five day period from the receipt by the
125 county commission, in writing, of the rates, fees and charges
126 approved by resolution of the board, without final action by the
127 county commission to approve, modify or reject such rates,
128 fees and charges, and the circuit court shall resolve said
129 complaint: *Provided, however,* That the rates, fees and charges
130 so fixed by the county commission, or those adopted by the
131 district upon which the county commission failed to act, shall
132 remain in full force and effect, until set aside, altered or
133 amended by the circuit court in an order to be followed in the
134 future.

135 (3) Where water, sewer, stormwater or gas services, or any
136 combination thereof, are all furnished to any premises, the
137 schedule of charges may be billed as a single amount for the
138 aggregate of the charges. The board shall require all users of
139 services and facilities furnished by the district to designate on
140 every application for service whether the applicant is a tenant
141 or an owner of the premises to be served. If the applicant is a
142 tenant, he or she shall state the name and address of the owner
143 or owners of the premises to be served by the district.
144 Notwithstanding the provisions of section eight, article three,
145 chapter twenty-four of this code to the contrary, all new
146 applicants for service shall deposit the greater of a sum equal
147 to two twelfths of the average annual usage of the applicant's
148 specific customer class or \$50, with the district to secure the
149 payment of service rates, fees and charges in the event they
150 become delinquent as provided in this section. If a district
151 provides both water and sewer service, all new applicants for
152 service shall deposit the greater of a sum equal to two twelfths
153 of the average annual usage for water service or \$50 and the
154 greater of a sum equal to two twelfths of the average annual
155 usage for wastewater service of the applicant's specific
156 customer class or \$50. In any case where a deposit is forfeited
157 to pay service rates, fees and charges which were delinquent at
158 the time of disconnection or termination of service, no
159 reconnection or reinstatement of service may be made by the
160 district until another deposit equal to the greater of a sum equal
161 to two twelfths of the average usage for the applicant's specific

162 customer class or \$50 has been remitted to the district. After
163 twelve months of prompt payment history, the district shall
164 return the deposit to the customer or credit the customer's
165 account at a rate as the Public Service Commission may
166 prescribe: *Provided*, That where the customer is a tenant, the
167 district is not required to return the deposit until the time the
168 tenant discontinues service with the district. Whenever any
169 rates, fees, rentals or charges for services or facilities furnished
170 remain unpaid for a period of twenty days after the same
171 become due and payable, the user of the services and facilities
172 provided is delinquent and the user is liable at law until all
173 rates, fees and charges are fully paid. The board may, under
174 reasonable rules promulgated by the Public Service
175 Commission, shut off and discontinue water or gas services to
176 all delinquent users of either water or gas facilities, or both, ten
177 days after the water or gas services become delinquent:
178 *Provided, however*, That nothing contained within the rules of
179 the Public Service Commission shall be deemed to require any
180 agents or employees of the board to accept payment at the
181 customer's premises in lieu of discontinuing service for a
182 delinquent bill.

183 (b) In the event that any publicly or privately owned utility,
184 city, incorporated town, other municipal corporation or other
185 public service district included within the district owns and
186 operates separately water facilities, sewer facilities or
187 stormwater facilities and the district owns and operates another
188 kind of facility, either water or sewer, or both, as the case may
189 be, then the district and the publicly or privately owned utility,
190 city, incorporated town or other municipal corporation or other
191 public service district shall covenant and contract with each
192 other to shut off and discontinue the supplying of water service
193 for the nonpayment of sewer or stormwater service fees and
194 charges: *Provided*, That any contracts entered into by a public
195 service district pursuant to this section shall be submitted to the
196 Public Service Commission for approval. Any public service
197 district which provides water and sewer service, water and
198 stormwater service or water, sewer and stormwater service has
199 the right to terminate water service for delinquency in payment

200 of water, sewer or stormwater bills. Where one public service
201 district is providing sewer service and another public service
202 district or a municipality included within the boundaries of the
203 sewer or stormwater district is providing water service and the
204 district providing sewer or stormwater service experiences a
205 delinquency in payment, the district or the municipality
206 included within the boundaries of the sewer or stormwater
207 district that is providing water service, upon the request of the
208 district providing sewer or stormwater service to the
209 delinquent account, shall terminate its water service to the
210 customer having the delinquent sewer or stormwater account:
211 *Provided, however,* That any termination of water service must
212 comply with all rules and orders of the Public Service
213 Commission: *Provided further,* That nothing contained within
214 the rules of the Public Service Commission shall be deemed to
215 require any agents or employees of the public service districts
216 to accept payment at the customer's premises in lieu of
217 discontinuing service for a delinquent bill.

218 (c) Any district furnishing sewer facilities within the
219 district may require or may, by petition to the circuit court of
220 the county in which the property is located, compel or may
221 require the Division of Health to compel all owners, tenants or
222 occupants of any houses, dwellings and buildings located near
223 any sewer facilities where sewage will flow by gravity or be
224 transported by other methods approved by the Division of
225 Health, including, but not limited to, vacuum and pressure
226 systems, approved under the provisions of section nine, article
227 one, chapter sixteen of this code, from the houses, dwellings
228 or buildings into the sewer facilities, to connect with and use
229 the sewer facilities and to cease the use of all other means for
230 the collection, treatment and disposal of sewage and waste
231 matters from the houses, dwellings and buildings where there
232 is gravity flow or transportation by any other methods
233 approved by the Division of Health, including, but not limited
234 to, vacuum and pressure systems, approved under the
235 provisions of section nine, article one of this chapter and the
236 houses, dwellings and buildings can be adequately served by
237 the sewer facilities of the district and it is declared that the

238 mandatory use of the sewer facilities provided for in this
239 subsection is necessary and essential for the health and welfare
240 of the inhabitants and residents of the districts and of the state.
241 If the public service district requires the property owner to
242 connect with the sewer facilities even when sewage from
243 dwellings may not flow to the main line by gravity and the
244 property owner incurs costs for any changes in the existing
245 dwellings' exterior plumbing in order to connect to the main
246 sewer line, the public service district board shall authorize the
247 district to pay all reasonable costs for the changes in the
248 exterior plumbing, including, but not limited to, installation,
249 operation, maintenance and purchase of a pump or any other
250 method approved by the Division of Health. Maintenance and
251 operation costs for the extra installation should be reflected in
252 the users charge for approval of the Public Service
253 Commission. The circuit court shall adjudicate the merits of
254 the petition by summary hearing to be held not later than thirty
255 days after service of petition to the appropriate owners, tenants
256 or occupants.

257 (d) Whenever any district has made available sewer
258 facilities to any owner, tenant or occupant of any house,
259 dwelling or building located near the sewer facility and the
260 engineer for the district has certified that the sewer facilities
261 are available to and are adequate to serve the owner, tenant or
262 occupant and sewage will flow by gravity or be transported by
263 other methods approved by the Division of Health from the
264 house, dwelling or building into the sewer facilities, the district
265 may charge, and the owner, tenant or occupant shall pay, the
266 rates and charges for services established under this article
267 only after thirty days' notice of the availability of the facilities
268 has been received by the owner, tenant or occupant. Rates and
269 charges for sewage services shall be based upon actual water
270 consumption or the average monthly water consumption based
271 upon the owner's, tenant's or occupant's specific customer
272 class.

273 (e) The owner, tenant or occupant of any real property may
274 be determined and declared to be served by a stormwater

275 system only after each of the following conditions is met: (1)
276 The district has been designated by the Environmental
277 Protection Agency as an entity to serve a West Virginia
278 Separate Storm Sewer System community, as defined in 40 C.
279 F. R. §122.26; (2) the district's authority has been properly
280 expanded to operate and maintain a stormwater system; (3) the
281 district has made available a stormwater system where
282 stormwater from the real property affects or drains into the
283 stormwater system; and (4) the real property is located in the
284 Municipal Separate Storm Sewer System's designated service
285 area. It is further hereby found, determined and declared that
286 the mandatory use of the stormwater system is necessary and
287 essential for the health and welfare of the inhabitants and
288 residents of the district and of the state. The district may charge
289 and the owner, tenant or occupant shall pay the rates, fees and
290 charges for stormwater services established under this article
291 only after thirty days' notice of the availability of the
292 stormwater system has been received by the owner. An entity
293 providing stormwater service shall provide a tenant a report of
294 the stormwater fee charged for the entire property and, if
295 appropriate, that portion of the fee to be assessed to the tenant.

296 (f) All delinquent fees, rates and charges of the district for
297 either water facilities, sewer facilities, gas facilities or
298 stormwater systems or stormwater management programs are
299 liens on the premises served of equal dignity, rank and priority
300 with the lien on the premises of state, county, school and
301 municipal taxes. Nothing contained within the rules of the
302 Public Service Commission shall be deemed to require any
303 agents or employees of the public service districts to accept
304 payment at the customer's premises in lieu of discontinuing
305 service for a delinquent bill. In addition to the other remedies
306 provided in this section, public service districts are granted a
307 deferral of filing fees or other fees and costs incidental to the
308 bringing and maintenance of an action in magistrate court for
309 the collection of delinquent water, sewer, stormwater or gas
310 bills. If the district collects the delinquent account, plus
311 reasonable costs, from its customer or other responsible party,
312 the district shall pay to the magistrate the normal filing fee and

313 reasonable costs which were previously deferred. In addition,
314 each public service district may exchange with other public
315 service districts a list of delinquent accounts: *Provided*, That
316 an owner of real property may not be held liable for the
317 delinquent rates or charges for services or facilities of a tenant,
318 nor may any lien attach to real property for the reason of
319 delinquent rates or charges for services or facilities of a tenant
320 of the real property unless the owner has contracted directly
321 with the public service district to purchase the services or
322 facilities.

323 (g) Anything in this section to the contrary
324 notwithstanding, any establishment, as defined in section
325 three, article eleven, chapter twenty-two of this code, now or
326 hereafter operating its own sewage disposal system pursuant
327 to a permit issued by the Department of Environmental
328 Protection, as prescribed by section eleven of said article, is
329 exempt from the provisions of this section.

330 (h) A public service district which has been designated by
331 the Environmental Protection Agency as an entity to serve a
332 West Virginia Separate Storm Sewer System community shall
333 prepare an annual report detailing the collection and
334 expenditure of rates, fees or charges and make it available for
335 public review at the place of business of the governing body
336 and the stormwater utility main office.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1b. Supplemental rule for reorganization.

1 The Public Service Commission shall, by general order,
2 create a division within its staff which shall, upon written
3 request of the governing body of a political subdivision that
4 operates a water and/or sewer utility, provide legal,
5 operational, engineering, financial, ratemaking and
6 accounting advice and assistance to water and/or sewer
7 utilities that are political subdivisions of the state and may

- 8 perform or participate in the studies required under section
9 one-b, article thirteen-a, chapter sixteen of this code.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

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

- 1 (a) The jurisdiction of the commission shall extend to
2 all public utilities in this state and shall include any utility
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by air,
5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly by
7 land, water or air; transportation of oil, gas or water by
8 pipeline; transportation of coal and its derivatives and all
9 mixtures and combinations thereof with other substances by
10 pipeline; sleeping car or parlor car services; transmission of
11 messages by telephone, telegraph or radio; generation and
12 transmission of electrical energy by hydroelectric or other
13 utilities for service to the public, whether directly or through
14 a distributing utility; supplying water, gas or electricity by
15 municipalities or others; sewer systems servicing twenty-five
16 or more persons or firms other than the owner of the sewer
17 systems: *Provided*, That if a public utility other than a political
18 subdivision intends to provide sewer service by an innovative,
19 alternative method, as defined by the federal Environmental
20 Protection Agency, the innovative, alternative method is a
21 public utility function and subject to the jurisdiction of the
22 Public Service Commission regardless of the number of
23 customers served by the innovative, alternative method; any
24 public service district created under the provisions of article
25 thirteen-a, chapter sixteen of this code, except that the Public
26 Service Commission will have no jurisdiction over the
27 provision of stormwater services by a public service district;

*NOTE: This section was also amended by S. B. 180 (Chapter 209),
which passed prior to this act.

28 toll bridges, wharves, ferries; solid waste facilities; and any
29 other public service: *Provided, however,* That natural gas
30 producers who provide natural gas service to not more than
31 twenty-five residential customers are exempt from the
32 jurisdiction of the commission with regard to the provisions of
33 such residential service: *Provided further,* That upon request
34 of any of the customers of such natural gas producers, the
35 commission may, upon good cause being shown, exercise such
36 authority as the commission may deem appropriate over the
37 operation, rates and charges of such producer and for such
38 length of time as the commission may consider to be proper.

39 (b) The jurisdiction of the commission over political
40 subdivisions of this state providing separate or combined
41 water and/or sewer services and having at least four
42 thousand five hundred customers and annual combined
43 gross revenues of \$3 million or more that are political
44 subdivisions of the state is limited to:

45 (1) General supervision of public utilities, as granted
46 and described in section five of this article;

47 (2) Regulation of measurements, practices, acts or
48 services, as granted and described in section seven of this
49 article;

50 (3) Regulation of a system of accounts to be kept by a
51 public utility that is a political subdivision of the state, as
52 granted and described in section eight of this article;

53 (4) Submission of information to the commission
54 regarding rates, tolls, charges or practices, as granted and
55 described in section nine of this article;

56 (5) Authority to subpoena witnesses, take testimony and
57 administer oaths to any witness in any proceeding before or
58 conducted by the commission, as granted and described in
59 section ten of this article; and

60 (6) Investigation and resolution of disputes between a
61 political subdivision of the state providing wholesale water

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

80 (7) Customers of water and sewer utilities operated by a
81 political subdivision of the state may bring formal or
82 informal complaints regarding the commission's exercise of
83 the powers enumerated in this section and the commission
84 shall resolve these complaints.

85 (8) In the event that a political subdivision has a
86 deficiency in either its bond revenue or bond reserve
87 accounts, or is otherwise in breach of a bond covenant, any
88 bond holder may petition the Public Service Commission
89 for such redress as will bring the accounts to current status
90 or otherwise resolve the breached covenant, and the
91 commission shall have jurisdiction to fully resolve the
92 alleged deficiency or breach.

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

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

99 (2) Said area can be provided with utility service by a
100 utility which operates in a state adjoining West Virginia;

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

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

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

112 (1) An owner or operator of an electric generating
113 facility located or to be located in this state that has been
114 designated as an exempt wholesale generator under
115 applicable federal law, or will be so designated prior to
116 commercial operation of the facility, and for which such
117 facility the owner or operator holds a certificate of public
118 convenience and necessity issued by the commission on or
119 before July 1, 2003, shall be subject to subsections (e), (f),
120 (g), (h), (i) and (j), section eleven-c of this article as if the
121 certificate of public convenience and necessity for such
122 facility were a siting certificate issued under said section
123 and shall not otherwise be subject to the jurisdiction of the
124 commission or to the provisions of this chapter with respect
125 to such facility except for the making or constructing of a
126 material modification thereof as provided in subdivision (5)
127 of this subsection.

128 (2) Any person, corporation or other entity that intends
129 to construct or construct and operate an electric generating

130 facility to be located in this state that has been designated as
131 an exempt wholesale generator under applicable federal
132 law, or will be so designated prior to commercial operation
133 of the facility, and for which facility the owner or operator
134 does not hold a certificate of public convenience and
135 necessity issued by the commission on or before July 1,
136 2003, shall, prior to commencement of construction of the
137 facility, obtain a siting certificate from the commission
138 pursuant to the provisions of section eleven-c of this article
139 in lieu of a certificate of public convenience and necessity
140 pursuant to the provisions of section eleven of this article.
141 An owner or operator of an electric generating facility as is
142 described in this subdivision for which a siting certificate
143 has been issued by the commission shall be subject to
144 subsections (e), (f), (g), (h), (i) and (j), section eleven-c of
145 this article and shall not otherwise be subject to the
146 jurisdiction of the commission or to the provisions of this
147 chapter with respect to such facility except for the making
148 or constructing of a material modification thereof as
149 provided in subdivision (5) of this subsection.

150 (3) An owner or operator of an electric generating
151 facility located in this state that had not been designated as
152 an exempt wholesale generator under applicable federal law
153 prior to commercial operation of the facility that generates
154 electric energy solely for sale at retail outside this state or
155 solely for sale at wholesale in accordance with any
156 applicable federal law that preempts state law or solely for
157 both such sales at retail and such sales at wholesale and that
158 had been constructed and had engaged in commercial
159 operation on or before July 1, 2003, shall not be subject to
160 the jurisdiction of the commission or to the provisions of
161 this chapter with respect to such facility, regardless of
162 whether such facility subsequent to its construction has been
163 or will be designated as an exempt wholesale generator
164 under applicable federal law: *Provided*, That such owner or
165 operator shall be subject to subdivision (5) of this subsection
166 if a material modification of such facility is made or
167 constructed.

168 (4) Any person, corporation or other entity that intends
169 to construct or construct and operate an electric generating
170 facility to be located in this state that has not been or will
171 not be designated as an exempt wholesale generator under
172 applicable federal law prior to commercial operation of the
173 facility that will generate electric energy solely for sale at
174 retail outside this state or solely for sale at wholesale in
175 accordance with any applicable federal law that preempts
176 state law or solely for both such sales at retail and such sales
177 at wholesale and that had not been constructed and had not
178 been engaged in commercial operation on or before July 1,
179 2003, shall, prior to commencement of construction of the
180 facility, obtain a siting certificate from the commission
181 pursuant to the provisions of section eleven-c of this article
182 in lieu of a certificate of public convenience and necessity
183 pursuant to the provisions of section eleven of this article.
184 An owner or operator of an electric generating facility as is
185 described in this subdivision for which a siting certificate
186 has been issued by the commission shall be subject to
187 subsections (e), (f), (g), (h), (i) and (j), section eleven-c of
188 this article and shall not otherwise be subject to the
189 jurisdiction of the commission or to the provisions of this
190 chapter with respect to such facility except for the making
191 or constructing of a material modification thereof as
192 provided in subdivision (5) of this subsection.

193 (5) An owner or operator of an electric generating
194 facility described in this subsection shall, before making or
195 constructing a material modification of the facility that is
196 not within the terms of any certificate of public convenience
197 and necessity or siting certificate previously issued for the
198 facility or an earlier material modification thereof, obtain a
199 siting certificate for the modification from the commission
200 pursuant to the provisions of section eleven-c of this article
201 in lieu of a certificate of public convenience and necessity
202 for the modification pursuant to the provisions of section
203 eleven of this article and, except for the provisions of
204 section eleven-c of this article, shall not otherwise be

205 subject to the jurisdiction of the commission or to the
206 provisions of this chapter with respect to such modification.

207 (6) The commission shall consider an application for a
208 certificate of public convenience and necessity filed
209 pursuant to section eleven of this article to construct an
210 electric generating facility described in this subsection or to
211 make or construct a material modification of such electric
212 generating facility as an application for a siting certificate
213 pursuant to section eleven-c of this article if the application
214 for the certificate of public convenience and necessity was
215 filed with the commission prior to July 1, 2003, and if the
216 commission has not issued a final order thereon as of that
217 date.

218 (7) The limitations on the jurisdiction of the commission
219 over, and on the applicability of the provisions of this
220 chapter to, the owner or operator of an electric generating
221 facility as imposed by and described in this subsection shall
222 not be deemed to affect or limit the commission's
223 jurisdiction over contracts or arrangements between the
224 owner or operator of such facility and any affiliated public
225 utility subject to the provisions of this chapter.*

226 (e) The commission shall not have jurisdiction of
227 Internet protocol-enabled service or voice-over Internet
228 protocol-enabled service. As used in this subsection:

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

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

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

236 (3) The term "voice-over Internet protocol service"
237 includes any service that permits users to receive calls that

238 originate on the public-switched telephone network and to
239 terminate calls on the public-switched telephone network.

240 (f) Notwithstanding any other provisions of this article,
241 the commission shall not have jurisdiction to review or
242 approve any transaction involving a telephone company
243 otherwise subject to sections twelve and twelve-a, article
244 two, chapter twenty-four of this code if all entities involved
245 in the transaction are under common ownership.

§24-2-3. General power of commission with respect to rates.

1 (a) The commission shall have power to enforce,
2 originate, establish, change and promulgate tariffs, rates,
3 joint rates, tolls and schedules for all public utilities except
4 for water and/or sewer utilities that are political
5 subdivisions of this state providing a separate or combined
6 services and having at least four thousand five hundred
7 customers and annual combined gross revenues of \$3
8 million or more: *Provided*, That the commission may
9 exercise such rate authority over municipally owned electric
10 or natural gas utilities or a municipally owned water and/or
11 sewer utility having less than four thousand five hundred
12 customers or annual combined gross revenues of less than
13 \$3 million dollars, only under the circumstances and
14 limitations set forth in section four-b of this article, and
15 subject to the provisions set forth in subsection (b) of this
16 section. And whenever the commission shall, after hearing,
17 find any existing rates, tolls, tariffs, joint rates or schedules
18 enacted or maintained by a utility regulated under the
19 provisions of this section to be unjust, unreasonable,
20 insufficient or unjustly discriminatory or otherwise in
21 violation of any of the provisions of this chapter, the
22 commission shall by an order fix reasonable rates, joint
23 rates, tariffs, tolls or schedules to be followed in the future
24 in lieu of those found to be unjust, unreasonable, insufficient
25 or unjustly discriminatory or otherwise in violation of any
26 provisions of law, and the said commission, in fixing the
27 rate of any railroad company, may fix a fair, reasonable and
28 just rate to be charged on any branch line thereof,

29 independent of the rate charged on the main line of such
30 railroad.

31 (b) Any complaint filed with the commission by a resale
32 or wholesale customer of a municipally owned water and/or
33 sewer utility having less than four thousand five hundred
34 customers or annual combined gross revenue of less than \$3
35 million dollars concerning rates, fees or charges applicable
36 to such resale or wholesale customer, shall be filed within
37 thirty days of the enactment by the governing body of the
38 political subdivision of an ordinance changing rates, fees or
39 charges for such service. The commission shall resolve said
40 complaint within 120 days of filing. The one hundred-
41 twenty day period for resolution of the complaint may be
42 tolled by the commission until the necessary information
43 showing the basis of the rates, fees, charges and other
44 information as the commission considers necessary is filed:
45 *Provided*, That rates, fees and charges so fixed by the
46 political subdivision providing separate or combined water
47 and/or sewer services shall remain in full force and effect
48 until set aside, altered or amended by the commission in an
49 order to be followed in the future: *Provided, however*, That
50 the commission shall have no authority to order refunds for
51 amounts collected during the pendency of the complaint
52 proceeding unless the rates, fees, or charges so enacted by
53 the governing body were enacted subject to refund under the
54 provisions of subsections (d)(2) or (g) of section four-b of
55 this article.

56 (c) In determining just and reasonable rates, the
57 commission may audit and investigate management
58 practices and policies, or have performed an audit and
59 investigation of such practices and policies, in order to
60 determine whether the utility is operating with efficiency
61 and is utilizing sound management practices. The
62 commission shall adopt rules and regulations setting forth
63 the scope, frequency and application of such audits and
64 investigations to the various utilities subject to its
65 jurisdiction. The commission may include the cost of

66 conducting the management audit in the cost of service of
67 the utility.

68 (d) In determining just and reasonable rates, the
69 commission shall investigate and review transactions
70 between utilities and affiliates. The commission shall limit
71 the total return of the utility to a level which, when
72 considered with the level of profit or return the affiliate
73 earns on transactions with the utility, is just and reasonable.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

1 (a) The rates and charges of electric cooperatives,
2 natural gas cooperatives and municipal water and/or sewer
3 utilities that are political subdivisions of the state having
4 less than four thousand five hundred customers or annual
5 combined gross revenues of less than \$3 million dollars,
6 except for municipally operated commercial solid waste
7 facilities as defined in section two, article fifteen, chapter
8 twenty-two of this code, and the rates and charges for local
9 exchange services provided by telephone cooperatives are
10 not subject to the rate approval provisions of section four or
11 four-a of this article, but are subject to the limited rate
12 provisions of this section.

13 (b) All rates and charges set by electric cooperatives,
14 natural gas cooperatives and municipally operated public
15 utilities that are political subdivisions of the state providing
16 water, sewer, electric and/or natural gas services that are
17 subject to the provisions of this section and all rates and
18 charges for local exchange services set by telephone
19 cooperatives shall be just, reasonable, applied without
20 unjust discrimination between or preference for any
21 customer or class of customer and based primarily on the
22 costs of providing these services. All rates and charges shall
23 be based upon the measured or reasonably estimated cost of
24 service and the equitable sharing of those costs between

25 customers based upon the cost of providing the service
26 received by the customer, including a reasonable plant-in-
27 service depreciation expense. The rates and charges shall be
28 adopted by the electric, natural gas, telephone cooperative
29 or political subdivision's governing board or body and, in
30 the case of the municipally operated public utility, by
31 municipal ordinance to be effective not sooner than forty-
32 five days after adoption. The 45-day waiting period may be
33 waived by public vote of the governing body if that body
34 finds and declares the public utility that is a political
35 subdivision of the state to be in financial distress such that
36 the 45-day waiting period would be detrimental to the
37 ability of the utility to deliver continued and compliant
38 public services: *Provided*, That notice of intent to effect a
39 rate change shall be specified on the monthly billing
40 statement of the customers of the utility for the month next
41 preceding the month in which the rate change is to become
42 effective and the utility governing body shall give its
43 customers and, in the case of a cooperative, its customers,
44 members and stockholders, other reasonable notices as will
45 allow filing of timely objections to the proposed rate change
46 and full participation in municipal rate legislation through
47 the provision of a public forum in which customers may
48 comment upon the proposed rate change prior to an
49 enactment vote. The rates and charges or ordinance shall be
50 filed with the commission, together with any information
51 showing the basis of the rates and charges and other
52 information as the commission considers necessary. Any
53 change in the rates and charges with updated information
54 shall be filed with the commission. If a petition, as set out
55 in subdivision (1), (2) or (3), subsection (c) of this section,
56 is received and the electric cooperative, natural gas
57 cooperative or telephone cooperative or municipality has
58 failed to file with the commission the rates and charges with
59 information showing the basis of rates and charges and other
60 information as the commission considers necessary, the
61 suspension period limitation of one hundred twenty days
62 and the one hundred-day period limitation for issuance of an
63 order by a hearing examiner, as contained in subsections (d)

64 and (e) of this section, is tolled until the necessary
65 information is filed. The electric cooperative, natural gas
66 cooperative, telephone cooperative or municipality shall set
67 the date when any new rate or charge is to go into effect.

68 (c) The commission shall review and approve or modify
69 the rates and charges of electric cooperatives, natural gas
70 cooperatives, telephone cooperatives, or municipal electric
71 or natural gas utilities and municipally owned water and/or
72 sewer utilities that are political subdivisions of the state and
73 having less than four thousand five hundred customers or
74 annual combined revenues of less than \$3 million dollars
75 upon the filing of a petition within thirty days of the
76 adoption of the ordinance or resolution changing the rates
77 or charges by:

78 (1) Any customer aggrieved by the changed rates or
79 charges who presents to the commission a petition signed
80 by not less than twenty-five percent of the customers served
81 by the municipally operated electric or natural gas public
82 utility or municipally owned water and/or sewer utility or
83 twenty-five percent of the membership of the electric,
84 natural gas or telephone cooperative residing within the
85 state;

86 (2) Any customer who is served by a municipally owned
87 electric or natural gas public utility and who resides outside
88 the corporate limits and who is affected by the change in the
89 rates or charges and who presents to the commission a
90 petition alleging discrimination between customers within
91 and without the municipal boundaries. The petition shall be
92 accompanied by evidence of discrimination; or

93 (3) Any customer or group of customers of the
94 municipally owned electric or natural gas public utility who
95 is affected by the change in rates who reside within the
96 municipal boundaries and who present a petition to the
97 commission alleging discrimination between a customer or
98 group of customers and other customers of the municipal

99 utility. The petition shall be accompanied by evidence of
100 discrimination.

101 (d) (1) The filing of a petition with the commission
102 signed by not less than twenty-five percent of the customers
103 served by the municipally owned electric or natural gas
104 public utility or a municipally owned water and/or sewer
105 utility having less than four thousand five hundred
106 customers or annual combined gross revenues of less than
107 \$3 million dollars or twenty-five percent of the membership
108 of the electric, natural gas or telephone cooperative residing
109 within the state under subsection (c) of this section shall
110 suspend the adoption of the rate change contained in the
111 ordinance or resolution for a period of one hundred twenty
112 days from the date the rates or charges would otherwise go
113 into effect or until an order is issued as provided herein.

114 (2) Upon sufficient showing of discrimination by
115 customers outside the municipal boundaries or a customer
116 or a group of customers within the municipal boundaries
117 under a petition filed under subdivision (2) or (3),
118 subsection (c) of this section, the commission shall suspend
119 the adoption of the rate change contained in the ordinance
120 for a period of one hundred twenty days from the date the
121 rates or charges would otherwise go into effect or until an
122 order is issued as provided herein. A municipal rate
123 ordinance enacted pursuant to the provisions of this section
124 and municipal charter or state code that establishes or
125 proposes a rate increase that results in an increase of less
126 than twenty-five percent of the gross revenue of the utility
127 shall be presumed valid and rates shall be allowed to go into
128 effect, subject to refund, upon the date stated in that
129 ordinance. Any refund determined to be due and owing as a
130 result of any difference between any final rates approved by
131 the commission and the rates placed into effect subject to
132 refund shall be refunded as a credit against each customer's
133 account for a period of up to six months after entry of the
134 commission's final order. Any remaining balance which is
135 not fully credited by credit within six months after entry of

136 the commission's final order shall be directly refunded to
137 the customer by check. In the case of rates established or
138 proposed that increase by more than twenty-five percent of
139 the gross revenue of the municipally operated public utility,
140 the utility may apply for, and the commission may grant, a
141 waiver of the suspension period and allow rates to be
142 effective upon enactment.

143 (e) The commission shall forthwith appoint a hearing
144 examiner from its staff to review the grievances raised by
145 the petitioners. The hearing examiner shall conduct a public
146 hearing and shall, within one hundred days from the date the
147 rates or charges would otherwise go into effect, unless
148 otherwise tolled as provided in subsection (b) of this
149 section, issue an order approving, disapproving or
150 modifying, in whole or in part, the rates or charges imposed
151 by the electric, natural gas or telephone cooperative or by
152 the municipally operated public utility pursuant to this
153 section.

154 (f) Upon receipt of a petition for review of the rates
155 under the provisions of subsection (c) of this section, the
156 commission may exercise the power granted to it under the
157 provisions of section three of this article, consistent with the
158 applicable rate provisions of section twenty, article ten,
159 chapter eight of this code, section four, article nineteen of
160 said chapter and section sixteen, article thirteen, chapter
161 sixteen of this code. The commission may determine the
162 method by which the rates are reviewed and may grant and
163 conduct a de novo hearing on the matter if the customer,
164 electric, natural gas or telephone cooperative or
165 municipality requests a hearing.

166 (g) The commission may, upon petition by an electric,
167 natural gas or telephone cooperative or municipal electric or
168 natural gas public utility or a municipally owned water
169 and/or sewer utility having less than four thousand five
170 hundred customers or annual combined gross revenues of
171 less than \$3 million dollars, allow an interim or emergency
172 rate to take effect, subject to refund or future modification,

173 if it is determined that the interim or emergency rate is
174 necessary to protect the municipality from financial
175 hardship attributable to the purchase of the utility
176 commodity sold, or the commission determines that a
177 temporary or interim rate increase is necessary for the utility
178 to avoid financial distress. In such cases, the commission
179 shall waive the 45-day waiting period provided for in
180 subsection (b) of this section and the one hundred twenty-
181 day suspension period provided for in subsection (d) of this
182 section.

183 (h) The commission shall, upon written request of the
184 governing body of a political subdivision, provide technical
185 assistance to the governing body in its deliberations
186 regarding a proposed rate increase.

187 (i) Notwithstanding any other provision, the
188 commission has no authority or responsibility with regard
189 to the regulation of rates, income, services or contracts by
190 municipally operated public utilities for services which are
191 transmitted and sold outside of the State of West Virginia.

192 (j) Notwithstanding any other provision of this code to
193 the contrary, the jurisdiction of the commission over water
194 and/or sewer utilities that are political subdivisions of the
195 state and having at least four thousand five hundred
196 customers and annual gross combined revenues of \$3
197 million or more shall be limited to those powers enumerated
198 in subsection (b), section one of this article.

**§24-2-11. Requirements for certificate of public convenience
and necessity.**

1 (a) A public utility, person or corporation other than a
2 political subdivision of the state providing water or sewer
3 services and having at least four thousand five hundred
4 customers and annual gross combined revenues of \$3
5 million dollars or more may not begin the construction of
6 any plant, equipment, property or facility for furnishing to
7 the public any of the services enumerated in section one,

8 article two of this chapter, nor apply for, nor obtain any
9 franchise, license or permit from any municipality or other
10 governmental agency, except ordinary extensions of
11 existing systems in the usual course of business, unless and
12 until it shall obtain from the Public Service Commission a
13 certificate of public convenience and necessity authorizing
14 such construction franchise, license or permit.

15 (b) Upon the filing of any application for the certificate,
16 and after hearing, the commission may, in its discretion,
17 issue or refuse to issue, or issue in part and refuse in part,
18 the certificate of convenience and necessity: *Provided*, That
19 the commission, after it gives proper notice and if no
20 substantial protest is received within thirty days after the
21 notice is given, may waive formal hearing on the
22 application. Notice shall be given by publication which shall
23 state that a formal hearing may be waived in the absence of
24 substantial protest, made within thirty days, to the
25 application. The notice shall be published as a Class I legal
26 advertisement in compliance with the provisions of article
27 three, chapter fifty-nine of this code. The publication area
28 shall be the proposed area of operation.

29 (c) Any public utility, person or corporation subject to
30 the provisions of this section other than a political
31 subdivision of the state providing water and/or sewer
32 services having at least four thousand five hundred
33 customers and combined annual gross revenue of \$3 million
34 dollars or more shall give the commission at least thirty
35 days' notice of the filing of any application for a certificate
36 of public convenience and necessity under this section:
37 *Provided*, That the commission may modify or waive the
38 thirty-day notice requirement and shall waive the thirty-day
39 notice requirement for projects approved by the
40 Infrastructure and Jobs Development Council.

41 (d) The commission shall render its final decision on
42 any application filed under the provisions of this section or
43 section eleven-a of this article within two hundred seventy
44 days of the filing of the application and within ninety days

45 after final submission of any such application for decision
46 following a hearing: *Provided*, That if the application is for
47 authority to construct a water and sewer project and the
48 projected total cost is less than \$10 million, the commission
49 shall render its final decision within two hundred twenty-
50 five days of the filing of the application.

51 (e) The commission shall render its final decision on any
52 application filed under the provisions of this section that has
53 received the approval of the Infrastructure and Jobs
54 Development Council pursuant to article fifteen-a, chapter
55 thirty-one of this code within one hundred eighty days after
56 filing of the application: *Provided*, That if a substantial
57 protest is received within thirty days after the notice is
58 provided pursuant to subsection (b) of this section, the
59 commission shall render its final decision within two
60 hundred seventy days or two hundred twenty-five days of
61 the filing of the application, whichever is applicable as
62 determined in subsection (d) of this section.

63 (f) If the projected total cost of a project which is the
64 subject of an application filed pursuant to this section or
65 section eleven-a of this article is greater than \$50 million,
66 the commission shall render its final decision on any such
67 application filed under the provisions of this section or
68 section eleven-a of this article within four hundred days of
69 the filing of the application and within ninety days after final
70 submission of any such application for decision after a
71 hearing.

72 (g) If a decision is not rendered within the time frames
73 established in this section, the commission shall issue a
74 certificate of convenience and necessity as applied for in the
75 application.

76 (h) The commission shall prescribe rules as it may deem
77 proper for the enforcement of the provisions of this section;
78 and, in establishing that public convenience and necessity
79 do exist, the burden of proof shall be upon the applicant.

80 (i) Pursuant to the requirements of this section, the
81 commission may issue a certificate of public convenience
82 and necessity to any intrastate pipeline, interstate pipeline
83 or local distribution company for the transportation in
84 intrastate commerce of natural gas used by any person for
85 one or more uses, as defined by rule, by the commission in
86 the case of:

87 (1) Natural gas sold by a producer, pipeline or other
88 seller to the person; or

89 (2) Natural gas produced by the person.

90 (j) A public utility, including a public service district,
91 which has received a certificate of public convenience and
92 necessity after July 8, 2005, from the commission and has
93 been approved by the Infrastructure and Jobs Development
94 Council is not required to, and cannot be compelled to,
95 reopen the proceeding if the cost of the project changes but
96 the change does not affect the rates established for the
97 project.

98 (k) Any public utility, person or corporation proposing
99 any electric power project that requires a certificate under
100 this section is not required to obtain such certificate before
101 applying for or obtaining any franchise, license or permit
102 from any municipality or other governmental agency.

103 (l) Water or sewer utilities that are political subdivisions
104 of the state and having at least four thousand five hundred
105 customers and combined gross revenues of \$3 million
106 dollars or more desiring to pursue construction projects that
107 are not in the ordinary course of business shall provide
108 adequate prior public notice of the contemplated
109 construction and proposed changes to rates, fees and
110 charges, if any, as a result of such construction to both
111 current customers and those persons who will be affected by
112 the proposed construction as follows:

113 (1) Adequate prior public notice of the contemplated
114 construction by causing a notice of intent to pursue a project
115 that is not in the ordinary course of business to be specified
116 on the monthly billing statement of the customers of the
117 utility for the month immediately preceding the month in
118 which an ordinance or resolution approving the proposed
119 construction and proposed changes to rates, fees and
120 charges, if any, is to be before the governing body for the
121 public hearing on the ordinance or resolution approving the
122 proposed construction and proposed changes to rates, fees
123 and charges, if any.

124 (2) Adequate prior public notice of the contemplated
125 construction by causing to be published as a Class I legal
126 advertisement of the proposed public hearing on the
127 ordinance or resolution approving the proposed
128 construction and proposed changes to rates, fees and
129 charges, if any, in compliance with the provisions of article
130 three, chapter fifty-nine of the code. The publication area
131 for publication shall be all territory served by the political
132 subdivision. If the political subdivision provides service in
133 more than one county, publication shall be made in a
134 newspaper of general circulation in each county that the
135 political subdivision provides service.

136 (3) The public notice of the proposed construction shall
137 state the scope of the proposed construction; a summary of
138 the current rates, fees and charges, and proposed changes to
139 said rates, fees and charges, if any; the date, time and place
140 of the public hearing on the ordinance or resolution
141 approving the proposed construction and proposed changes
142 to rates, fees and charges, if any; and the place or places
143 within the political subdivision where the ordinance or
144 resolution approving the proposed construction and
145 proposed changes to rates, fees and charges, if any, may be
146 inspected by the public. A reasonable number of copies of
147 the ordinance or resolution shall be kept at the place or
148 places and be made available for public inspection. The
149 notice shall also advise that interested parties may appear at

150 the public hearing before the political subdivision and be
151 heard with respect to the proposed construction and the
152 proposed rates, fees and charges, if any.

153 (4) The ordinance or resolution on the proposed
154 construction and the proposed rates, fees and charges shall
155 be read at two meetings of the governing body with at least
156 two weeks intervening between each meeting. The public
157 hearing may be conducted prior to, or at, the meeting of the
158 governing body at which the ordinance or resolution
159 approving the proposed construction is considered on
160 second reading.

161 (5) Enactment or adoption of the ordinance or resolution
162 approving the proposed construction and the proposed rates,
163 fees and charges shall follow an affirmative vote of the
164 governing body and the approved rates shall go into effect
165 no sooner than forty-five days following the action of the
166 governing body. If the political subdivision proposes rates
167 that will go into effect prior to the completion of
168 construction of the proposed project, the 45-day waiting
169 period may be waived by public vote of the governing body
170 only if the political subdivision finds and declares the
171 political subdivision to be in financial distress such that the
172 45-day waiting period would be detrimental to the ability of
173 the political subdivision to deliver continued and compliant
174 public services: *Provided*, That, if the political subdivision
175 is a public service district, in no event shall the rate become
176 effective prior to the date that the county commission has
177 entered an order approving or modifying the action of the
178 public service district board.

179 (6) Rates, fees and charges approved by an affirmative
180 vote of the public service district board shall be forwarded
181 in writing to the county commission with the authority to
182 appoint the members of the public service board of the
183 public service district. The county commission shall, within
184 forty-five days of receipt of the proposed rates, fees and
185 charges, take action to approve, modify, or reject the
186 proposed rates, fees and charges, in its sole discretion. If,

187 after forty-five days, the county commission has not taken
188 final action to approve, modify, or reject the proposed rates,
189 fees and charges, the proposed rates, fees and charges, as
190 presented to the County Commission, shall be effective with
191 no further action by the board or county commission. In any
192 event this 45-day period may be extended by official action
193 of both the board proposing the rates, fees and charges and
194 the appointing county commission.

195 (7) The county commission shall provide notice to the
196 public by a Class I legal advertisement of the proposed
197 action, in compliance with the provisions of article three,
198 chapter fifty-nine of this code, of the meeting where it shall
199 consider the proposed increases in rates, fees and charges
200 no later than one week prior to the meeting date.

201 (8) A public service district, or a customer aggrieved by
202 the changed rates or charges who presents to the circuit
203 court a petition signed by at least 750 or twenty-five percent
204 of the customers served by the public service district,
205 whichever is fewer, when dissatisfied by the approval,
206 modification, or rejection by the county commission of the
207 proposed rates, fees and charges under the provisions of this
208 subsection (1) may file a complaint regarding the rates, fees
209 and charges resulting from the action of, or failure to act by,
210 the county commission in the circuit court of the county in
211 which the county commission sits: *Provided*, That any
212 complaint or petition filed hereunder shall be filed within
213 thirty days of the county commission's final action
214 approving, modifying or rejecting such rates, fees and
215 charges, or the expiration of the 45 day period from the
216 receipt by the county commission, in writing, of the rates,
217 fees and charges approved by resolution of the board,
218 without final action by the county commission to approve,
219 modify or reject such rates, fees and charges, and the circuit
220 court shall resolve said complaint: *Provided, however*, That
221 the rates, fees and charges so fixed by the county
222 commission, or those adopted by the district upon which the
223 county commission failed to act, shall remain in full force

224 and effect, until set aside, altered or amended by the circuit
225 court in an order to be followed in the future.

CHAPTER 162

**(Com. Sub. for H. B. 2109 - By Delegates Rohrbach,
Hornbuckle and Lovejoy)**

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §31-18E-3 and §31-18E-9 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Land Reuse Agency Authorization Act; defining the term “municipal land bank”; including a municipal land bank as an agency that may acquire property; providing that a land reuse agency or a municipal land bank may have the right of first refusal to buy certain tax delinquent property for taxes owed and any related fees before the tax delinquent property is placed for public auction at tax sales; providing procedures for when a land reuse agency or municipal land bank exercises a first right of refusal to purchase tax-delinquent property; requiring county sheriffs to compile a list of properties meeting certain criteria; granting owners of adjacent real property a right to purchase a tax delinquent property from a land reuse agency or municipal land bank, within 120 days of receiving notice, for an amount equal to the amount paid for the property by the land reuse agency or municipal land bank; providing a three year sunset provision; and authorizing reporting to the Legislature.

Be it enacted by the Legislature of West Virginia:

That §31-18E-3 and §31-18E-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 18E. WEST VIRGINIA LAND REUSE AGENCY
AUTHORIZATION ACT.**

§31-18E-3. Definitions.

1 As used in this article:

2 (1) “Board” means the board of directors of a land reuse
3 agency;

4 (2) “Deconstruct” means to attempt to remove
5 salvageable pieces of a housing unit prior to or as part of
6 demolition or renovation;

7 (3) “Financial institution” means a bank, savings
8 association, operating subsidiary of a bank or savings
9 association, credit union, association licensed to originate
10 mortgage loans or an assignee of a mortgage or note
11 originated by such an institution;

12 (4) “Land reuse agency” means a public body
13 established under this article;

14 (5) “Land reuse jurisdiction” means: (A) A county or
15 municipality in this state; or (B) two or more municipalities
16 or counties that enter into an intergovernmental cooperation
17 agreement to establish and maintain a land reuse agency;

18 (6) “Municipal land bank” means a department or
19 agency of a municipality, or an entity lawfully created by a
20 municipality, engaged in activities designed to address
21 issues related to vacant, abandoned and tax-delinquent real
22 property, including but not limited to, the purchase,
23 rehabilitation, improvement or sale of such properties for
24 the purpose of eliminating blight and returning those
25 properties to productive use.

26 (7) “Municipality” means a municipality as defined in
27 section two, article one, chapter eight of this code; and

28 (8) “Real property” means all lands, including
29 improvements and fixtures on them and property of any

30 nature appurtenant to them or used in connection with them
31 and every estate, interest and right, legal or equitable, in
32 them, including terms of years and liens by way of
33 judgment, mortgage or otherwise, and indebtedness secured
34 by the liens.

§31-18E-9. Acquisition of property.

1 (a) *Title to be held in its name.* – A land reuse agency or
2 municipal land bank shall hold in its own name all real
3 property it acquires.

4 (b) *Tax exemption.* – (1) Except as set forth in
5 subdivision (2) of this subsection, the real property of a land
6 reuse agency or municipal land bank and its income and
7 operations are exempt from property tax.

8 (2) Subdivision (1) of this subsection does not apply to
9 real property of a land reuse agency or municipal land bank
10 after the fifth consecutive year in which the real property is
11 continuously leased to a private third party. However, real
12 property continues to be exempt from property taxes if it is
13 leased to a nonprofit or governmental agency at
14 substantially less than fair market value.

15 (c) *Methods of acquisition.* – A land reuse agency or
16 municipal land bank may acquire real property or interests
17 in real property by any means on terms and conditions and
18 in a manner the land reuse agency considers proper:
19 *Provided,* That a land reuse agency or municipal land bank
20 may not acquire any interest in oil, gas or minerals which
21 have been severed from the realty.

22 (d) *Acquisitions from municipalities or counties.* – (1) A
23 land reuse agency or municipal land bank may acquire real
24 property by purchase contracts, lease purchase agreements,
25 installment sales contracts and land contracts and may
26 accept transfers from municipalities or counties upon terms
27 and conditions as agreed to by the land reuse agency or
28 municipal land bank and the municipality or county.

29 (2) A municipality or county may transfer to a land
30 reuse agency or municipal land bank real property and
31 interests in real property of the municipality or county on
32 terms and conditions and according to procedures
33 determined by the municipality or county as long as the real
34 property is located within the jurisdiction of the land reuse
35 agency or municipal land bank.

36 (3) An urban renewal authority, as defined in section four,
37 article eighteen, chapter sixteen of this code, located within a
38 land reuse jurisdiction established under this article may, with
39 the consent of the local governing body and without a
40 redevelopment contract, convey property to the land reuse
41 agency. A conveyance under this subdivision shall be with fee
42 simple title, free of all liens and encumbrances.

43 (e) *Maintenance.* – A land reuse agency or municipal
44 land bank shall maintain all of its real property in
45 accordance with the statutes and ordinances of the
46 jurisdiction in which the real property is located.

47 (f) *Prohibition.* – (1) Subject to the provisions of
48 subdivision (2) of this subsection, a land reuse agency or
49 municipal land bank may not own or hold real property
50 located outside the jurisdictional boundaries of the entities
51 which created the land reuse agency under subsection (c),
52 section four of this article.

53 (2) A land reuse agency or municipal land bank may be
54 granted authority pursuant to an intergovernmental
55 cooperation agreement with a municipality or county to
56 manage and maintain real property located within the
57 jurisdiction of the municipality or county.

58 (g) *Acquisition of tax delinquent properties.* – (1)
59 Notwithstanding any other provision of this code to the
60 contrary, if authorized by the land reuse jurisdiction which
61 created a land reuse agency or municipal land bank or
62 otherwise by intergovernmental cooperation agreement, a land
63 reuse agency or municipal land bank may acquire an interest

64 in tax delinquent property through the provisions of chapter
65 eleven-a of this code. Notwithstanding the provisions of
66 section eight, article three, chapter eleven-a of this code, if no
67 person present at the tax sale bids the amount of the taxes,
68 interest and charges due on any unredeemed tract or lot or
69 undivided interest in real estate offered for sale, the sheriff
70 shall, prior to certifying the real estate to the Auditor for
71 disposition pursuant to section forty-four, article three, chapter
72 eleven-a of this code, provide a list of all of said real estate
73 within a land reuse or municipal land bank jurisdiction to the
74 land reuse agency or municipal land bank and the land reuse
75 agency or municipal land bank shall be given an opportunity
76 to purchase the tax lien and pay the taxes, interest and charges
77 due for any unredeemed tract or lot or undivided interest
78 therein as if the land reuse agency or municipal land bank were
79 an individual who purchased the tax lien at the tax sale.

80 (2) Notwithstanding any other provision of this code to
81 the contrary, if authorized by the land reuse jurisdiction
82 which created a land reuse agency or municipal land bank
83 or otherwise by intergovernmental cooperation agreement,
84 the land reuse agency or municipal land bank shall have the
85 right of first refusal to purchase any tax-delinquent property
86 which is within municipal limits, and has an assessed value
87 of \$25,000 or less or has been condemned: *Provided*, That
88 the land reuse agency or municipal land bank satisfies the
89 requirements of subdivision (3) of this subsection. A list of
90 properties which meet the criteria of this subdivision shall
91 regularly be compiled by the sheriff of the county, and a
92 land reuse agency or municipal land bank may purchase any
93 qualifying tax-delinquent property for an amount equal to
94 the taxes owed and any related fees before such property is
95 placed for public auction.

96 (3) When a land reuse agency or municipal land bank
97 exercises a right of first refusal in accordance with subdivision
98 (2) of this section, the land reuse agency or municipal land
99 bank shall, within fifteen days, provide written notice to all
100 owners of real property that is adjacent to the tax-delinquent

101 property. Any such property owner shall have a period of 120
102 days from the receipt of notice, actual or constructive, to
103 exercise a right to purchase the tax-delinquent property from
104 the land reuse agency or municipal land bank for an amount
105 equal to the amount paid for the property by the land reuse
106 agency or municipal land bank: *Provided*, That in the event
107 more than one adjacent land owner desires to purchase the tax-
108 delinquent property, it shall be sold to the adjacent property
109 owner offering the highest bid. It is the duty of the adjacent
110 property owner to establish that he or she is the actual owner
111 of property that is adjacent to the tax-delinquent property and
112 all state and local taxes and all fees on his or her adjacent
113 property are current and non-delinquent.

114 (4) Effective July 1, 2020, the provisions of
115 subdivisions (2) and (3) of this subsection shall sunset and
116 have no further force and effect.

117 (5) Prior to January 1, 2020, any land reuse agency or
118 municipal land bank which exercises the authority granted by
119 this subsection may submit to the Joint Committee on
120 Government and Finance a report on the entity's activities
121 related to the purchase of tax-delinquent properties and any
122 benefits realized from the authority granted by this subsection.

CHAPTER 163

**(Com. Sub. for H. B. 2679 - By Delegates Summers,
Frich, Overington, Paynter, Harshbarger, Moore,
Dean, G. Foster, Higginbotham, Butler and Fast)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to repeal §20-2-19a of the Code of West Virginia, 1931,
as amended; to amend and reenact §7-11-5 of said code; and

to amend and reenact §20-2-5, §20-2-42g and §20-2-42h, all relating to firearms and hunting generally; eliminating authority for trappers to carry certain firearms on Sundays while checking traps; prohibiting county parks and recreation commissions from promulgating or enforcing rules which prohibit possession of firearms in parks; updating antiquated language; allowing the carrying of an uncased or loaded long firearm in the woods of this state and state parks, state forests, state wildlife management areas or state rail trails; excepting recreation facilities therein from areas where uncased or loaded long guns may be possessed; providing exceptions to the prohibition for self-defense purposes; eliminating local option election regarding to hunting on private land on Sundays; permitting Sunday hunting on private land with written permission of the owner or an authorized agent of the owner; clarifying that hunting on public land on Sundays after five o'clock ante meridian is illegal; superseding ballot measures in elections prior to the effective date of legislation making Sunday hunting on private land lawful with the written permission of the landowner or an authorized agent thereof; creating the misdemeanor offense of catching, taking, or killing of fish within two hundred feet of Division of Natural Resources personnel engaged in stocking fish in public waters; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §20-2-19a of the Code of West Virginia, 1931, as amended, be repealed; that §7-11-15 of said code be amended and reenacted; and that §20-2-5, §20-2-42g and §20-2-42h of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.

§7-11-5. General powers of commission; rules; misdemeanor offenses; park police authorized.

1 The commission shall have the necessary powers and
2 authority to manage and control all public parks and
3 recreational properties and facilities owned by the county or
4 commission and used as a part of such public parks and
5 recreation system, including the right to promulgate rules
6 and regulations concerning the management and control of
7 such parks and recreational properties and facilities and to
8 enforce any such rules and regulations so promulgated:
9 *Provided*, That a commission shall not promulgate or
10 enforce rules which prohibit the possession of firearms in
11 such parks.

12 The commission shall also have plenary power and
13 authority to prepare and submit to the county commission
14 for adoption rules regulating the use of any parks and
15 recreational properties and facilities under the control of the
16 commission and prohibiting any type of use of or activities
17 in connection with any such properties or facilities, and any
18 such rules, and regulations if so adopted, shall be duly
19 entered of record in the order book of the county
20 commission. The violation of any such rule and regulation
21 so adopted by the county commission shall constitute a
22 misdemeanor and, any person convicted of any such
23 violation shall be punished by a fine of not less than \$5 nor
24 more than \$100, or by imprisonment in jail for a period not
25 exceeding thirty days, or by both such fine and
26 imprisonment. The magistrate court of the county shall have
27 concurrent jurisdiction with the circuit court and other
28 courts of record (having criminal jurisdiction) of any
29 misdemeanor offenses arising under this article. The
30 violation of any such rule which also constitutes the
31 violation of any state law or municipal ordinance may be
32 prosecuted and punished as a violation of such state law or
33 municipal ordinance rather than under the provisions of this
34 section. To enforce any such rules and regulations, to
35 protect and preserve all properties and facilities under the
36 control of the commission and to preserve law and order in
37 connection therewith, the commission shall have plenary
38 power and authority to provide in its bylaws procedures for

39 the appointment, supervision and discharge of one or more
40 park police officers. Whenever any such appointment is
41 made, a copy of the order of appointment shall be
42 maintained by the commission for review by members of
43 the public.

44 In any area under the jurisdiction and control of the
45 commission, or in connection with any properties or
46 facilities under the jurisdiction and control of the
47 commission, or in pursuit of one or more individuals
48 therefrom, any park police officer so appointed shall have
49 all of the power and authority which a regularly appointed
50 deputy sheriff of such county has in enforcing the criminal
51 laws of the state. Notwithstanding any provisions of this
52 code to the contrary, park police officers appointed as
53 aforesaid shall not be required to obtain a state license to
54 carry a weapon, as required by the provisions of section two,
55 article seven, chapter sixty-one of this code. When any such
56 commission has purchased one or more policies of public
57 liability insurance providing the commission and its
58 officers, agents and employees insurance coverage for legal
59 liability of said commission and its officers, agents and
60 employees for bodily injury, personal injury or damage
61 (including, but not limited to, false arrest and false
62 imprisonment) and property damage, and affording said
63 commission and its officers, agents and employees
64 insurance coverage against any and all legal liability arising
65 from, growing out of, by reason of or in any way connected
66 with, any acts or omissions of said commission, or its
67 officers, agents or employees in the performance of their
68 official duties, and so long as the coverage aforesaid
69 remains in full force and effect as to such park police
70 officers, then the bond specified in section five, article seven
71 of said chapter sixty-one shall not be required as to such
72 park police officers.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

***§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.**

1 (a) Except as authorized by the director or by law, it is
2 unlawful at any time for any person to:

3 (1) Shoot at any wild bird or wild animal unless it is
4 plainly visible;

5 (2) Dig out, cut out, smoke out, or in any manner take
6 or attempt to take any live wild animal or wild bird out of
7 its den or place of refuge;

8 (3) Use or attempt to use any artificial light or any night
9 vision technology, including image intensification, thermal
10 imaging or active illumination while hunting, locating,
11 attracting, taking, trapping or killing any wild bird or wild
12 animal: *Provided*, That it is lawful to hunt or take coyote,
13 fox, raccoon, opossum or skunk by the use of artificial light
14 or night vision technology. Any person violating this
15 subdivision is guilty of a misdemeanor and, upon conviction
16 thereof, shall for each offense be fined not less than \$100
17 nor more than \$500, and shall be confined in jail for not less
18 than ten days nor more than one hundred days;

19 (4) Hunt, take, kill, wound or shoot at wild animals or
20 wild birds from an airplane or other airborne conveyance, a
21 drone or other unmanned aircraft, an automobile or other
22 land conveyance, or from a motor-driven water conveyance;

23 (5) Use a drone or other unmanned aircraft to hunt, take
24 or kill a wild bird or wild animal, or to use a drone or other
25 unmanned aircraft to drive or herd any wild bird or wild
26 animal for the purposes of hunting, trapping or killing;

27 (6) Take any beaver or muskrat by any means other than
28 a trap;

***NOTE:** This section was also amended by S. B. 345 (Chapter 166),
which passed prior to this act.

29 (7) Catch, capture, take, hunt or kill by seine, net, bait,
30 trap or snare or like device a bear, wild turkey, ruffed
31 grouse, pheasant or quail;

32 (8) Intentionally destroy or attempt to destroy the nest
33 or eggs of any wild bird or have in his or her possession the
34 nest or eggs;

35 (9) Carry an uncased or loaded firearm in the woods of
36 this state or in state parks, state forests, state wildlife
37 management areas or state rail trails with the following
38 permissible exceptions:

39 (A) A person in possession of a valid license or permit
40 during open firearms hunting season for wild animals and
41 nonmigratory wild birds where hunting is lawful;

42 (B) A person hunting or taking unprotected species of
43 wild animals, wild birds and migratory wild birds during the
44 open season, in the open fields, open water and open
45 marshes of the state where hunting is lawful;

46 (C) A person carrying a firearm pursuant to sections six
47 and six-a of this article;

48 (D) A person carrying a handgun for self-defense who
49 is not prohibited from possessing firearms under state or
50 federal law; or

51 (E) A person carrying a rifle or shotgun for self-defense
52 who is not prohibited from possessing firearms under state
53 or federal law: *Provided*, That this exception does not apply
54 to an uncased rifle or shotgun carried in state park, state
55 forest, or state wildlife management area recreational
56 facilities and on marked trails within state park or state
57 forest borders.

58 (10) Have in his or her possession a crossbow with a
59 nocked bolt, or a rifle or shotgun with cartridges that have
60 not been removed or a magazine that has not been
61 detached, in or on any vehicle or conveyance, or its

62 attachments. For the purposes of this section, a rifle or
63 shotgun whose magazine readily detaches is considered
64 unloaded if the magazine is detached and no cartridges
65 remain in the rifle or shotgun itself. Except that between
66 five o'clock post meridian of day one and seven o'clock
67 ante meridian, Eastern Standard Time, of the following
68 day, any unloaded firearm or crossbow may be carried
69 only when in a case or taken apart and securely wrapped.
70 During the period from July 1 to September 30, inclusive,
71 of each year, the requirements relative to carrying
72 unloaded firearms are permissible only from eight-thirty
73 o'clock post meridian to five o'clock ante meridian,
74 Eastern Standard Time: *Provided*, That the time periods
75 for carrying unloaded and uncased firearms are extended
76 for one hour after the post meridian times and one hour
77 before the ante meridian times established in this
78 subdivision, if a person is transporting or transferring the
79 firearms to or from a hunting site, campsite, home or
80 other abode;

81 (11) Hunt, catch, take, kill, injure or pursue a wild
82 animal or wild bird with the use of a ferret;

83 (12) Buy raw furs, pelts or skins of fur-bearing
84 animals unless licensed to do so;

85 (13) Catch, take, kill or attempt to catch, take or kill
86 any fish by any means other than by rod, line and hooks
87 with natural or artificial lures: *Provided*, That snaring of
88 any species of suckers, carp, fallfish and creek chubs is
89 lawful;

90 (14) Employ, hire, induce or persuade, with money,
91 things of value or by any means, any person to hunt, take,
92 catch or kill any wild animal or wild bird except those
93 species in which there is no closed season; or to fish for,
94 catch, take or kill any fish, amphibian or aquatic life that
95 is protected by rule, or the sale of which is otherwise
96 prohibited;

97 (15) Hunt, catch, take, kill, capture, pursue, transport,
98 possess or use any migratory game or nongame birds
99 except as permitted by the Migratory Bird Treaty Act, 16
100 U. S. C. §703, *et seq.*, and its regulations;

101 (16) Kill, take, catch, sell, transport or have in his or
102 her possession, living or dead, any wild bird other than a
103 game bird including the plumage, skin or body of any
104 protected bird, irrespective of whether the bird was
105 captured in or out of this state, except the English or
106 European sparrow (*Passer domesticus*), starling (*Sturnus*
107 *vulgaris*) and cowbird (*Molothrus ater*), which may be
108 killed at any time;

109 (17) Use dynamite, explosives or any poison in any
110 waters of the state for the purpose of killing or taking fish.
111 Any person violating this subdivision is guilty of a felony
112 and, upon conviction thereof, shall be fined not more than
113 \$500 or imprisoned for not less than six months nor more
114 than three years, or both fined and imprisoned;

115 (18) Have a bow and gun, or have a gun and any
116 arrow, in the fields or woods at the same time;

117 (19) Have a crossbow in the woods or fields, or use a
118 crossbow to hunt for, take or attempt to take any wildlife
119 except as otherwise provided in sections five-g and forty-
120 two-w of this article;

121 (20) Take or attempt to take turkey, bear, elk or deer
122 with any arrow unless the arrow is equipped with a point
123 having at least two sharp cutting edges measuring in
124 excess of three fourths of an inch wide;

125 (21) Take or attempt to take any wildlife with an
126 arrow having an explosive head or shaft, a poisoned
127 arrow or an arrow which would affect wildlife by any
128 chemical action;

129 (22) Shoot an arrow across any public highway;

130 (23) Permit any dog owned or under his or her control
131 to chase, pursue or follow the tracks of any wild animal
132 or wild bird, day or night, between May 1 and August 15:
133 *Provided*, That dogs may be trained on wild animals and
134 wild birds, except deer and wild turkeys, and field trials
135 may be held or conducted on the grounds or lands of the
136 owner, or by his or her bona fide tenant, or upon the
137 grounds or lands of another person with his or her written
138 permission, or on public lands at any time. Nonresidents
139 may not train dogs in this state at any time except during
140 the legal small game hunting season. A person training
141 dogs may not have firearms or other implements in his or
142 her possession during the closed season on wild animals
143 and wild birds;

144 (24) Conduct or participate in a trial, including a field
145 trial, shoot-to-retrieve field trial, water race or wild hunt:
146 *Provided*, That any person, group of persons, club or
147 organization may hold a trial upon obtaining a permit
148 pursuant to section fifty-six of this article. The person
149 responsible for obtaining the permit shall prepare and
150 keep an accurate record of the names and addresses of all
151 persons participating in the trial and make the records
152 readily available for inspection by any natural resources
153 police officer upon request;

154 (25) Hunt, catch, take, kill or attempt to hunt, catch,
155 take or kill any wild animal, wild bird or wild fowl except
156 during open seasons;

157 (26) Hunt on public lands on Sunday after five
158 o'clock ante meridian;

159 (27) Hunt or conduct hunts for a fee when the person
160 is not physically present in the same location as the
161 wildlife being hunted within West Virginia.

162 (28) Catch, take, kill, or attempt to catch, take or kill
163 any fish by any means within two hundred feet of division
164 personnel engaged in stocking fish in public waters.

165 (b) Notwithstanding any ballot measure relating to
166 Sunday hunting, it is lawful to hunt throughout the State
167 of West Virginia on private lands on Sundays after the
168 hour of five o'clock ante meridian with the written
169 consent of the private landowner pursuant to section
170 seven, article two of this chapter.

***§20-2-42g. Class H nonresident small game hunting license.**

1 A Class H license is a nonresident small game hunting
2 license and entitles the licensee to hunt small game in all
3 counties of the State, except as prohibited by rules of the
4 director or Natural Resources Commission and except when
5 additional licenses, stamps or permits are required, for a
6 period of six consecutive hunting days chosen by the
7 licensee. The fee for the license is \$25. This is a base license
8 and does not require the purchase of a prerequisite license
9 to participate in the activities specified in this section,
10 except as noted.

***§20-2-42h. Class J nonresident small game shooting preserve license.**

1 A Class J license is a nonresident small game shooting
2 preserve license and entitles the licensee to hunt small game
3 on designated shooting preserves, except as prohibited by
4 rules of the director or Natural Resources Commission and
5 except when additional licenses, stamps or permits are
6 required, for a period of six consecutive hunting days
7 chosen by the licensee. The fee for the license is \$10. This
8 is a base license and does not require the purchase of a
9 prerequisite license to participate in the activities specified
10 in this section, except as noted.

***NOTE:** This section was also amended by S. B. 345 (Chapter 166),
which passed prior to this act.


CHAPTER 164

**(Com. Sub. for H. B. 2949 - By Delegates Hamilton,
Eldridge, Lewis, Ambler and R. Romine)**

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-5-15 of said code, all relating to exempting Division of Natural Resources' contracts for the replacement, repair or design of repairs to revenue-producing facilities and related infrastructure where protecting public safety or public enjoyment and use of the facilities from the Purchasing Division; and exempting intergovernmental cooperative agreements and operational contracts for Prickett's Fort from review and approval requirements of the Purchasing Division.

Be it enacted by the Legislature of West Virginia:

That §20-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §20-5-15 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

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

1 In addition to all other powers, duties and
2 responsibilities granted and assigned to the director in this
3 chapter and elsewhere by law, the director is hereby
4 authorized and empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the

8 conservation of the natural resources of the state which best
9 effectuates the purpose of this chapter and which makes
10 adequate provisions for the natural resources laws of the
11 state;

12 (2) Sign and execute in the name of the state by the Division
13 of Natural Resources any contract or agreement with the federal
14 government or its departments or agencies, subdivisions of the
15 state, corporations, associations, partnerships or individuals:
16 *Provided*, That intergovernmental cooperative agreements and
17 agreements with nongovernmental organizations in furtherance
18 of providing a comprehensive program for the exploration,
19 conservation, development, protection, enjoyment and use of
20 the natural resources of the state are exempt from the provisions
21 of article three, chapter five-a of this code: *Provided, however*,
22 That repair and related construction contracts necessary to
23 protect public health or safety or to provide uninterrupted
24 enjoyment and public use of state parks, state forests, wildlife
25 management areas and state natural areas under the jurisdiction
26 of the Division of Natural Resources are exempt from the
27 provisions of article three, chapter five-a of this code. Nothing
28 in this section shall authorize the construction or replacement of
29 capital improvements without complying with the provisions of
30 article three, chapter five-a of this code.

31 (3) Conduct research in improved conservation methods
32 and disseminate information matters to the residents of the
33 state;

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

38 (5) Prescribe the locality in which the manner and
39 method by which the various species of wildlife may be
40 taken, or chased, unless otherwise specified by this chapter;

41 (6) Hold at least six meetings each year at such time and
42 at such points within the state, as in the discretion of the

43 Natural Resources Commission may appear to be necessary
44 and proper for the purpose of giving interested persons in
45 the various sections of the state an opportunity to be heard
46 concerning open season for their respective areas, and report
47 the results of the meetings to the Natural Resources
48 Commission before such season and bag limits are fixed by
49 it;

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

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

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

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

70 (11) Acquire for the state in the name of the Division of
71 Natural Resources by purchase, condemnation, lease or
72 agreement, or accept or reject for the state, in the name of
73 the Division of Natural Resources, gifts, donations,
74 contributions, bequests or devises of money, security or
75 property, both real and personal, and any interest in such
76 property, including lands and waters, which he or she deems
77 suitable for the following purposes:

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

81 (b) For state parks or recreation areas for the purpose of
82 preserving scenic, aesthetic, scientific, cultural,
83 archaeological or historical values or natural wonders, or
84 providing public recreation;

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

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

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

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

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

99 (13) Sell timber for not less than the value thereof, as
100 appraised by a qualified appraiser appointed by the director,
101 from all lands under the jurisdiction and control of the
102 director, except those lands that are designated as state parks
103 and those in the Kanawha State Forest. The appraisal shall
104 be made within a reasonable time prior to any sale, reduced
105 to writing, filed in the office of the director and shall be
106 available for public inspection. The director must obtain the
107 written permission of the Governor to sell timber when the
108 appraised value is more than \$5,000. The director shall
109 receive sealed bids therefor, after notice by publication as a
110 Class II legal advertisement in compliance with the
111 provisions of article three, chapter fifty-nine of this code

112 and the publication area for such publication shall be each
113 county in which the timber is located. The timber so
114 advertised shall be sold at not less than the appraised value
115 to the highest responsible bidder, who shall give bond for
116 the proper performance of the sales contract as the director
117 shall designate; but the director shall have the right to reject
118 any and all bids and to readvertise for bids. If the foregoing
119 provisions of this section have been complied with and no
120 bid equal to or in excess of the appraised value of the timber
121 is received, the director may, at any time, during a period of
122 six months after the opening of the bids, sell the timber in
123 such manner as he or she deems appropriate, but the sale
124 price shall not be less than the appraised value of the timber
125 advertised. No contract for sale of timber made pursuant to
126 this section shall extend for a period of more than ten years.
127 And all contracts heretofore entered into by the state for the
128 sale of timber shall not be validated by this section if the
129 same be otherwise invalid. The proceeds arising from the
130 sale of the timber so sold shall be paid to the Treasurer of
131 the State of West Virginia and shall be credited to the
132 division and used exclusively for the purposes of this
133 chapter: *Provided*, That nothing contained herein shall
134 prohibit the sale of timber which otherwise would be
135 removed from rights-of-way necessary for and strictly
136 incidental to the extraction of minerals;

137 (14) Sell or lease, with the approval in writing of the
138 Governor, coal, oil, gas, sand, gravel and any other minerals
139 that may be found in the lands under the jurisdiction and
140 control of the director, except those lands that are designated
141 as state parks. The director, before making sale or lease
142 thereof, shall receive sealed bids therefor, after notice by
143 publication as a Class II legal advertisement in compliance
144 with the provisions of article three, chapter fifty-nine of this
145 code, and the publication area for such publication shall be
146 each county in which such lands are located. The minerals so
147 advertised shall be sold or leased to the highest responsible
148 bidder, who shall give bond for the proper performance of the
149 sales contract or lease as the director shall designate; but the

150 director shall have the right to reject any and all bids and to
151 readvertise for bids. The proceeds arising from any such sale
152 or lease shall be paid to the Treasurer of the State of West
153 Virginia and shall be credited to the division and used
154 exclusively for the purposes of this chapter;

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

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

162 (17) Report to the Governor each year all information
163 relative to the operation and functions of the division and the
164 director shall make such other reports and recommendations
165 as may be required by the Governor, including an annual
166 financial report covering all receipts and disbursements of the
167 division for each fiscal year, and he or she shall deliver such
168 report to the Governor on or before December 1, next after the
169 end of the fiscal year so covered. A copy of such report shall
170 be delivered to each house of the Legislature when convened
171 in January next following;

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

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

181 (20) Require such reports as he or she may deem to be
182 necessary from any person issued a license or permit under the
183 provisions of this chapter, but no person shall be required to

184 disclose secret processes or confidential data of competitive
185 significance;

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

188 (22) Conduct and encourage research designed to further
189 new and more extensive uses of the natural resources of this
190 state and to publicize the findings of such research;

191 (23) Encourage and cooperate with other public and
192 private organizations or groups in their efforts to publicize the
193 attractions of the state;

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

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

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

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

215 (28) Conduct schools, institutions and other educational
216 programs, apart from or in cooperation with other

217 governmental agencies, for instruction and training in all
218 phases of the natural resources programs of the state;

219 (29) Authorize the payment of all or any part of the
220 reasonable expenses incurred by an employee of the division
221 in moving his or her household furniture and effects as a result
222 of a reassignment of the employee: *Provided*, That no part of
223 the moving expenses of any one such employee shall be paid
224 more frequently than once in twelve months; and

225 (30) Promulgate rules, in accordance with the provisions
226 of chapter twenty-nine-a of this code, to implement and make
227 effective the powers and duties vested in him or her by the
228 provisions of this chapter and take such other steps as may be
229 necessary in his or her discretion for the proper and effective
230 enforcement of the provisions of this chapter.

ARTICLE 5. PARKS AND RECREATION.

§20-5-15. Authority to enter into certain operational contracts; terms and conditions; necessity for legislative notice and public hearing before certain facilities are placed under contract.

1 (a) The director may enter into a contract with a person,
2 firm, corporation, foundation or public agency for the
3 operation of a commissary, restaurant, recreational facility or
4 other establishment within the state parks and public
5 recreational system, for a duration not to exceed ten years, but
6 the contract may provide for an option to renew at the
7 director's discretion for an additional term or terms not to
8 exceed ten years at the time of renewal: *Provided*, That an
9 operational contract for the operation of Prickett's Fort by the
10 Prickett's Fort Memorial Foundation, Inc., funded by an
11 appropriation for the specific purpose of such operational
12 contract is exempt from the provisions of article three, chapter
13 five-a of this code. Prior to initiating of a contract for the
14 operation of a state park lodge, cabin, campground, gift shop,
15 golf facility, including pro shop operations, or ski facility, the
16 director shall submit written notice of the specific location

17 subject to the contract to the Legislature by letter to the Senate
18 President and the Speaker of the House of Delegates.

19 (b) Prior to initiating a contract for a previously state-
20 operated state park lodge, cabin, campground, gift shop, golf
21 facility, including pro shop operations, or ski facility, the
22 director shall conduct a public hearing to be held at a
23 reasonable time and place within the county in which the
24 facility is located. Notice of the time, place and purpose of the
25 public hearing shall be provided as a Class II legal
26 advertisement in accordance with the provisions of section
27 two, article three, chapter fifty-nine of this code which notice
28 shall be given at least for the first publication twenty days in
29 advance of said hearing.

30 (c) Any contract entered into by the director shall provide
31 an obligation upon the part of the operator that he or she
32 maintain a level of performance satisfactory to the director and
33 shall further provide that any contract may be terminated by
34 the director in the event he or she determines that the
35 performance is unsatisfactory and has given the operator
36 reasonable notice of the termination.



CHAPTER 165

**(Com. Sub. for S. B. 473 - By Senators Maynard and
Cline)**

[Passed March 31, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §20-2-4 and §20-2-11 of the Code of West Virginia, 1931, as amended, all relating to wildlife; permitting the collection, possession and sale of naturally shed deer antlers; and clarifying the sale, trade or barter of wildlife or parts thereof.

Be it enacted by the Legislature of West Virginia:

That §20-2-4 and §20-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-4. Possession of wildlife.

1 (a) Except for wildlife lawfully taken, killed or
2 obtained, no person may have in his or her possession any
3 wildlife, or parts thereof, during closed seasons. It is
4 unlawful to possess any wildlife, or parts thereof, which
5 have been illegally taken, killed or obtained. This does not
6 include the possession of deer antlers that are naturally shed
7 and collected by a person from his or her own land, from
8 public lands unless prohibited by law, or from private lands
9 with the written permission of the landowner in hand. Any
10 wildlife illegally taken, killed or possessed shall be forfeited
11 to the state and shall be counted toward the daily, seasonal,
12 bag, creel and possession limit of the person in possession
13 of, or responsible for, the illegal taking or killing of any
14 wildlife. It is unlawful to take, obtain, purchase, possess or
15 maintain in captivity any live wildlife, wild animals, wild
16 birds, game or fur-bearing animals except as provided by
17 this chapter or any rule promulgated thereunder.

18 (b) Wildlife lawfully taken outside of this state is subject
19 to the same laws and rules as wildlife taken within this state.

20 (c) Migratory wild birds may be possessed only in
21 accordance with the Migratory Bird Treaty Act, 16 U. S. C.
22 §703, *et seq.*, and its regulations.

23 (d) The restrictions in this section do not apply to the
24 director or duly authorized agents, who may take or
25 maintain in captivity any wildlife for the purpose of carrying
26 out the provisions of this chapter.

27 (e) Wildlife, except protected birds, elk, spotted fawn
28 and bear cubs, killed or mortally wounded as a result of
29 being accidentally or inadvertently struck by a motor
30 vehicle may be lawfully possessed if the possessor of the
31 wildlife provides notice of the claim within twelve hours
32 to a relevant law-enforcement agency and obtains a
33 nonhunting game tag within twenty-four hours of
34 possession. The director shall propose administrative
35 policy which addresses the means, methods and
36 administrative procedures for implementing the
37 provisions of this section.

38 (f) Persons are required to electronically register deer,
39 bear, turkey, wild boar, bobcat, beaver, otter and fisher in
40 accordance with rules promulgated by the director.
41 “Electronically register” means submission of all
42 necessary and relevant information to the division, in the
43 manner designated by rule governing the electronic
44 registration of wildlife. The director may promulgate
45 rules, pursuant to article three, chapter twenty-nine-a of
46 this code, governing the electronic registration of
47 wildlife: *Provided*, That the rules shall include a
48 procedure for persons who are not required to obtain
49 licenses or permits under section twenty-eight of this
50 article to register wildlife using identification other than
51 a social security number. The rules may use a system of
52 a combination of the last four digits of the social security
53 number, date of birth and last name of the person.

§20-2-11. Sale of wildlife; transportation of same.

1 (a) A person, except those legally licensed to operate
2 private game preserves for the purpose of propagating game
3 for commercial purposes and those legally licensed to
4 propagate or sell fish, amphibians and other forms of
5 aquatic life, may not purchase or offer to purchase, sell or
6 offer to sell, trade or offer to trade, barter or offer to barter,
7 expose for sale, trade or barter or have in his or her
8 possession for the purpose of sale, trade or barter any

9 wildlife, or part thereof, which has been designated as game
10 animals, fur-bearing animals, game birds, game fish or
11 amphibians, or any of the song or insectivorous birds of the
12 state, or any other species of wildlife which the director may
13 designate, except for captive cervids regulated pursuant to
14 the provisions of article two-h, chapter nineteen of this code.
15 However, pelts of game or fur-bearing animals taken during
16 the legal season may be sold, traded or bartered and live red
17 and gray foxes and raccoon taken by legal methods during
18 legal and established trapping seasons may be sold, traded
19 or bartered within the state. In addition, the hide, head,
20 antlers and feet of a legally killed deer, lawfully collected
21 and possessed naturally shed deer antlers and the hide, head
22 and skull of a legally killed black bear may be sold, traded
23 or bartered.

24 (b) A person, including a common carrier, may not
25 transport, carry or convey, or receive for such purposes, any
26 wildlife, the sale, trade or bartering of which is prohibited,
27 if such person knows or has reason to believe that such
28 wildlife has been or is to be sold, traded or bartered in
29 violation of this section.

30 (c) Each separate act of selling or exposing for sale, trading
31 or exposing for trade or bartering or exposing for barter or
32 having in possession for sale, trade, barter, transporting or
33 carrying in violation of this section constitutes a separate
34 misdemeanor offense. Notwithstanding this or any other
35 section of this chapter, any game birds or game bird meats sold
36 by licensed retailers may be served at any hotel, restaurant or
37 other licensed eating place in this state.

38 (d) The director may propose rules for promulgation
39 in accordance with article three, chapter twenty-nine-a of
40 this code dealing with the sale of wildlife and the skins
41 thereof.

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CHAPTER 166

**(Com. Sub. for S. B. 345 - By Senators Maynard,
Jeffries, Mullins, Takubo, Cline, Weld and Maroney)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to repeal §20-2-19a of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-2-5, §20-2-42g and §20-2-42h of said code, all relating to hunting; repealing limitations on trappers on Sundays; eliminating local option election regarding hunting on Sunday on private land; permitting hunting on Sunday on private land; clarifying hunting on Sunday on public lands is unlawful; and superseding ballot measures relating to Sunday hunting that have passed or failed prior to the effective date of the amendments.

Be it enacted by the Legislature of West Virginia:

That §20-2-19a of the Code of West Virginia, 1931, as amended, be repealed; and that §20-2-5, §20-2-42g and §20-2-42h of said code be amended and reenacted, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

***§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.**

- 1 (a) Except as authorized by the director or by law, it is
- 2 unlawful at any time for any person to:

***NOTE:** This section was also amended by H. B. 2679 (Chapter 163), which passed subsequent to this act.

3 (1) Shoot at any wild bird or wild animal unless it is
4 plainly visible;

5 (2) Dig out, cut out, smoke out, or in any manner take
6 or attempt to take any live wild animal or wild bird out of
7 its den or place of refuge;

8 (3) Use or attempt to use any artificial light or any night
9 vision technology, including image intensification, thermal
10 imaging or active illumination, while hunting, locating,
11 attracting, taking, trapping or killing any wild bird or wild
12 animal: *Provided*, That it is lawful to hunt or take coyote,
13 fox, raccoon, opossum or skunk by the use of artificial light
14 or night vision technology;

15 Any person violating this subdivision is guilty of a
16 misdemeanor and, upon conviction thereof, shall for each
17 offense be fined not less than \$100 nor more than \$500, and
18 shall be confined in jail for not less than ten days nor more
19 than one hundred days;

20 (4) Hunt, take, kill, wound or shoot at wild animals or
21 wild birds from an airplane or other airborne conveyance, a
22 drone or other unmanned aircraft, an automobile or other
23 land conveyance, or from a motor-driven water conveyance;

24 (5) Use a drone or other unmanned aircraft to hunt, take
25 or kill a wild bird or wild animal, or to use a drone or other
26 unmanned aircraft to drive or herd any wild bird or wild
27 animal for the purposes of hunting, trapping or killing;

28 (6) Take any beaver or muskrat by any means other than
29 a trap;

30 (7) Catch, capture, take, hunt or kill by seine, net, bait,
31 trap or snare or like device a bear, wild turkey, ruffed
32 grouse, pheasant or quail;

33 (8) Intentionally destroy or attempt to destroy the nest
34 or eggs of any wild bird or have in his or her possession the
35 nest or eggs;

36 (9) Carry an uncased or loaded firearm in the woods of
37 this state with the following permissible exceptions:

38 (A) A person in possession of a valid license or permit
39 during open firearms hunting season for wild animals and
40 nonmigratory wild birds;

41 (B) A person hunting or taking unprotected species of
42 wild animals, wild birds and migratory wild birds during the
43 open season, in the open fields, open water and open
44 marshes of the state;

45 (C) A person carrying a firearm pursuant to sections six
46 and six-a of this article; or

47 (D) A person carrying a firearm for self-defense who is
48 not prohibited from possessing firearms by section seven,
49 article seven, chapter sixty-one of this code;

50 (10) Have in his or her possession a crossbow with a
51 nocked bolt, or a rifle or shotgun with cartridges that have not
52 been removed or a magazine that has not been detached, in or
53 on any vehicle or conveyance, or its attachments. For the
54 purposes of this section, a rifle or shotgun whose magazine
55 readily detaches is considered unloaded if the magazine is
56 detached and no cartridges remain in the rifle or shotgun itself.
57 Except that between five o'clock post meridian of day one and
58 seven o'clock ante meridian, Eastern Standard Time, of the
59 following day, any unloaded firearm or crossbow may be
60 carried only when in a case or taken apart and securely
61 wrapped. During the period from July 1 to September 30,
62 inclusive, of each year, the requirements relative to carrying
63 unloaded firearms are permissible only from eight-thirty
64 o'clock post meridian to five o'clock ante meridian, Eastern
65 Standard Time: *Provided*, That the time periods for carrying
66 unloaded and uncased firearms are extended for one hour after
67 the post meridian times and one hour before the ante meridian
68 times established in this subdivision, if a person is transporting
69 or transferring the firearms to or from a hunting site, campsite,
70 home or other abode;

- 71 (11) Hunt, catch, take, kill, injure or pursue a wild animal
72 or wild bird with the use of a ferret;
- 73 (12) Buy raw furs, pelts or skins of fur-bearing animals
74 unless licensed to do so;
- 75 (13) Catch, take, kill or attempt to catch, take or kill any
76 fish by any means other than by rod, line and hooks with
77 natural or artificial lures: *Provided*, That snaring of any species
78 of suckers, carp, fallfish and creek chubs is lawful;
- 79 (14) Employ, hire, induce or persuade, with money, things
80 of value or by any means, any person to hunt, take, catch or
81 kill any wild animal or wild bird except those species in which
82 there is no closed season; or to fish for, catch, take or kill any
83 fish, amphibian or aquatic life that is protected by rule, or the
84 sale of which is otherwise prohibited;
- 85 (15) Hunt, catch, take, kill, capture, pursue, transport,
86 possess or use any migratory game or nongame birds except as
87 permitted by the Migratory Bird Treaty Act, 16 U. S. C. (703,
88 *et seq.*, and its regulations;
- 89 (16) Kill, take, catch, sell, transport or have in his or her
90 possession, living or dead, any wild bird other than a game bird
91 including the plumage, skin or body of any protected bird,
92 irrespective of whether the bird was captured in or out of this
93 state, except the English or European sparrow (*Passer*
94 *domesticus*), starling (*Sturnus vulgaris*) and cowbird
95 (*Molothrus ater*), which may be killed at any time;
- 96 (17) Use dynamite, explosives or any poison in any waters
97 of the state for the purpose of killing or taking fish. Any person
98 violating this subdivision is guilty of a felony and, upon
99 conviction thereof, shall be fined not more than \$500 or
100 imprisoned for not less than six months nor more than three
101 years, or both fined and imprisoned;
- 102 (18) Have a bow and gun, or have a gun and any arrow, in
103 the fields or woods at the same time;
- 104 (19) Have a crossbow in the woods or fields, or use a
105 crossbow to hunt for, take or attempt to take any wildlife

106 except as otherwise provided in sections five-g and forty-two-
107 w of this article;

108 (20) Take or attempt to take turkey, bear, elk or deer with
109 any arrow unless the arrow is equipped with a point having at
110 least two sharp cutting edges measuring in excess of three
111 fourths of an inch wide;

112 (21) Take or attempt to take any wildlife with an arrow
113 having an explosive head or shaft, a poisoned arrow or an
114 arrow which would affect wildlife by any chemical action;

115 (22) Shoot an arrow across any public highway;

116 (23) Permit any dog owned or under his or her control to
117 chase, pursue or follow the tracks of any wild animal or wild
118 bird, day or night, between May 1 and August 15: *Provided*,
119 That dogs may be trained on wild animals and wild birds,
120 except deer and wild turkeys, and field trials may be held or
121 conducted on the grounds or lands of the owner, or by his or
122 her bona fide tenant, or upon the grounds or lands of another
123 person with his or her written permission, or on public lands at
124 any time. Nonresidents may not train dogs in this state at any
125 time except during the legal small game hunting season. A
126 person training dogs may not have firearms or other
127 implements in his or her possession during the closed season
128 on wild animals and wild birds;

129 (24) Conduct or participate in a trial, including a field trial,
130 shoot-to-retrieve field trial, water race or wild hunt: *Provided*,
131 That any person, group of persons, club or organization may
132 hold a trial upon obtaining a permit pursuant to section fifty-
133 six of this article. The person responsible for obtaining the
134 permit shall prepare and keep an accurate record of the names
135 and addresses of all persons participating in the trial and make
136 the records readily available for inspection by any natural
137 resources police officer upon request;

138 (25) Hunt, catch, take, kill or attempt to hunt, catch, take
139 or kill any wild animal, wild bird or wild fowl except during
140 open seasons;

141 (26) Hunt on public lands on Sunday after five o'clock
142 ante meridian; and

143 (27) Hunt or conduct hunts for a fee when the person is not
144 physically present in the same location as the wildlife being
145 hunted within West Virginia.

146 (b) Notwithstanding any ballot measure relating to Sunday
147 hunting, it is lawful to hunt throughout the State of West
148 Virginia on private lands on Sundays after the hour of five
149 o'clock ante meridian with the written consent of the private
150 landowner pursuant to section seven, article two of this
151 chapter.

***§20-2-42g. Class H nonresident small game hunting license.**

1 A Class H license is a nonresident small game hunting
2 license and entitles the licensee to hunt small game in all
3 counties of the state, except as prohibited by rules of the
4 director or Natural Resources Commission and except when
5 additional licenses, stamps or permits are required, for a period
6 of six consecutive hunting days chosen by the licensee. The fee
7 for the license is \$25. This is a base license and does not require
8 the purchase of a prerequisite license to participate in the
9 activities specified in this section, except as noted.

***§20-2-42h. Class J nonresident small game shooting preserve license.**

1 A Class J license is a nonresident small game shooting
2 preserve license and entitles the licensee to hunt small game
3 on designated shooting preserves, except as prohibited by rules
4 of the director or Natural Resources Commission and except
5 when additional licenses, stamps or permits are required, for a
6 period of six consecutive hunting days chosen by the licensee.
7 The fee for the license is \$10. This is a base license and does
8 not require the purchase of a prerequisite license to participate
9 in the activities specified in this section, except as noted.

***NOTE:** This section was also amended by H. B. 2679 (Chapter 163),
which passed subsequent to this act.

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CHAPTER 167

**(S. B. 493 - By Senators Mann, Cline, Mullins,
Maroney and Romano)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §20-7-1c of the Code of West Virginia, 1931, as amended, relating to compensation for Natural Resources Police Officers.

Be it enacted by the Legislature of West Virginia:

That §20-7-1c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 7. LAW ENFORCEMENT; MOTORBOATING;
LITTER.**

§20-7-1c. Natural resources police officer, ranks, salary schedule, base pay, exceptions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the ranks within the law-enforcement section of
3 the Division of Natural Resources are colonel, lieutenant
4 colonel, major, captain, lieutenant, sergeant, corporal,
5 natural resources police officer first class, senior natural
6 resources police officer, natural resources police officer and
7 natural resources police officer-in-training. Each officer
8 while in uniform shall wear the insignia of rank as provided
9 by the chief natural resources police officer.

10 (b) Beginning on July 1, 2002, through June 30, 2011,
11 Natural Resources Police Officers shall be paid the
12 minimum annual salaries based on the following
13 schedule:

14	ANNUAL SALARY SCHEDULE (BASE PAY)	
15	SUPERVISORY AND NONSUPERVISORY RANKS	
16	Natural Resources Police Officer In Training	
17	(first year until end of probation).....	\$26,337
18	Natural Resources Police Officer	
19	(second year).....	\$29,768
20	Natural Resources Police Officer	
21	(third year)	\$30,140
22	Senior Natural Resources Police Officer	
23	(fourth and fifth year)	\$30,440
24	Senior Natural Resources Police Officer	
25	First Class (after fifth year).....	\$32,528
26	Senior Natural Resources Police Officer	
27	(after tenth year)	\$33,104
28	Senior Natural Resources Police Officer	
29	(after fifteenth year)	\$33,528
30	Corporal (after sixteenth year).....	\$36,704
31	Sergeant	\$40,880
32	First Sergeant	\$42,968
33	Lieutenant	\$47,144
34	Captain.....	\$49,232
35	Major.....	\$51,320
36	Lieutenant Colonel.....	\$53,408
37	Colonel	

38 Beginning July 1, 2011, and continuing thereafter,
 39 Natural Resources Police Officers shall be paid the
 40 minimum annual salaries based on the following schedule:

41	ANNUAL SALARY SCHEDULE (BASE PAY)	
42	SUPERVISORY AND NONSUPERVISORY RANKS	
43	Natural Resources Police Officer in Training	
44	(first year until end of probation).....	\$31,222
45	Natural Resources Police Officer	
46	(second year).....	\$34,881
47	Natural Resources Police Officer	
48	(third year)	\$35,277
49	Senior Natural Resources Police Officer	
50	(fourth and fifth year)	\$35,601
51	Senior Natural Resources Police Officer	
52	First Class (after fifth year).....	\$37,797
53	Senior Natural Resources Police Officer	
54	(after tenth year)	\$38,397
55	Senior Natural Resources Police Officer	
56	(after fifteenth year).....	\$38,833
57	Corporal (after sixteenth year).....	\$42,105
58	Sergeant	\$46,401
59	First Sergeant	\$48,549
60	Lieutenant	\$52,857
61	Captain.....	\$55,005
62	Major.....	\$57,153
63	Lieutenant Colonel.....	\$59,301
64	Colonel.....	\$66,000

65 Beginning July 1, 2017, the director may set additional
66 annual compensation for Natural Resources Police Officers
67 based on rank and length of service in addition to the
68 minimum annual salaries provided in this section in an
69 amount payable solely from the Law Enforcement Program
70 Fund and the Special Revenue License Fund. Each Natural
71 Resources Police Officer whose minimum salary is fixed
72 and specified in the Annual Salary Schedule in this section
73 is entitled to the length of service increases set forth in
74 section one-a of this article.

75 In applying the salary schedules set forth in this section
76 where salary increases are provided for length of service,
77 Natural Resources Police Officers in service at the time the
78 schedules become effective shall be given credit for prior
79 service and shall be paid salaries the same length of service
80 entitles them to receive under the provisions of this section.

81 (c) This section does not apply to special or emergency
82 Natural Resources Police Officers appointed under the
83 authority of section one of this article.

84 (d) Nothing in this section prohibits other pay increases
85 as provided under section two, article five, chapter five of
86 this code: *Provided*, That any across-the-board pay increase
87 granted by the Legislature or the Governor, and any increase
88 in the base pay for the ranks within the law-enforcement
89 section authorized by the director, will be added to, and
90 reflected in, the minimum salaries set forth in this section;
91 and that any merit increases granted to an officer over and
92 above the annual salary schedule listed in subsection (b) of
93 this section are retained by an officer when he or she
94 advances from one rank to another: *Provided, however*,
95 That any Natural Resources Police Officer who receives an
96 increase in compensation pursuant to the amendment and
97 reenactment of this section in 2011 shall not receive any
98 across-the-board pay increase granted by the Legislature or
99 the Governor in 2011.

CHAPTER 168

(H. B. 2548 - By Delegates Pushkin, Howell, Rowe, Lane, Hamrick, Storch, Byrd and Robinson)

[Passed April 5, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended, relating to the use of outside speakers by persons licensed to manufacture, sell, possess for sale, transport or distribute nonintoxicating beer.

Be it enacted by the Legislature of West Virginia:

That §11-16-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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
3 or employees to sell, give or dispense, or any individual to
4 drink or consume, in or on any licensed premises or in any
5 rooms directly connected, nonintoxicating beer or cooler on
6 weekdays between the hours of two o'clock a.m. and seven
7 o'clock a.m., or between the hours of two o'clock a.m. and
8 one o'clock p.m., or a Class A retail dealer who sells
9 nonintoxicating beer for on premises consumption only
10 between the hours of two o'clock a.m. and ten o'clock a.m.
11 in any county upon approval as provided for in section
12 three-pp, article one, chapter seven of this code, on any
13 Sunday, except in private clubs licensed under the
14 provisions of article seven, chapter sixty of this code, where

15 the hours shall conform with the hours of sale of alcoholic
16 liquors;

17 (2) For any licensee, his, her, its or their servants, agents
18 or employees to sell, furnish or give any nonintoxicating
19 beer, as defined in this article, to any person visibly or
20 noticeably intoxicated or to any person known to be insane
21 or known to be a habitual drunkard;

22 (3) For any licensee, his, her, its or their servants, agents
23 or employees to sell, furnish or give any nonintoxicating
24 beer as defined in this article to any person who is less than
25 twenty-one years of age;

26 (4) For any distributor to sell or offer to sell, or any
27 retailer to purchase or receive, any nonintoxicating beer as
28 defined in this article, except for cash and no right of action
29 shall exist to collect any claims for credit extended contrary
30 to the provisions of this subdivision. Nothing herein
31 contained in this section prohibits a licensee from crediting
32 to a purchaser the actual price charged for packages or
33 containers returned by the original purchaser as a credit on
34 any sale, or from refunding to any purchaser the amount
35 paid or deposited for the containers when title is retained by
36 the vendor: *Provided*, That a distributor may accept an
37 electronic transfer of funds if the transfer of funds is
38 initiated by an irrevocable payment order on the invoiced
39 amount for the nonintoxicating beer. The cost of the
40 electronic fund transfer shall be borne by the retailer and the
41 distributor shall initiate the transfer no later than noon of
42 one business day after the delivery;

43 (5) For any brewer or distributor or brew-pub or his, her,
44 its or their agents to transport or deliver nonintoxicating
45 beer as defined in this article to any retail licensee on
46 Sunday;

47 (6) For any brewer or distributor to give, furnish, rent or
48 sell any equipment, fixtures, signs or supplies directly or
49 indirectly or through a subsidiary or affiliate to any licensee

50 engaged in selling products of the brewing industry at retail
51 or to offer any prize, premium, gift or other similar
52 inducement, except advertising matter of nominal value, to
53 either trade or consumer buyers: *Provided*, That a
54 distributor may offer, for sale or rent, tanks of carbonic gas.
55 Nothing herein contained in this section prohibits a brewer
56 from sponsoring any professional or amateur athletic event
57 or from providing prizes or awards for participants and
58 winners in any events: *Provided, however*, That no event
59 shall be sponsored which permits actual participation by
60 athletes or other persons who are minors, unless specifically
61 authorized by the commissioner;

62 (7) For any licensee to permit in his or her premises any
63 lewd, immoral or improper entertainment, conduct or
64 practice;

65 (8) For any licensee except the holder of a license to
66 operate a private club issued under the provisions of article
67 seven, chapter sixty of this code or a holder of a license or a
68 private wine restaurant issued under the provisions of article
69 eight of said chapter to possess a federal license, tax receipt
70 or other permit entitling, authorizing or allowing the
71 licensee to sell liquor or alcoholic drinks other than
72 nonintoxicating beer;

73 (9) For any licensee to obstruct the view of the interior
74 of his or her premises by enclosure, lattice, drapes or any
75 means which would prevent plain view of the patrons
76 occupying the premises. The interior of all licensed
77 premises shall be adequately lighted at all times: *Provided*,
78 That provisions of this subdivision do not apply to the
79 premises of a Class B retailer, the premises of a private club
80 licensed under the provisions of article seven, chapter sixty
81 of this code or the premises of a private wine restaurant
82 licensed under the provisions of article eight of said chapter;

83 (10) For any licensee to manufacture, import, sell, trade,
84 barter, possess or acquiesce in the sale, possession or
85 consumption of any alcoholic liquors on the premises

86 covered by a license or on premises directly or indirectly
87 used in connection with it: *Provided*, That the prohibition
88 contained in this subdivision with respect to the selling or
89 possessing or to the acquiescence in the sale, possession or
90 consumption of alcoholic liquors is not applicable with
91 respect to the holder of a license to operate a private club
92 issued under the provisions of article seven, chapter sixty of
93 this code nor shall the prohibition be applicable to a private
94 wine restaurant licensed under the provisions of article eight
95 of said chapter insofar as the private wine restaurant is
96 authorized to serve wine;

97 (11) For any retail licensee to sell or dispense
98 nonintoxicating beer, as defined in this article, purchased or
99 acquired from any source other than a distributor, brewer or
100 manufacturer licensed under the laws of this state;

101 (12) For any licensee to permit loud, boisterous or
102 disorderly conduct of any kind upon his or her premises or
103 to permit the use of loud musical instruments if either or any
104 of the same may disturb the peace and quietude of the
105 community where the business is located: *Provided*, That a
106 licensee may have speaker systems for outside broadcasting
107 so long as the noise levels do not create a public nuisance or
108 violate local noise ordinances;

109 (13) For any person whose license has been revoked, as
110 provided in this article, to obtain employment with any
111 retailer within the period of one year from the date of the
112 revocation, or for any retailer to knowingly employ that
113 person within the specified time;

114 (14) For any distributor to sell, possess for sale,
115 transport or distribute nonintoxicating beer except in the
116 original container;

117 (15) For any licensee to knowingly permit any act to be
118 done upon the licensed premises, the commission of which
119 constitutes a crime under the laws of this state;

120 (16) For any Class B retailer to permit the consumption
121 of nonintoxicating beer upon his or her licensed premises;

122 (17) For any Class A licensee, his, her, its or their
123 servants, agents or employees, or for any licensee by or
124 through any servants, agents or employees, to allow, suffer
125 or permit any person less than eighteen years of age to loiter
126 in or upon any licensed premises; except, however, that the
127 provisions of this subdivision do not apply where a person
128 under the age of eighteen years is in or upon the premises in
129 the immediate company of his or her parent or parents, or
130 where and while a person under the age of eighteen years is
131 in or upon the premises for the purpose of and actually
132 making a lawful purchase of any items or commodities
133 therein sold, or for the purchase of and actually receiving
134 any lawful service therein rendered, including the
135 consumption of any item of food, drink or soft drink therein
136 lawfully prepared and served or sold for consumption on the
137 premises;

138 (18) For any distributor to sell, offer for sale, distribute
139 or deliver any nonintoxicating beer outside the territory
140 assigned to any distributor by the brewer or manufacturer of
141 nonintoxicating beer or to sell, offer for sale, distribute or
142 deliver nonintoxicating beer to any retailer whose principal
143 place of business or licensed premises is within the assigned
144 territory of another distributor of such nonintoxicating beer:
145 *Provided*, That nothing in this section is considered to
146 prohibit sales of convenience between distributors licensed
147 in this state where one distributor sells, transfers or delivers
148 to another distributor a particular brand or brands for sale at
149 wholesale; and

150 (19) For any licensee or any agent, servant or employee
151 of any licensee to knowingly violate any rule lawfully
152 promulgated by the commissioner in accordance with the
153 provisions of chapter twenty-nine-a of this code.

154 (b) Any person who violates any provision of this article
155 including, but not limited to, any provision of this section,

156 or any rule, or order lawfully promulgated by the
157 commissioner, or who makes any false statement
158 concerning any material fact in submitting application for
159 license or for a renewal of a license or in any hearing
160 concerning the revocation thereof, or who commits any of
161 the acts herein declared to be unlawful is guilty of a
162 misdemeanor and, upon conviction thereof, shall be
163 punished for each offense by a fine of not less than \$25, nor
164 more than \$500, or confined in the county or regional jail
165 for not less than thirty days nor more than six months, or by
166 both fine and confinement. Magistrates have concurrent
167 jurisdiction with the circuit court and any other courts
168 having criminal jurisdiction in their county for the trial of
169 all misdemeanors arising under this article.

170 (c) (1) A Class B licensee that:

171 (A) Has installed a transaction scan device on its
172 licensed premises; and

173 (B) Can demonstrate that it requires each employee,
174 servant or agent to verify the age of any individual to whom
175 nonintoxicating beer is sold, furnished or given away by the
176 use of the transaction device may not be subject to: (i) Any
177 criminal penalties whatsoever, including those set forth in
178 subsection (b) of this section; (ii) any administrative
179 penalties from the commissioner; or (iii) any civil liability
180 whatsoever for the improper sale, furnishing or giving away
181 of nonintoxicating beer to an individual who is less than
182 twenty-one years of age by one of his or her employees,
183 servants or agents. Any agent, servant or employee who has
184 improperly sold, furnished or given away nonintoxicating
185 beer to an individual less than twenty-one years of age is
186 subject to the criminal penalties of subsection (b) of this
187 section. Any agent, servant or employee who has
188 improperly sold, furnished or given away nonintoxicating
189 beer to an individual less than twenty-one years of age is
190 subject to termination from employment, and the employer
191 shall have no civil liability for the termination.

192 (2) For purposes of this section, a Class B licensee can
193 demonstrate that it requires each employee, servant or agent
194 to verify the age of any individual to whom nonintoxicating
195 beer is sold by providing evidence: (A) That it has
196 developed a written policy which requires each employee,
197 servant or agent to verify the age of each individual to whom
198 nonintoxicating beer will be sold, furnished or given away;
199 (B) that it has communicated this policy to each employee,
200 servant or agent; and (C) that it monitors the actions of its
201 employees, servants or agents regarding the sale, furnishing
202 or giving away of nonintoxicating beer and that it has taken
203 corrective action for any discovered noncompliance with
204 this policy.

205 (3) “Transaction scan” means the process by which a
206 person checks, by means of a transaction scan device, the
207 age and identity of the cardholder, and “transaction scan
208 device” means any commercial device or combination of
209 devices used at a point of sale that is capable of deciphering
210 in an electronically readable format the information
211 enclosed on the magnetic strip or bar code of a driver’s
212 license or other governmental identity card.

213 (d) Nothing in this article nor any rule or regulation of
214 the commissioner shall prevent or be considered to prohibit
215 any licensee from employing any person who is at least
216 eighteen years of age to serve in the licensee’s lawful
217 employ, including the sale or delivery of nonintoxicating
218 beer as defined in this article. With the prior approval of the
219 commissioner, a licensee whose principal business is the
220 sale of food or consumer goods or the providing of
221 recreational activities, including, but not limited to,
222 nationally franchised fast food outlets, family-oriented
223 restaurants, bowling alleys, drug stores, discount stores,
224 grocery stores and convenience stores, may employ persons
225 who are less than eighteen years of age but at least sixteen
226 years of age: *Provided*, That the person’s duties may not
227 include the sale or delivery of nonintoxicating beer or
228 alcoholic liquors: *Provided, however*, That the authorization

229 to employ persons under the age of eighteen years shall be
230 clearly indicated on the licensee's license.



CHAPTER 169

**(Com. Sub. for H. B. 2631 - By Delegates Howell,
Martin, Hill, Arvon, Shott, Hanshaw, Lewis, Criss,
Hamrick, Paynter and Hollen)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2017.]

AN ACT to amend and reenact §30-1-5 of the Code of West Virginia, 1931, as amended, relating to time standards for disposition of complaint proceedings; tolling the time periods for delays attributable to the respondent; and prohibiting complaint proceeding from being dismissed for exceeding time standards when overage is result of procedural delay or obstructive action by respondent.

Be it enacted by the Legislature of West Virginia:

That §30-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-5. Meetings; quorum; investigatory powers; duties.

1 (a) Every board referred to in this chapter shall hold at
2 least one meeting each year, at such time and place as it may
3 prescribe by rule, for the examination of applicants who
4 desire to practice their respective professions or occupations
5 in this state and to transact any other business which may
6 legally come before it. The board may hold additional

7 meetings as may be necessary, which shall be called by the
8 secretary at the direction of the president or upon the written
9 request of any three members. A majority of the members
10 of the board constitutes a quorum for the transaction of its
11 business.

12 (b) The board may compel the attendance of witnesses,
13 to issue subpoenas, to conduct investigations and hire an
14 investigator and to take testimony and other evidence
15 concerning any matter within its jurisdiction. The president
16 and secretary of the board may administer oaths for these
17 purposes.

18 (c) Every board referred to in this chapter shall
19 investigate and resolve complaints which it receives and
20 shall, within six months of the complaint being filed, send a
21 status report to the party filing the complaint and the
22 respondent by certified mail with a signed return receipt and
23 within one year of the status report's return receipt date
24 issue a final ruling, unless the party filing the complaint and
25 the board agree in writing to extend the time for the final
26 ruling. The time period for final ruling shall be tolled for
27 any delay requested or caused by the respondent or by
28 counsel for the respondent and in no event shall a complaint
29 proceeding be dismissed for exceeding the time standards in
30 this section when such overage is the result of procedural
31 delay or obstructive action by the accused or his or her
32 counsel or agents.

33 (d) Every board shall provide public access to the record
34 of the disposition of the complaints which it receives in
35 accordance with the provisions of chapter twenty-nine-b of
36 this code, and shall provide public access on a website to all
37 completed disciplinary actions in which discipline was
38 ordered. If a board is unable to provide access, the Attorney
39 General shall provide a link to this information on the
40 consumer protection division website, together with a link
41 to the website of all other boards subject to this chapter.
42 Every board shall report violations of individual practice
43 acts contained in this chapter to the board by which the

44 individual may be licensed and shall do so in a timely
45 manner upon receiving notice of the violations. Every
46 person licensed or registered by a board shall report to the
47 board which licenses or registers him or her a known or
48 observed violation of the practice act or the board's rules by
49 any other person licensed or registered by the same board
50 and shall do so in a timely manner. Law-enforcement
51 agencies or their personnel and courts shall report in a
52 timely manner to the appropriate board any violations of
53 individual practice acts by any individual.

54 (e) Whenever a board referred to in this chapter obtains
55 information that a person subject to its authority has
56 engaged in, is engaging in or is about to engage in any act
57 which constitutes or will constitute a violation of the
58 provisions of this chapter which are administered and
59 enforced by that board, it may apply to the circuit court for
60 an order enjoining the act. Upon a showing that the person
61 has engaged, is engaging or is about to engage in any such
62 act, the court shall order an injunction, restraining order or
63 other order as the court may deem appropriate.

CHAPTER 170

**(Com. Sub. for H. B. 2804 - By Delegates Lane, Ferro,
Williams, Phillips, Maynard and Robinson)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §30-1-7a of the Code of west
Virginia, 1931, as amended, relating to continuing education
requirements; removing continuing education requirements;
and removing outdated provisions.

Be it enacted by the Legislature of West Virginia:

That §30-1-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-7a. Continuing education.

1 (a) A board referred to in this chapter shall establish
2 continuing education requirements as a prerequisite to
3 license renewal. A board shall develop continuing education
4 criteria appropriate to its discipline, which shall include, but
5 not be limited to, course content, course approval, hours
6 required and reporting periods.

7 (b) Notwithstanding any other provision of this code
8 or the provision of a legislative rule to the contrary, each
9 person issued a license to practice medicine and surgery,
10 a license to practice podiatry or licensed as a physician
11 assistant by the West Virginia Board of Medicine; each
12 person issued a license to practice dentistry by the West
13 Virginia Board of Dental Examiners, each person issued
14 a license to practice optometry by the West Virginia
15 Board of Optometry, each person licensed as a pharmacist
16 by the West Virginia Board of Pharmacy, each person
17 licensed to practice registered professional nursing or
18 licensed as an advanced nurse practitioner by the West
19 Virginia Board of Examiners for Registered Professional
20 Nurses, each person licensed as a licensed practical nurse
21 by the West Virginia State Board of Examiners for
22 Licensed Practical Nurses and each person licensed to
23 practice medicine and surgery as an osteopathic physician
24 and surgeon or licensed or certified as an osteopathic
25 physician assistant by the West Virginia Board of
26 Osteopathy shall complete drug diversion training, best-
27 practice prescribing of controlled substances training and
28 training on prescribing and administration of an opioid
29 antagonist, as the trainings are established by his or her
30 respective licensing board, if that person prescribes,

31 administers or dispenses a controlled substance, as that
32 term is defined in section one hundred one, article one,
33 chapter sixty-a of this code.

34 (1) Notwithstanding any other provision of this code
35 or the provision of any legislative rule to the contrary, the
36 West Virginia Board of Medicine, the West Virginia
37 Board of Dental Examiners, the West Virginia Board of
38 Optometry, the West Virginia Board of Pharmacy, the
39 West Virginia Board of Examiners for Registered
40 Professional Nurses, the West Virginia State Board of
41 Examiners for Licensed Practical Nurses and the West
42 Virginia Board of Osteopathy shall establish continuing
43 education requirements and criteria appropriate to their
44 respective discipline on the subject of drug diversion
45 training, best-practice prescribing of controlled
46 substances training and prescribing and administration of
47 an opioid antagonist training for each person issued a
48 license or certificate by their respective board who
49 prescribes, administers or dispenses a controlled
50 substance, as that term is defined in section one hundred
51 one, article one, chapter sixty-a of this code, and shall
52 develop a certification form pursuant to subdivision
53 (b)(2) of this section.

54 (2) Each person who receives his or her initial license
55 or certificate from any of the boards set forth in
56 subsection (b) of this section shall complete the
57 continuing education requirements set forth in subsection
58 (b) of this section within one year of receiving his or her
59 initial license from that board and each person licensed or
60 certified by any of the boards set forth in subsection (b)
61 of this section who has held his or her license or
62 certificate for longer than one year shall complete the
63 continuing education requirements set forth in subsection
64 (b) of this section as a prerequisite to each license
65 renewal: *Provided*, That a person subject to subsection
66 (b) of this section may waive the continuing education
67 requirements for license renewal set forth in subsection

68 (b) of this section if he or she completes and submits to
69 his or her licensing board a certification form developed
70 by his or her licensing board attesting that he or she has
71 not prescribed, administered or dispensed a controlled
72 substance, as that term is defined in section one hundred
73 one, article one, chapter sixty-a of this code, during the
74 entire applicable reporting period.

75 (c) Notwithstanding any other provision of this code
76 or the provision of any legislative rule to the contrary,
77 each person licensed to practice registered professional
78 nursing or licensed as an advanced nurse practitioner by
79 the West Virginia Board of Examiners for Registered
80 Professional Nurses, each person licensed as a licensed
81 practical nurse by the West Virginia State Board of
82 Examiners for Licensed Practical Nurses, each person
83 licensed to practice psychology by the Board of
84 Examiners of Psychologists, each person licensed to
85 practice social work by the West Virginia Board of Social
86 Work and each person licensed to practice professional
87 counseling by the West Virginia Board of Examiners in
88 Counseling shall complete two hours of continuing
89 education for each reporting period on mental health
90 conditions common to veterans and family members of
91 veterans, as the continuing education is established by his
92 or her respective licensing board. In cooperation with the
93 Secretary of the Department of Veterans' Assistance, the
94 continuing education shall include training on inquiring
95 about whether the patients are veterans or family
96 members of veterans, and screening for conditions such
97 as post-traumatic stress disorder, risk of suicide,
98 depression and grief and prevention of suicide. The two
99 hours shall be part of the total hours of continuing
100 education required by each board and not two additional
101 hours.



CHAPTER 171

**(Com. Sub. for S. B. 4 - By Senators Gaunch, Trump,
Boso, Blair, Rucker, Jeffries, Stollings, Woelfel and
Sypolt)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §30-1-21; to amend and reenact §30-3-10a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-3E-14; to amend and reenact §30-4-15 of said code; to amend and reenact §30-5-17 of said code; to amend and reenact §30-7-6a of said code; to amend said code by adding thereto a new section, designated §30-7-6b; to amend said code by adding thereto a new section, designated §30-7A-6a; to amend and reenact §30-8-16 of said code; to amend and reenact §30-14-12b of said code; to amend said code by adding thereto a new section, designated §30-16-7a; to amend and reenact §30-20-13 of said code; to amend and reenact §30-21-17 of said code; and to amend and reenact §30-28-8a of said code, all relating to allowing professionals to donate time to the care of indigent and needy; permitting persons who hold an unrestricted license, certificate, registration or permit granted by another state or jurisdiction to serve as a volunteer without compensation for a charitable function for a period not to exceed ten days; permitting specific professionals who are actively practicing and whose license is in good standing to donate their expertise for the care and treatment of indigent and needy patients under an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient and providing that such services may be performed in either the professional's office or in the clinical setting; and providing for special volunteer

license for advance practice registered nurses, licensed practical nurses and chiropractors.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-1-21; that §30-3-10a of said code be amended and reenacted; that §30-3E-14 of said code be amended and reenacted; that §30-4-15 of said code be amended and reenacted; that §30-5-17 of said code be amended and reenacted; that §30-7-6a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-7-6b; that said code be amended by adding thereto a new section, designated §30-7A-6a; that §30-8-16 of said code be amended and reenacted; that §30-14-12b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-16-7a; that §30-20-13 of said code be amended and reenacted; that §30-21-17 of said code be amended and reenacted; and that §30-28-8a of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-21. Exemption from licensure for professional practice for a charitable function.

1 (a) A person holding an unrestricted license, certificate,
2 registration or permit granted by another state or jurisdiction
3 to practice a profession or occupation licensed under this
4 chapter may serve as a volunteer without compensation for
5 a charitable function for a period not to exceed ten days,
6 subject to the approval process described in this
7 section: *Provided*, That a person who has received any
8 completed disciplinary actions in which discipline was
9 ordered in any of the three most recent years, or is the
10 subject of any pending disciplinary actions is not eligible for
11 this charitable exemption from licensure.

12 (b) The person shall notify the board of the nature of the
13 volunteer charitable practice, the specific dates the person
14 will participate in the charitable practice, and shall provide
15 to the board a list of all professional and occupational
16 licenses, registrations, permits or certificates held in each
17 state or jurisdiction for the previous three years.

18 (c) Upon a review of the information required by this
19 section, the board shall provide a temporary authorization to
20 a qualified volunteer to participate in the volunteer activity
21 for the duration not to exceed ten days. Each board shall
22 keep a record of each authorization issued pursuant to his
23 section.

24 (d) The board may not charge a fee to authorize this
25 charitable practice.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

1 (a) There is hereby established a special volunteer
2 medical license for physicians retired or retiring from the
3 active practice of medicine who wish to donate their
4 expertise for the medical care and treatment of indigent and
5 needy patients in the clinical setting of clinics organized, in
6 whole or in part, for the delivery of health care services
7 without charge. The special volunteer medical license shall
8 be issued by the West Virginia Board of Medicine to
9 physicians licensed or otherwise eligible for licensure under
10 this article and the rules promulgated hereunder without the
11 payment of any application fee, license fee or renewal fee,
12 shall be issued for a fiscal year or part thereof, and shall be
13 renewable annually. The board shall develop application
14 forms for the special license provided for in this subsection
15 which shall contain the physician's acknowledgment that:

16 (1) The physician's practice under the special volunteer
17 medical license will be exclusively and totally devoted to

18 providing medical care to needy and indigent persons in
19 West Virginia;

20 (2) the physician will not receive any payment or
21 compensation, either direct or indirect, or have the
22 expectation of any payment or compensation, but may
23 donate to the clinic the proceeds of any reimbursement for
24 any medical services rendered under the special volunteer
25 medical license;

26 (3) the physician will supply any supporting
27 documentation that the board may reasonably require; and

28 (4) the physician agrees to continue to participate in
29 continuing medical education as required of physicians in
30 active practice.

31 (b) Any person engaged in the active practice of
32 medicine in this state whose license is in good standing may
33 donate their expertise for the medical care and treatment of
34 indigent and needy patients under an arrangement with a
35 clinic organized, in whole or in part, for the delivery of
36 health care services without charge to the patient. Services
37 rendered under an arrangement may be performed in either
38 the physician's office or the clinical setting.

39 (c) Any physician who renders any medical service to
40 indigent and needy patients of a clinic organized, in whole or
41 in part, for the delivery of health care services without charge
42 under a special volunteer medical license authorized under
43 subsection (a) of this section or pursuant to an arrangement
44 with a clinic as authorized pursuant to subsection (b) of this
45 section without payment or compensation or the expectation
46 or promise of payment or compensation is immune from
47 liability for any civil action arising out of any act or omission
48 resulting from the rendering of the medical service at the
49 clinic unless the act or omission was the result of the
50 physician's gross negligence or willful misconduct. In order
51 for the immunity under this subsection to apply, there must
52 be a written agreement between the physician and the clinic

53 pursuant to which the physician will provide voluntary
54 noncompensated medical services under the control of the
55 clinic to patients of the clinic before the rendering of any
56 services by the physician at the clinic: *Provided*, That any
57 clinic entering into such written agreement shall be required
58 to maintain liability coverage of not less than \$1 million per
59 occurrence.

60 (d) Notwithstanding the provisions of subsection (a) of
61 this section, a clinic organized, in whole or in part, for the
62 delivery of health care services without charge is not
63 relieved from imputed liability for the negligent acts of a
64 physician rendering voluntary medical services at or for the
65 clinic under a special volunteer medical license authorized
66 under subsection (a) of this section or pursuant to an
67 arrangement with a clinic as authorized pursuant to
68 subsection (b) of this section.

69 (e) For purposes of this section, “otherwise eligible for
70 licensure” means the satisfaction of all the requirements for
71 licensure as listed in section ten of this article and in the
72 legislative rules promulgated hereunder, except the fee
73 requirements of subsections (b) and (d) of said section and
74 of the legislative rule promulgated by the board relating to
75 fees.

76 (f) Nothing in this section may be construed as requiring
77 the board to issue a special volunteer medical license to any
78 physician whose medical license is or has been subject to
79 any disciplinary action or to any physician who has
80 surrendered a medical license or caused such license to
81 lapse, expire and become invalid in lieu of having a
82 complaint initiated or other action taken against his or her
83 medical license, or who has elected to place a medical
84 license in inactive status in lieu of having a complaint
85 initiated or other action taken against his or her medical
86 license, or who have been denied a medical license.

87 (g) Any policy or contract of liability insurance
88 providing coverage for liability sold, issued or delivered in

89 this state to any physician covered under the provisions of
90 this article shall be read so as to contain a provision or
91 endorsement whereby the company issuing such policy
92 waives or agrees not to assert as a defense on behalf of the
93 policyholder or any beneficiary thereof, to any claim
94 covered by the terms of such policy within the policy limits,
95 the immunity from liability of the insured by reason of the
96 care and treatment of needy and indigent patients by a
97 physician who holds a special volunteer medical license or
98 who renders such care and treatment pursuant to an
99 arrangement with a clinic as authorized pursuant to
100 subsection (b) of this section: *Provided*, That this subsection
101 shall not apply to a terminated policy, terminated contract
102 of liability insurance or extended reporting endorsement
103 attached thereto that provides (tail insurance(as defined by
104 section two, article twenty-d, chapter thirty-three of this
105 code: *Provided, however*, That nothing within this
106 subsection shall be construed to extend coverage under a
107 terminated policy or terminated contract of liability
108 insurance or any extended reporting endorsement attached
109 thereto to: (1) Alter or amend the effective policy period of
110 any policy, contract of liability insurance or extended
111 reporting endorsement; or (2) cover the treatment of
112 indigent and needy patients by a physician who holds a
113 special volunteer medical license or who renders such care
114 and treatment pursuant to an arrangement with a clinic as
115 authorized pursuant to subsection (b) of this section.

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-14. Special volunteer physician assistant license.

1 (a) A special volunteer physician assistant license may
2 be issued to a physician assistant who:

3 (1) Is retired or is retiring from the active practice of
4 medicine; and

5 (2) Wishes to donate his or her expertise for the medical
6 care and treatment of indigent and needy patients in the

7 clinical setting of clinics organized, in whole or in part, for
8 the delivery of health care services without charge.

9 (b) The special volunteer physician assistant license
10 shall be issued by the appropriate licensing board:

11 (1) To a physician assistant licensed or otherwise
12 eligible for licensure under this article;

13 (2) Without the payment of any fee; and

14 (3) The initial license shall be issued for the remainder
15 of the licensing period.

16 (c) The special volunteer physician assistant license
17 shall be renewed consistent with the appropriate licensing
18 board's other licensing requirements.

19 (d) The appropriate licensing board shall develop
20 application forms for the special volunteer physician
21 assistant license which shall contain the physician
22 assistant's acknowledgment that:

23 (1) The physician assistant's practice under the special
24 volunteer physician assistant license shall be exclusively
25 devoted to providing medical care to needy and indigent
26 persons in West Virginia;

27 (2) The physician assistant will not receive any payment
28 or compensation, either direct or indirect, or have the
29 expectation of any payment or compensation, for any
30 medical services rendered under the special volunteer
31 physician assistant license;

32 (3) The physician assistant shall supply any supporting
33 documentation that the appropriate licensing board may
34 reasonably require; and

35 (4) The physician assistant agrees to continue to
36 participate in continuing education as required by the

37 appropriate licensing board for the special volunteer
38 physician assistant license.

39 (e) A physician assistant and his or her collaborating
40 physician who render medical service to indigent and needy
41 patients of a clinic organized, in whole or in part, for the
42 delivery of health care services without charge, under a
43 special volunteer physician assistant license, without
44 payment or compensation or the expectation or promise of
45 payment or compensation, are immune from liability for any
46 civil action arising out of any act or omission resulting from
47 the rendering of the medical service at the clinic unless the
48 act or omission was the result of the physician assistant's
49 and his or her collaborating physician's gross negligence or
50 willful misconduct. In order for the immunity under this
51 subsection to apply, there shall be a written agreement
52 between the physician assistant and the clinic pursuant to
53 which the physician assistant shall provide voluntary
54 uncompensated medical services under the control of the
55 clinic to patients of the clinic before the rendering of any
56 services by the physician assistant at the clinic. Any clinic
57 entering into a written agreement is required to maintain
58 liability coverage of not less than \$1 million per occurrence.

59 (f) Notwithstanding the provisions of this section, a
60 clinic organized, in whole or in part, for the delivery of
61 health care services without charge is not relieved from
62 imputed liability for the negligent acts of a physician
63 assistant rendering voluntary medical services at or for the
64 clinic under a special volunteer physician assistant license.

65 (g) For purposes of this section, "otherwise eligible for
66 licensure" means the satisfaction of all the requirements for
67 licensure under this article, except the fee requirements.

68 (h) Nothing in this section may be construed as
69 requiring the appropriate licensing board to issue a special
70 volunteer physician assistant license to any physician
71 assistant whose license is or has been subject to any
72 disciplinary action or to any physician assistant who has

73 surrendered a physician assistant license or caused his or her
74 license to lapse, expire and become invalid in lieu of having
75 a complaint initiated or other action taken against his or her
76 license, or who has elected to place a physician assistant
77 license in inactive status in lieu of having a complaint
78 initiated or other action taken against his or her license, or
79 who has been denied a physician assistant license.

80 (i) Any policy or contract of liability insurance
81 providing coverage for liability sold, issued or delivered in
82 this state to any physician assistant covered under the
83 provisions of this article shall be read so as to contain a
84 provision or endorsement whereby the company issuing the
85 policy waives or agrees not to assert as a defense on behalf
86 of the policyholder or any beneficiary thereof, to any claim
87 covered by the terms of the policy within the policy limits,
88 the immunity from liability of the insured by reason of the
89 care and treatment of needy and indigent patients by a
90 physician assistant who holds a special volunteer physician
91 assistant license.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-15. Special volunteer dentist or dental hygienist license; civil immunity for voluntary services rendered to indigents.

1 (a) There is continued a special volunteer dentist and
2 dental hygienist license for dentist and dental hygienists
3 retired or retiring from the active practice of dentistry and
4 dental hygiene who wish to donate their expertise for the
5 care and treatment of indigent and needy patients in the
6 clinical setting of clinics organized, in whole or in part, for
7 the delivery of health care services without charge. The
8 special volunteer dentist or dental hygienist license shall be
9 issued by the board to dentist or dental hygienists licensed
10 or otherwise eligible for licensure under this article and the
11 legislative rules promulgated hereunder without the
12 payment of an application fee, license fee or renewal fee,
13 shall be issued for the remainder of the licensing period and

14 renewed consistent with the boards other licensing
15 requirements. The board shall develop application forms for
16 the special license provided in this subsection which shall
17 contain the dental hygienist's acknowledgment that:

18 (1) The dentist or dental hygienist's practice under the
19 special volunteer dentist or dental hygienist license will be
20 exclusively devoted to providing dentistry or dental hygiene
21 care to needy and indigent persons in West Virginia;

22 (2) The dentist or dental hygienist will not receive any
23 payment or compensation, either direct or indirect, or have
24 the expectation of any payment or compensation but may
25 donate to the clinic the proceeds of any reimbursement, for
26 any dentistry or dental hygiene services rendered under the
27 special volunteer dentist or dental hygienist license;

28 (3) The dentist or dental hygienist will supply any
29 supporting documentation that the board may reasonably
30 require; and

31 (4) The dentist or dental hygienist agrees to continue to
32 participate in continuing professional education as required
33 by the board for the special volunteer dentist or dental
34 hygienist.

35 (b) Any person engaged in the active practice of
36 dentistry and dental hygiene in this state whose license is in
37 good standing may donate their expertise for the care and
38 treatment of indigent and needy patients pursuant to an
39 arrangement with a clinic organized, in whole or in part, for
40 the delivery of health care services without charge to the
41 patient. Services rendered pursuant to an arrangement may
42 be performed in either the office of the dentist or dental
43 hygienist or the clinical setting.

44 (c) Any dentist or dental hygienist who renders any
45 dentistry or dental hygiene service to indigent and needy
46 patients of a clinic organized, in whole or in part, for the
47 delivery of health care services without charge under a
48 special volunteer dentist or dental hygienist license

49 authorized under subsection (a) of this section or pursuant
50 to an arrangement with a clinic as authorized pursuant to
51 subsection (b) of this section without payment or
52 compensation or the expectation or promise of payment or
53 compensation is immune from liability for any civil action
54 arising out of any act or omission resulting from the
55 rendering of the dental hygiene service at the clinic unless
56 the act or omission was the result of the dentist's or dental
57 hygienist's gross negligence or willful misconduct. In order
58 for the immunity under this subsection to apply, there shall
59 be a written agreement between the dentist or dental
60 hygienist and the clinic pursuant to which the dentist or
61 dental hygienist will provide voluntary uncompensated
62 dental hygiene services under the control of the clinic to
63 patients of the clinic before the rendering of any services by
64 the dentist or dental hygienist at the clinic: *Provided*, That
65 any clinic entering into such written agreement is required
66 to maintain liability coverage of not less than \$1 million per
67 occurrence.

68 (d) Notwithstanding the provisions of subsection (b) of
69 this section, a clinic organized, in whole or in part, for the
70 delivery of health care services without charge is not
71 relieved from imputed liability for the negligent acts of a
72 dentist or dental hygienist rendering voluntary dental
73 hygiene services at or for the clinic under a special volunteer
74 dentist or dental hygienist license authorized under
75 subsection (a) of this section or who renders such care and
76 treatment pursuant to an arrangement with a clinic as
77 authorized pursuant to subsection (b) of this section.

78 (e) For purposes of this section, (otherwise eligible for
79 licensure(means the satisfaction of all the requirements for
80 licensure as listed in section eight of this article and in the
81 legislative rules promulgated thereunder, except the fee
82 requirements of subdivision (6) of said section and of the
83 legislative rules promulgated by the board relating to fees.

84 (f) Nothing in this section may be construed as requiring
85 the board to issue a special volunteer dentist or dental

86 hygienist license to any dentist or dental hygienist whose
87 license is or has been subject to any disciplinary action or to
88 any dentist or dental hygienist who has surrendered a license
89 or caused such license to lapse, expire and become invalid
90 in lieu of having a complaint initiated or other action taken
91 against his or her dentist or dental hygienist license, or who
92 has elected to place a dentist or dental hygienist license in
93 inactive status in lieu of having a complaint initiated or other
94 action taken against his or her license, or who has been
95 denied a dentist or dental hygienist license.

96 (g) Any policy or contract of liability insurance
97 providing coverage for liability sold, issued or delivered in
98 this state to any dentist or dental hygienist covered under the
99 provisions of this article shall be read so as to contain a
100 provision or endorsement whereby the company issuing
101 such policy waives or agrees not to assert as a defense on
102 behalf of the policyholder or any beneficiary thereof, to any
103 claim covered by the terms of such policy within the policy
104 limits, the immunity from liability of the insured by reason
105 of the care and treatment of needy and indigent patients by
106 a dentist or dental hygienist who holds a special volunteer
107 dentist or dental hygienist license or who renders such care
108 and treatment pursuant to an arrangement with a clinic as
109 authorized pursuant to subsection (b) of this section.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-17. Special volunteer pharmacist license; civil immunity for voluntary services rendered to indigents.

1 (a) There is a special volunteer pharmacist license for
2 pharmacists retired or retiring from the active practice of
3 pharmacist care who wish to donate their expertise for the
4 pharmacist care and treatment of indigent and needy
5 patients in the clinical setting of clinics organized, in whole
6 or in part, for the delivery of health care services without
7 charge. The special volunteer pharmacist license shall be
8 issued by the board to pharmacists licensed or otherwise

9 eligible for licensure under this article and the legislative
10 rules promulgated hereunder without the payment of an
11 application fee, license fee or renewal fee, and the initial
12 license shall be issued for the remainder of the licensing
13 period, and renewed consistent with the boards other
14 licensing requirements. The board shall develop application
15 forms for the special license provided in this subsection
16 which shall contain the pharmacist's acknowledgment that:

17 (1) The pharmacist's practice under the special
18 volunteer pharmacist license shall be exclusively devoted to
19 providing pharmacist care to needy and indigent persons in
20 West Virginia;

21 (2) The pharmacist may not receive any payment or
22 compensation, either direct or indirect, or have the
23 expectation of any payment or compensation, but may
24 donate to the clinic the proceeds of any reimbursement for
25 any pharmacist care rendered under the special volunteer
26 pharmacist license;

27 (3) The pharmacist will supply any supporting
28 documentation that the board may reasonably require; and

29 (4) The pharmacist agrees to continue to participate in
30 continuing professional education as required by the board
31 for the special volunteer pharmacist license.

32 (b) Any person engaged in the active practice of
33 pharmacist care in this state whose license is in good
34 standing may donate their expertise for the care and
35 treatment of indigent and needy patients pursuant to an
36 arrangement with a clinic organized, in whole or in part, for
37 the delivery of health care services without charge to the
38 patient. Services rendered pursuant to an arrangement may
39 be performed in either the pharmacist's office or the clinical
40 setting.

41 (c) Any pharmacist who renders any pharmacist care to
42 indigent and needy patients of a clinic organized, in whole
43 or in part, for the delivery of health care services without

44 charge under a special volunteer pharmacist license
45 authorized under subsection (a) of this section or pursuant
46 to an arrangement with a clinic as authorized pursuant to
47 subsection (b) of this section without payment or
48 compensation or the expectation or promise of payment or
49 compensation is immune from liability for any civil action
50 arising out of any act or omission resulting from the
51 rendering of the pharmacist care at the clinic unless the act
52 or omission was the result of the pharmacist's gross
53 negligence or willful misconduct. In order for the immunity
54 under this subsection to apply, there shall be a written
55 agreement between the pharmacist and the clinic pursuant
56 to which the pharmacist provides voluntary uncompensated
57 pharmacist care under the control of the clinic to patients of
58 the clinic before the rendering of any services by the
59 pharmacist at the clinic: *Provided*, That any clinic entering
60 into such written agreement is required to maintain liability
61 coverage of not less than \$1 million per occurrence.

62 (d) Notwithstanding the provisions of subsection (b) of
63 this section, a clinic organized, in whole or in part, for the
64 delivery of health care services without charge is not
65 relieved from imputed liability for the negligent acts of a
66 pharmacist rendering voluntary pharmacist care at or for the
67 clinic under a special volunteer pharmacist license
68 authorized under subsection (a) of this section or who
69 renders such care and treatment pursuant to an arrangement
70 with a clinic as authorized pursuant to subsection (b) of this
71 section.

72 (e) For purposes of this section, "otherwise eligible for
73 licensure" means the satisfaction of all the requirements for
74 licensure as listed in section nine of this article and in the
75 legislative rules promulgated thereunder, except the fee
76 requirements of that section and of the legislative rules
77 promulgated by the board relating to fees.

78 (f) Nothing in this section may be construed as requiring
79 the board to issue a special volunteer pharmacist license to
80 any pharmacist whose license is or has been subject to any

81 disciplinary action or to any pharmacist who has
82 surrendered a license or caused such license to lapse, expire
83 and become invalid in lieu of having a complaint initiated
84 or other action taken against his or her license, or who has
85 elected to place a pharmacist license in inactive status in lieu
86 of having a complaint initiated or other action taken against
87 his or her license, or who has been denied a pharmacist
88 license.

89 (g) Any policy or contract of liability insurance
90 providing coverage for liability sold, issued or delivered in
91 this state to any pharmacist covered under the provisions of
92 this article shall be read so as to contain a provision or
93 endorsement whereby the company issuing such policy
94 waives or agrees not to assert as a defense on behalf of the
95 policyholder or any beneficiary thereof, to any claim
96 covered by the terms of such policy within the policy limits,
97 the immunity from liability of the insured by reason of the
98 care and treatment of needy and indigent patients by a
99 pharmacist who holds a special volunteer pharmacist license
100 or who renders such care and treatment pursuant to an
101 arrangement with a clinic as authorized pursuant to
102 subsection (b) of this section.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-6a. Special volunteer registered professional nurse license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer license for
2 registered professional nurses retired or retiring from the
3 active practice of nursing who wish to donate their expertise
4 for the care and treatment of indigent and needy patients in
5 the clinical setting of clinics organized, in whole or in part,
6 for the delivery of health care services without charge. The
7 special volunteer registered professional nurse license shall
8 be issued by the West Virginia Board of Examiners for
9 registered professional nurses to registered professional
10 nurses licensed or otherwise eligible for licensure under this

11 article and the legislative rules promulgated hereunder
12 without the payment of an application fee, license fee or
13 renewal fee, shall be issued for the remainder of the
14 licensing period, and renewed consistent with the boards
15 other licensing requirements. The board shall develop
16 application forms for the special license provided in this
17 subsection which shall contain the registered professional
18 nurse's acknowledgment that:

19 (1) The registered professional nurse's practice under
20 the special volunteer registered professional nurse license
21 will be exclusively devoted to providing nursing care to
22 needy and indigent persons in West Virginia;

23 (2) The registered professional nurse will not receive
24 any payment or compensation, either direct or indirect, or
25 have the expectation of any payment or compensation but
26 may donate to the clinic the proceeds of any reimbursement,
27 for any nursing services rendered under the special
28 volunteer registered professional nurse license;

29 (3) The registered professional nurse will supply any
30 supporting documentation that the board may reasonably
31 require; and

32 (4) The registered professional nurse agrees to continue
33 to participate in continuing education as required by the
34 board for the special volunteer registered professional nurse
35 license.

36 (b) Any person engaged in the active practice of nursing
37 in this state whose license is in good standing may donate
38 their expertise for the care and treatment of indigent and
39 needy patients pursuant to an arrangement with a clinic
40 organized, in whole or in part, for the delivery of health care
41 services without charge to the patient. Services rendered
42 pursuant to an arrangement may be performed in either the
43 office of the registered professional nurse or the clinical
44 setting.

45 (c) Any registered professional nurse who renders
46 nursing service to indigent and needy patients of a clinic
47 organized, in whole or in part, for the delivery of health care
48 services without charge under a special volunteer registered
49 professional nurse license authorized under subsection (a)
50 of this section or pursuant to an arrangement with a clinic as
51 authorized pursuant to subsection (b) of this section without
52 payment or compensation or the expectation or promise of
53 payment or compensation is immune from liability for any
54 civil action arising out of any act or omission resulting from
55 the rendering of the nursing service at the clinic unless the
56 act or omission was the result of the registered professional
57 nurse's gross negligence or willful misconduct. In order for
58 the immunity under this subsection to apply, there must be
59 a written agreement between the registered professional
60 nurse and the clinic pursuant to which the registered
61 professional nurse will provide voluntary uncompensated
62 nursing services under the control of the clinic to patients of
63 the clinic before the rendering of any services by the
64 registered professional nurse at the clinic: *Provided*, That
65 any clinic entering into such written agreement is required
66 to maintain liability coverage of not less than \$1 million per
67 occurrence.

68 (d) Notwithstanding the provisions of subsection (b) of
69 this section, a clinic organized, in whole or in part, for the
70 delivery of health care services without charge is not
71 relieved from imputed liability for the negligent acts of a
72 registered professional nurse rendering voluntary nursing
73 services at or for the clinic under a special volunteer
74 registered professional nurse license authorized under
75 subsection (a) of this section or who renders such care and
76 treatment pursuant to an arrangement with a clinic as
77 authorized pursuant to subsection (b) of this section.

78 (e) For purposes of this section, "otherwise eligible for
79 licensure" means the satisfaction of all the requirements for
80 licensure as listed in section six of this article and in the
81 legislative rules promulgated thereunder, except the fee

82 requirements of that section and of the legislative rules
83 promulgated by the board relating to fees.

84 (f) Nothing in this section may be construed as requiring
85 the board to issue a special volunteer registered professional
86 nurse license to any registered professional nurse whose
87 license is or has been subject to any disciplinary action or to
88 any registered professional nurse who has surrendered his
89 or her license or caused such license to lapse, expire and
90 become invalid in lieu of having a complaint initiated or
91 other action taken against his or her license, or who has
92 elected to place a registered professional nurse license in
93 inactive status in lieu of having a complaint initiated or other
94 action taken against his or her license, or who has been
95 denied a registered professional nurse license.

96 (g) Any policy or contract of liability insurance
97 providing coverage for liability sold, issued or delivered in
98 this state to any registered professional nurse covered under
99 the provisions of this article shall be read so as to contain a
100 provision or endorsement whereby the company issuing
101 such policy waives or agrees not to assert as a defense on
102 behalf of the policyholder or any beneficiary thereof, to any
103 claim covered by the terms of such policy within the policy
104 limits, the immunity from liability of the insured by reason
105 of the care and treatment of needy and indigent patients by
106 a registered professional nurse who holds a special
107 volunteer registered professional nurse license or who
108 renders such care and treatment pursuant to an arrangement
109 with a clinic as authorized pursuant to subsection (b) of this
110 section.

**§30-7-6b. Special volunteer license; civil immunity for
voluntary services rendered to indigents.**

1 (a) There is established a special volunteer license for
2 advanced practice registered nurses retired or retiring from
3 the active practice of nursing who wish to donate their
4 expertise for the care and treatment of indigent and needy
5 patients in the clinical setting of clinics organized, in whole

6 or in part, for the delivery of health care services without
7 charge. The special volunteer advanced practice registered
8 nurse license shall be issued by the West Virginia Board of
9 Examiners for Registered professional nurses to advanced
10 practice registered nurses licensed or otherwise eligible for
11 licensure pursuant to this article and the rules promulgated
12 hereunder without the payment of an application fee, license
13 fee or renewal fee, shall be issued for the remainder of the
14 licensing period, and renewed consistent with the boards
15 other licensing requirements. The board shall develop
16 application forms for the special license provided in this
17 subsection which shall contain the advanced practice
18 registered nurse's acknowledgment that:

19 (1) The advanced practice registered nurse's practice
20 pursuant to the special volunteer advanced practice
21 registered nurses license will be exclusively devoted to
22 providing nursing care to needy and indigent persons in
23 West Virginia;

24 (2) The advanced practice registered nurse will not
25 receive any payment or compensation, either direct or
26 indirect, or have the expectation of any payment or
27 compensation but may donate to the clinic the proceeds of
28 any reimbursement, for any nursing services rendered
29 pursuant to the special volunteer advanced practice
30 registered nurse license;

31 (3) The advanced practice registered nurse will supply
32 any supporting documentation that the board may
33 reasonably require; and

34 (4) The advanced practice registered nurse agrees to
35 continue to participate in continuing education as required
36 by the board for the special volunteer advanced practice
37 registered nurse license.

38 (b) Any person licensed as an advanced practice
39 registered nurse in this state whose license is in good
40 standing may donate their expertise for the care and

41 treatment of indigent and needy patients pursuant to an
42 arrangement with a clinic organized, in whole or in part, for
43 the delivery of health care services without charge to the
44 patient. Services rendered pursuant to an arrangement may
45 be performed in either the office of the advanced practice
46 registered nurses or the clinical setting.

47 (c) A advanced practice registered nurse and his or her
48 collaborating physician who render nursing service to
49 indigent and needy patients of a clinic organized, in whole
50 or in part, for the delivery of health care services without
51 charge pursuant to a special volunteer advanced practice
52 registered nurse license authorized pursuant to subsection
53 (a) of this section or pursuant to an arrangement with a clinic
54 as authorized pursuant to subsection (b) of this section
55 without payment or compensation or the expectation or
56 promise of payment or compensation is immune from
57 liability for any civil action arising out of any act or
58 omission resulting from the rendering of the nursing service
59 at the clinic unless the act or omission was the result of the
60 advanced practice registered nurse's and his or her
61 collaborating physician's gross negligence or willful
62 misconduct. For the immunity pursuant to this subsection to
63 apply, there must be a written agreement between the
64 licensed practical nurse and the clinic pursuant to which the
65 advanced practice registered nurse will provide voluntary
66 uncompensated nursing services under the control of the
67 clinic to patients of the clinic before the rendering of any
68 services by the advanced practice registered nurse at the
69 clinic: *Provided*, That any clinic entering into such written
70 agreement is required to maintain liability coverage of not
71 less than \$1 million per occurrence.

72 (d) Notwithstanding the provisions of subsection (b) of
73 this section, a clinic organized, in whole or in part, for the
74 delivery of health care services without charge is not
75 relieved from imputed liability for the negligent acts of a
76 advanced practice registered nurse rendering voluntary
77 nursing services at or for the clinic pursuant to a special

78 volunteer advanced practice registered nurse license
79 authorized pursuant to subsection (a) of this section or who
80 renders such care and treatment pursuant to an arrangement
81 with a clinic as authorized pursuant to subsection (b) of this
82 section.

83 (e) For purposes of this section, “otherwise eligible for
84 licensure” means the satisfaction of all the requirements for
85 licensure as listed in section six of this article and in the
86 rules promulgated thereunder, except the fee requirements
87 of that section and of the legislative rules promulgated by
88 the board relating to fees.

89 (f) Nothing in this section may be construed as requiring
90 the board to issue a special volunteer advanced practice
91 registered nurse license to any advanced practice registered
92 nurse whose license is or has been subject to any
93 disciplinary action or to any advanced practice registered
94 nurse who has surrendered his or her license or caused such
95 license to lapse, expire and become invalid in lieu of having
96 a complaint initiated or other action taken against his or her
97 license, or who has elected to place a advanced practice
98 registered nurse license in inactive status in lieu of having a
99 complaint initiated or other action taken against his or her
100 license, or who has been denied a advanced practice
101 registered nurse license.

102 (g) Any policy or contract of liability insurance
103 providing coverage for liability sold, issued or delivered in
104 this state to any advanced practice registered nurse covered
105 pursuant to the provisions of this article shall be read so as
106 to contain a provision or endorsement whereby the company
107 issuing such policy waives or agrees not to assert as a
108 defense on behalf of the policyholder or any beneficiary
109 thereof, to any claim covered by the terms of such policy
110 within the policy limits, the immunity from liability of the
111 insured by reason of the care and treatment of needy and
112 indigent patients by a advanced practice registered nurse
113 who holds a special volunteer advanced practice registered
114 nurse license or who renders such care and treatment

115 pursuant to an arrangement with a clinic as authorized
116 pursuant to subsection (b) of this section.

ARTICLE 7A. LICENSED PRACTICAL NURSES.

§30-7A-6a. Special volunteer license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer license for
2 licensed practical nurses retired or retiring from the active
3 practice of nursing who wish to donate their expertise for
4 the care and treatment of indigent and needy patients in the
5 clinical setting of clinics organized, in whole or in part, for
6 the delivery of health care services without charge. The
7 special volunteer license provided by this section shall be
8 issued by the West Virginia Board of Examiners for
9 licensed practical nurses to licensed practical nurses
10 licensed or otherwise eligible for licensure pursuant to this
11 article and the rules promulgated hereunder without the
12 payment of an application fee, license fee or renewal fee,
13 and the initial license shall be issued for the remainder of
14 the licensing period, and renewed consistent with the boards
15 other licensing requirements. The board shall develop
16 application forms for the special license provided in this
17 subsection which shall contain the licensed practical nurse's
18 acknowledgment that:

19 (1) The licensed practical nurse's practice pursuant to
20 the special volunteer licensed practical nurse license will be
21 exclusively devoted to providing nursing care to needy and
22 indigent persons in West Virginia;

23 (2) The licensed practical nurse will not receive any
24 payment or compensation, either direct or indirect, or have
25 the expectation of any payment or compensation but may
26 donate to the clinic the proceeds of any reimbursement, for
27 any nursing services rendered pursuant to the special
28 volunteer licensed practical nurse license;

29 (3) The licensed practical nurse will supply any
30 supporting documentation that the board may reasonably
31 require; and

32 (4) The licensed practical nurse agrees to continue to
33 participate in continuing education as required by the board
34 for the special volunteer licensed practical nurse license.

35 (b) Any person engaged in the active practice of
36 licensed practical nursing in this state whose license is in
37 good standing may donate their expertise for the care and
38 treatment of indigent and needy patients pursuant to an
39 arrangement with a clinic organized, in whole or in part, for
40 the delivery of health care services without charge to the
41 patient. Services rendered pursuant to an arrangement may
42 be performed in either the office of the licensed practical
43 nurse or the clinical setting.

44 (c) Any licensed practical nurse who renders nursing
45 service to indigent and needy patients of a clinic organized,
46 in whole or in part, for the delivery of health care services
47 without charge pursuant to a special volunteer licensed
48 practical nurse license authorized pursuant to subsection (a)
49 of this section or pursuant to an arrangement with a clinic as
50 authorized pursuant to subsection (b) of this section without
51 payment or compensation or the expectation or promise of
52 payment or compensation is immune from liability for any
53 civil action arising out of any act or omission resulting from
54 the rendering of the nursing service at the clinic unless the
55 act or omission was the result of the licensed practical
56 nurse's gross negligence or willful misconduct. For the
57 immunity pursuant to this subsection to apply, there must be
58 a written agreement between the licensed practical nurse
59 and the clinic pursuant to which the licensed practical nurse
60 will provide voluntary uncompensated nursing services
61 under the control of the clinic to patients of the clinic before
62 the rendering of any services by the licensed practical nurse
63 at the clinic: *Provided*, That any clinic entering into such
64 written agreement is required to maintain liability coverage
65 of not less than \$1 million per occurrence.

66 (d) Notwithstanding the provisions of subsection (c) of
67 this section, a clinic organized, in whole or in part, for the
68 delivery of health care services without charge is not
69 relieved from imputed liability for the negligent acts of a
70 licensed practical nurse rendering voluntary nursing
71 services at or for the clinic pursuant to a special volunteer
72 licensed practical nurse license authorized pursuant to
73 subsection (a) of this section or who renders such care and
74 treatment pursuant to an arrangement with a clinic as
75 authorized pursuant to subsection (b) of this section.

76 (e) For purposes of this section, “otherwise eligible for
77 licensure” means the satisfaction of all the requirements for
78 licensure as listed in section six of this article and in the
79 rules promulgated thereunder, except the fee requirements
80 of that section and of the legislative rules promulgated by
81 the board relating to fees.

82 (f) Nothing in this section may be construed as requiring
83 the board to issue a special volunteer licensed practical
84 nurse license to any licensed practical nurse whose license
85 is or has been subject to any disciplinary action or to any
86 licensed practical nurse who has surrendered his or her
87 license or caused such license to lapse, expire and become
88 invalid in lieu of having a complaint initiated or other action
89 taken against his or her license, or who has elected to place
90 a licensed practical nurse license in inactive status in lieu of
91 having a complaint initiated or other action taken against his
92 or her license, or who has been denied a licensed practical
93 nurse license.

94 (g) Any policy or contract of liability insurance
95 providing coverage for liability sold, issued or delivered in
96 this state to any licensed practical nurse covered pursuant to
97 the provisions of this article shall be read so as to contain a
98 provision or endorsement whereby the company issuing
99 such policy waives or agrees not to assert as a defense on
100 behalf of the policyholder or any beneficiary thereof, to any
101 claim covered by the terms of such policy within the policy
102 limits, the immunity from liability of the insured by reason

103 of the care and treatment of needy and indigent patients by
104 a licensed practical nurse who holds a special volunteer
105 licensed practical nurse license or who renders such care
106 and treatment pursuant to an arrangement with a clinic as
107 authorized pursuant to subsection (b) of this section.

ARTICLE 8. OPTOMETRISTS.

§30-8-16. Special volunteer license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer license for
2 optometrists who are retired or are retiring from the active
3 practice of optometry and wish to donate their expertise for
4 the care and treatment of indigent and needy patients in the
5 clinical setting of clinics organized, in whole or in part, for
6 the delivery of health care services without charge.

7 (b) The special volunteer license shall be issued by the
8 board to optometrists licensed or otherwise eligible for
9 licensure under this article without the payment of an
10 application fee, license fee or renewal fee, and shall be
11 issued for the remainder of the licensing period, and
12 renewed consistent with the boards other licensing
13 requirements.

14 (c) The board shall develop application forms for the
15 special volunteer license provided in this section which
16 shall contain the optometrist's acknowledgment that:

17 (1) The optometrist's practice under the special
18 volunteer license will be exclusively devoted to providing
19 optometrical care to needy and indigent persons in West
20 Virginia;

21 (2) The optometrist will not receive any payment or
22 compensation, either direct or indirect, or have the
23 expectation of any payment or compensation but may
24 donate to the clinic the proceeds of any reimbursement, for
25 any optometrical services rendered under the special
26 volunteer license;

27 (3) The optometrist will supply any supporting
28 documentation that the board may reasonably require; and

29 (4) The optometrist agrees to continue to participate in
30 continuing education as required by the board for a special
31 volunteer license.

32 (d) Any person engaged in the active practice of
33 optometry in this state whose license is in good standing
34 may donate their expertise for the care and treatment of
35 indigent and needy patients pursuant to an arrangement with
36 a clinic organized, in whole or in part, for the delivery of
37 health care services without charge to the patient. Services
38 rendered pursuant to an arrangement may be performed in
39 either the office of the optometrist or the clinical setting.

40 (e) Any optometrist who renders any optometrical
41 service to indigent and needy patients of a clinic organized,
42 in whole or in part, for the delivery of health care services
43 without charge, under a special volunteer license authorized
44 under this section or pursuant to an arrangement with a
45 clinic as authorized pursuant to subsection (d) of this section
46 without payment or compensation or the expectation or
47 promise of payment or compensation is immune from
48 liability for any civil action arising out of any act or
49 omission resulting from the rendering of the optometrical
50 service at the clinic unless the act or omission was the result
51 of the optometrist's gross negligence or willful misconduct.
52 In order for the immunity under this subsection to apply,
53 before the rendering of any services by the optometrist at
54 the clinic, there must be a written agreement between the
55 optometrist and the clinic stating that the optometrist will
56 provide voluntary uncompensated optometrical services
57 under the control of the clinic to patients of the clinic before
58 the rendering of any services by the optometrist at the clinic:
59 *Provided*, That any clinic entering into such written
60 agreement is required to maintain liability coverage of not
61 less than \$1 million per occurrence.

62 (f) Notwithstanding the provisions of subsection (d) of
63 this section, a clinic organized, in whole or in part, for the
64 delivery of health care services without charge is not
65 relieved from imputed liability for the negligent acts of an
66 optometrist rendering voluntary optometrical services at or
67 for the clinic under a special volunteer license under this
68 section or who renders such care and treatment pursuant to
69 an arrangement with a clinic as authorized pursuant to
70 subsection (d) of this section.

71 (g) For purposes of this section, “otherwise eligible for
72 licensure” means the satisfaction of all the requirements for
73 licensure in this article except the fee requirements.

74 (h) Nothing in this section may be construed as
75 requiring the board to issue a special volunteer license to
76 any optometrist whose license is or has been subject to any
77 disciplinary action or to any optometrist who has
78 surrendered a license or caused such license to lapse, expire
79 and become invalid in lieu of having a complaint initiated
80 or other action taken against his or her license, or who has
81 elected to place a license in inactive status in lieu of having
82 a complaint initiated or other action taken against his or her
83 license, or who has been denied a license.

84 (i) Any policy or contract of liability insurance
85 providing coverage for liability sold, issued or delivered in
86 this state to any optometrist covered under the provisions of
87 this article shall be read so as to contain a provision or
88 endorsement whereby the company issuing such policy
89 waives or agrees not to assert as a defense on behalf of the
90 policyholder or any beneficiary thereof, to any claim
91 covered by the terms of such policy within the policy limits,
92 the immunity from liability of the insured by reason of the
93 care and treatment of needy and indigent patients by an
94 optometrist who holds a special volunteer license or who
95 renders such care and treatment pursuant to an arrangement
96 with a clinic as authorized pursuant to subsection (d) of this
97 section.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**§30-14-12b. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.**

1 (a) There is hereby established a special volunteer
2 medical license for physicians retired or retiring from the
3 active practice of osteopathy who wish to donate their
4 expertise for the medical care and treatment of indigent and
5 needy patients in the clinical setting of clinics organized, in
6 whole or in part, for the delivery of health care services
7 without charge. The special volunteer medical license shall
8 be issued by the West Virginia Board of Osteopathic
9 Medicine to physicians licensed or otherwise eligible for
10 licensure under this article and the rules promulgated
11 hereunder without the payment of any application fee,
12 license fee or renewal fee, shall be issued for a fiscal year or
13 part thereof, and shall be renewable annually. The board
14 shall develop application forms for the special license
15 provided for in this subsection which shall contain the
16 physician's acknowledgment that: (1) The physician's
17 practice under the special volunteer medical license will be
18 exclusively and totally devoted to providing medical care to
19 needy and indigent persons in West Virginia; (2) the
20 physician will not receive any payment or compensation,
21 either direct or indirect, or have the expectation of any
22 payment or compensation but may donate to the clinic the
23 proceeds of any reimbursement, for any medical services
24 rendered under the special volunteer medical license; (3) the
25 physician will supply any supporting documentation that the
26 board may reasonably require; and (4) the physician agrees
27 to continue to participate in continuing medical education
28 as required of physicians in active practice.

29 (b) Any person engaged in the active practice of
30 osteopathy in this state whose license is in good standing
31 may donate their expertise for the medical care and
32 treatment of indigent and needy patients pursuant to an
33 arrangement with a clinic organized, in whole or in part, for

34 the delivery of health care services without charge to the
35 patient. Services rendered pursuant to an arrangement may
36 be performed in either the physician's office or the clinical
37 setting.

38 (c) Any physician who renders any medical service to
39 indigent and needy patients of clinics organized, in whole
40 or in part, for the delivery of health care services without
41 charge under a special volunteer medical license authorized
42 under subsection (a) of this section or pursuant to an
43 arrangement with a clinic as authorized pursuant to
44 subsection (b) of this section without payment or
45 compensation or the expectation or promise of payment or
46 compensation is immune from liability for any civil action
47 arising out of any act or omission resulting from the
48 rendering of the medical service at the clinic unless the act
49 or omission was the result of the physician's gross
50 negligence or willful misconduct. In order for the immunity
51 under this subsection to apply, there must be a written
52 agreement between the physician and the clinic
53 pursuant to which the physician will provide voluntary
54 noncompensated medical services under the control of the
55 clinic to patients of the clinic before the rendering of any
56 services by the physician at the clinic: *Provided*, That any
57 clinic entering into such written agreement shall be required
58 to maintain liability coverage of not less than \$1 million per
59 occurrence.

60 (d) Notwithstanding the provisions of subsection (a) of
61 this section, a clinic organized, in whole or in part, for the
62 delivery of health care services without charge shall not be
63 relieved from imputed liability for the negligent acts of a
64 physician rendering voluntary medical services at or for the
65 clinic under a special volunteer medical license authorized
66 under said subsection or who renders such services pursuant
67 to an arrangement with a clinic as authorized pursuant to
68 subsection (b) of this section.

69 (e) For purposes of this section, "otherwise eligible for
70 licensure" means the satisfaction of all the requirements for

71 licensure as listed in section ten of this article and in the
72 legislative rules promulgated hereunder, except the fee
73 requirements of subsections (b) and (d) of said section and
74 of the legislative rule promulgated by the board relating to
75 fees.

76 (f) Nothing in this section may be construed as requiring
77 the board to issue a special volunteer medical license to any
78 physician whose medical license is or has been subject to
79 any disciplinary action or to any physician who has
80 surrendered a medical license or caused such license to
81 lapse, expire and become invalid in lieu of having a
82 complaint initiated or other action taken against his or her
83 medical license, or who has elected to place a medical
84 license in inactive status in lieu of having a complaint
85 initiated or other action taken against his or her medical
86 license, or who have been denied a medical license.

87 (g) Any policy or contract of liability insurance
88 providing coverage for liability sold, issued or delivered in
89 this state to any physician covered under the provisions of
90 this article shall be read so as to contain a provision or
91 endorsement whereby the company issuing such policy
92 waives or agrees not to assert as a defense on behalf of the
93 policyholder or any beneficiary thereof, to any claim
94 covered by the terms of such policy within the policy limits,
95 the immunity from liability of the insured by reason of the
96 care and treatment of needy and indigent patients by a
97 physician who holds a special volunteer medical license or
98 who renders such care and treatment pursuant to an
99 arrangement with a clinic as authorized pursuant to
100 subsection (b) of this section.

ARTICLE 16. CHIROPRACTORS.

§30-16-7a. Special volunteer chiropractor license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer license for
2 chiropractors retired or retiring from active practice who

3 wish to donate their expertise for the care and treatment of
4 indigent and needy patients in the clinical setting of clinics
5 organized, in whole or in part, for the delivery of health care
6 services without charge. The special volunteer license
7 provided by this section shall be issued by the West Virginia
8 Board of Chiropractic to chiropractors licensed or otherwise
9 eligible for licensure pursuant to this article and the rules
10 promulgated hereunder without the payment of an
11 application fee, license fee or renewal fee, and the initial
12 license shall be issued for the remainder of the licensing
13 period, and renewed consistent with the boards other
14 licensing requirements. The board shall develop application
15 forms for the special volunteer license provided in this
16 section which shall contain the applicant's acknowledgment
17 that:

18 (1) The applicant's practice pursuant to the special
19 volunteer license will be exclusively devoted to providing
20 chiropractic care to needy and indigent persons in West
21 Virginia;

22 (2) The applicant may not receive any payment or
23 compensation, either direct or indirect, or have the
24 expectation of any payment or compensation but may
25 donate to the clinic the proceeds of any reimbursement for
26 any chiropractic services rendered pursuant to the special
27 volunteer license;

28 (3) The applicant shall supply any supporting
29 documentation that the board may reasonably require; and

30 (4) The applicant shall continue to participate in
31 continuing education as required by the board for special
32 volunteer chiropractor's licenses.

33 (b) Any person engaged in the active practice of
34 chiropractic in this state whose license is in good standing
35 may donate their expertise for the care and treatment of
36 indigent and needy patients pursuant to an arrangement with
37 a clinic organized, in whole or in part, for the delivery of

38 health care services without charge to the patient. Services
39 rendered pursuant to an arrangement may be performed in
40 either the chiropractor's office or the clinical setting.

41 (c) Any chiropractor who renders any chiropractic
42 service to indigent and needy patients of a clinic organized,
43 in whole or in part, for the delivery of health care services
44 without charge pursuant to a special volunteer license
45 authorized pursuant to subsection (a) of this section or an
46 arrangement with a clinic as authorized pursuant to
47 subsection (b) of this section without payment or
48 compensation or the expectation or promise of payment or
49 compensation is immune from liability for any civil action
50 arising out of any act or omission resulting from the
51 rendering of the chiropractic service at the clinic unless the
52 act or omission was the result of gross negligence or willful
53 misconduct on the part of the chiropractor. For the
54 immunity pursuant to this subsection to apply, there must be
55 a written agreement between the chiropractor and the clinic
56 stating that the chiropractor will provide voluntary
57 uncompensated chiropractic services under the control of
58 the clinic to patients of the clinic before the rendering of any
59 services by the chiropractor at the clinic: *Provided*, That any
60 clinic entering into such written agreement is required to
61 maintain liability coverage of not less than \$1 million per
62 occurrence.

63 (d) Notwithstanding the provisions of subsection (c) of
64 this section, a clinic organized, in whole or in part, for the
65 delivery of health care services without charge is not
66 relieved from imputed liability for the negligent acts of a
67 chiropractor rendering voluntary chiropractic services at or
68 for the clinic pursuant to a special volunteer license
69 authorized pursuant to this section or who renders such care
70 and treatment pursuant to an arrangement with a clinic as
71 authorized pursuant to subsection (b) of this section.

72 (e) For purposes of this section, "otherwise eligible for
73 licensure" means the satisfaction of all the requirements for
74 licensure for a chiropractor except the fee requirements.

75 (f) Nothing in this section may be construed as requiring
76 the board to issue a special volunteer license to any
77 chiropractor whose license is or has been subject to any
78 disciplinary action or to any chiropractor who has
79 surrendered a license or caused a license to lapse, expire and
80 become invalid in lieu of having a complaint initiated or
81 other action taken against his or her license, or who has
82 elected to place a license in inactive status in lieu of having
83 a complaint initiated or other action taken against his or her
84 license or who has been denied a license.

85 (g) Any policy or contract of liability insurance
86 providing coverage for liability sold, issued or delivered in
87 this state to any chiropractor covered pursuant to the
88 provisions of this article shall be read so as to contain a
89 provision or endorsement whereby the company issuing
90 such policy waives or agrees not to assert as a defense on
91 behalf of the policy holder or any beneficiary there of the
92 policy, to any claim covered by the terms of the policy
93 within the policy limits, the immunity from liability of the
94 insured by reason of the care and treatment of needy and
95 indigent patients by a chiropractor who holds a special
96 volunteer license or who renders such care and treatment
97 pursuant to an arrangement with a clinic as authorized
98 pursuant to subsection (b) of this section.

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-13. Special volunteer physical therapist license, physical therapist assistant license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer license for
2 physical therapists or physical therapist assistants, as the
3 case may be, retired or retiring from active practice who
4 wish to donate their expertise for the care and treatment of
5 indigent and needy patients in the clinical setting of clinics
6 organized, in whole or in part, for the delivery of health care
7 services without charge. The special volunteer license
8 provided by this section shall be issued by the West Virginia

9 Board of Physical Therapy to physical therapists or physical
10 therapist assistants licensed or otherwise eligible for
11 licensure under this article and the legislative rules
12 promulgated hereunder without the payment of an
13 application fee, license fee or renewal fee, and the initial
14 license shall be issued for the remainder of the licensing
15 period, and renewed consistent with the boards other
16 licensing requirements. The board shall develop application
17 forms for the special volunteer license provided in this
18 section which shall contain the applicant's acknowledgment
19 that:

20 (1) The applicant's practice under the special volunteer
21 license will be exclusively devoted to providing physical
22 therapy care to needy and indigent persons in West Virginia;

23 (2) The applicant may not receive any payment or
24 compensation, either direct or indirect, or have the
25 expectation of any payment or compensation but may
26 donate to the clinic the proceeds of any reimbursement for
27 any physical therapy services rendered under the special
28 volunteer license;

29 (3) The applicant shall supply any supporting
30 documentation that the board may reasonably require; and

31 (4) The applicant shall continue to participate in
32 continuing education as required by the board for special
33 volunteer physical therapists or physical therapist assistants
34 license, as the case may be.

35 (b) Any person engaged in the active practice of
36 physical therapy in this state whose license is in good
37 standing may donate their expertise for the care and
38 treatment of indigent and needy patients pursuant to an
39 arrangement with a clinic organized, in whole or in part, for
40 the delivery of health care services without charge to the
41 patient. Services rendered pursuant to an arrangement may
42 be performed in either the physical therapist's office or the
43 clinical setting.

44 (c) Any physical therapist or physical therapist assistant
45 who renders any physical therapy service to indigent and
46 needy patients of a clinic organized, in whole or in part, for
47 the delivery of health care services without charge under a
48 special volunteer license authorized under subsection (a) of
49 this section or pursuant to an arrangement with a clinic as
50 authorized pursuant to subsection (b) of this section without
51 payment or compensation or the expectation or promise of
52 payment or compensation is immune from liability for any
53 civil action arising out of any act or omission resulting from
54 the rendering of the physical therapy service at the clinic
55 unless the act or omission was the result of gross negligence
56 or willful misconduct on the part of the physical therapist or
57 physical therapist assistant. In order for the immunity under
58 this subsection to apply, there must be a written agreement
59 between the physical therapist or physical therapist assistant
60 and the clinic stating that the physical therapist or physical
61 therapist assistant will provide voluntary uncompensated
62 physical therapy services under the control of the clinic to
63 patients of the clinic before the rendering of any services by
64 the physical therapist or physical therapist assistant at the
65 clinic: *Provided*, That any clinic entering into such written
66 agreement is required to maintain liability coverage of not
67 less than \$1 million per occurrence.

68 (d) Notwithstanding the provisions of subsection (b) of
69 this section, a clinic organized, in whole or in part, for the
70 delivery of health care services without charge is not
71 relieved from imputed liability for the negligent acts of a
72 physical therapist or physical therapist assistant rendering
73 voluntary physical therapy services at or for the clinic under
74 a special volunteer license authorized under this section or
75 who renders such care and treatment pursuant to an
76 arrangement with a clinic as authorized pursuant to
77 subsection (b) of this section.

78 (e) For purposes of this section, “otherwise eligible for
79 licensure” means the satisfaction of all the requirements for

80 licensure for a physical therapist or physical therapist
81 assistant, as the case may be, except the fee requirements.

82 (f) Nothing in this section may be construed as requiring
83 the board to issue a special volunteer license to any physical
84 therapist or physical therapist assistant whose license is or
85 has been subject to any disciplinary action or to any physical
86 therapist or physical therapist assistant who has surrendered
87 a license or caused a license to lapse, expire and become
88 invalid in lieu of having a complaint initiated or other action
89 taken against his or her license, or who has elected to place
90 a license in inactive status in lieu of having a complaint
91 initiated or other action taken against his or her license or
92 who has been denied a license.

93 (g) Any policy or contract of liability insurance
94 providing coverage for liability sold, issued or delivered in
95 this state to any physical therapist or physical therapist
96 assistant covered under the provisions of this article shall be
97 read so as to contain a provision or endorsement whereby
98 the company issuing such policy waives or agrees not to
99 assert as a defense on behalf of the policy holder or any
100 beneficiary thereof the policy, to any claim covered by the
101 terms of the policy within the policy limits, the immunity
102 from liability of the insured by reason of the care and
103 treatment of needy and indigent patients by a physical
104 therapist or physical therapist assistant who holds a special
105 volunteer license or who renders such care and treatment
106 pursuant to an arrangement with a clinic as authorized
107 pursuant to subsection (b) of this section.

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-17. Special volunteer psychologists license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer
2 psychologists license for psychologists retired or retiring
3 from the active practice of psychology who wish to donate
4 their expertise for the psychological care and treatment of

5 indigent and needy patients in the clinical setting of clinics
6 organized, in whole or in part, for the delivery of health care
7 services without charge. The special volunteer psychologist
8 license shall be issued by the West Virginia Board of
9 Examiners of Psychologists to psychologists licensed or
10 otherwise eligible for licensure under this article and the
11 legislative rules promulgated hereunder without the
12 payment of an application fee, license fee or renewal fee,
13 and the initial license shall be issued for the remainder of
14 the licensing period, and renewed consistent with the boards
15 other licensing requirements. The board shall develop
16 application forms for the special license provided in this
17 subsection which shall contain the psychologist's
18 acknowledgment that:

19 (1) The psychologist's practice under the special
20 volunteer psychologists license will be exclusively devoted
21 to providing psychological care to needy and indigent
22 persons in West Virginia;

23 (2) The psychologist will not receive any payment or
24 compensation, either direct or indirect, or have the
25 expectation of any payment or compensation but may
26 donate to the clinic the proceeds of any reimbursement, for
27 any psychological services rendered under the special
28 volunteer psychological license;

29 (3) The psychologist will supply any supporting
30 documentation that the board may reasonably require; and

31 (4) The psychologist agrees to continue to participate in
32 continuing education as required by the board for a special
33 volunteer psychologists license.

34 (b) Any person engaged in the active practice of
35 psychology in this state whose license is in good standing
36 may donate their expertise for the care and treatment of
37 indigent and needy patients pursuant to an arrangement with
38 a clinic organized, in whole or in part, for the delivery of
39 health care services without charge to the patient. Services

40 rendered pursuant to an arrangement may be performed in
41 either the psychologist's office or the clinical setting.

42 (c) Any psychologist who renders any psychological
43 service to indigent and needy patients of a clinic organized,
44 in whole or in part, for the delivery of health care services
45 without charge under a special volunteer psychologist
46 license authorized under subsection (a) of this section
47 without payment or compensation or the expectation or
48 promise of payment or compensation, is immune from
49 liability for any civil action arising out of any act or
50 omission resulting from the rendering of the psychological
51 service at the clinic unless the act or omission was the result
52 of the psychologist's gross negligence or willful
53 misconduct. In order for the immunity under this subsection
54 to apply, there must be a written agreement between the
55 psychologist and the clinic pursuant to which the
56 psychologist will provide voluntary uncompensated
57 psychological services under the control of the clinic to
58 patients of the clinic before the rendering of any services by
59 the psychologists at the clinic: *Provided*, That any clinic
60 entering into such written agreement is required to maintain
61 liability coverage of not less than \$1 million per occurrence.

62 (d) Notwithstanding the provisions of subsection (b) of
63 this section, a clinic organized, in whole or in part, for the
64 delivery of health care services without charge is not
65 relieved from imputed liability for the negligent acts of a
66 psychologist rendering voluntary psychological services at
67 or for the clinic under a special volunteer psychological
68 license authorized under subsection (a) of this section or
69 who renders such care and treatment pursuant to an
70 arrangement with a clinic as authorized pursuant to
71 subsection (b) of this section.

72 (e) For purposes of this section, "otherwise eligible for
73 licensure" means the satisfaction of all the requirements for
74 licensure as listed in section seven of this article and in the
75 legislative rules promulgated thereunder, except the fee

76 requirements of subsection (d) of that section and of the
77 legislative rules promulgated by the board relating to fees.

78 (f) Nothing in this section may be construed as requiring
79 the board to issue a special volunteer psychologist license
80 to any psychologist whose license is or has been subject to
81 any disciplinary action or to any psychologist who has
82 surrendered a psychologist license or caused such license to
83 lapse, expire and become invalid in lieu of having a
84 complaint initiated or other action taken against his or her
85 license, or who has elected to place a psychologist license
86 in inactive status in lieu of having a complaint initiated or
87 other action taken against his or her license, or who has been
88 denied a psychologist license.

89 (g) Any policy or contract of liability insurance
90 providing coverage for liability sold, issued or delivered in
91 this state to any psychologist covered under the provisions
92 of this article, shall be read so as to contain a provision or
93 endorsement whereby the company issuing such policy
94 waives or agrees not to assert as a defense on behalf of the
95 policyholder or any beneficiary thereof, to any claim
96 covered by the terms of such policy within the policy limits,
97 the immunity from liability of the insured by reason of the
98 care and treatment of needy and indigent patients by a
99 psychologist who holds a special volunteer psychologist
100 license or who renders such care and treatment pursuant to
101 an arrangement with a clinic as authorized pursuant to
102 subsection (b) of this section.

ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

§30-28-8a. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.

1 (a) There is established a special volunteer occupational
2 therapist license for occupational therapists retired or
3 retiring from the active practice of occupational therapy
4 who wish to donate their expertise for the care and treatment

5 of indigent and needy patients in the clinical setting of
6 clinics organized, in whole or in part, for the delivery of
7 health care services without charge. The special volunteer
8 occupational therapist license shall be issued by the West
9 Virginia Board of Occupational Therapy to occupational
10 therapists licensed or otherwise eligible for licensure under
11 this article and the legislative rules promulgated hereunder
12 without the payment of an application fee, license fee or
13 renewal fee, and the initial license shall be issued for the
14 remainder of the licensing period, and renewed consistent
15 with the boards other licensing requirements. The board
16 shall develop application forms for the special license
17 provided in this subsection which shall contain the
18 occupational therapist's acknowledgment that:

19 (1) The occupational therapist's practice under the
20 special volunteer occupational therapist license will be
21 exclusively devoted to providing occupational therapy care
22 to needy and indigent persons in West Virginia;

23 (2) The occupational therapist will not receive any
24 payment or compensation, either direct or indirect, or have
25 the expectation of any payment or compensation but may
26 donate to the clinic the proceeds of any reimbursement, for
27 any occupational therapy services rendered under the
28 special volunteer occupational therapist license;

29 (3) The occupational therapist will supply any
30 supporting documentation that the board may reasonably
31 require; and

32 (4) The occupational therapist agrees to continue to
33 participate in continuing education as required by the board
34 for a special volunteer occupational therapists license.

35 (b) Any person engaged in the active practice of
36 occupational therapy in this state whose license is in good
37 standing may donate their expertise for the care and
38 treatment of indigent and needy patients pursuant to an
39 arrangement with a clinic organized, in whole or in part, for

40 the delivery of health care services without charge to the
41 patient. Services rendered pursuant to an arrangement may
42 be performed in either the occupational therapist's office or
43 the clinical setting.

44 (c) Any occupational therapist who renders any
45 occupational therapy service to indigent and needy patients
46 of a clinic organized, in whole or in part, for the delivery of
47 health care services without charge under a special
48 volunteer occupational therapist license authorized under
49 subsection (a) of this section or pursuant to an arrangement
50 with a clinic as authorized pursuant to subsection (b) of this
51 section without payment or compensation or the expectation
52 or promise of payment or compensation is immune from
53 liability for any civil action arising out of any act or
54 omission resulting from the rendering of the occupational
55 therapy service at the clinic unless the act or omission was
56 the result of the occupational therapist's gross negligence or
57 willful misconduct. In order for the immunity under this
58 subsection to apply, there must be a written agreement
59 between the occupational therapist and the clinic pursuant
60 to which the occupational therapist will provide voluntary
61 uncompensated occupational therapy services under the
62 control of the clinic to patients of the clinic before the
63 rendering of any services by the occupational therapist at
64 the clinic: *Provided*, That any clinic entering into such
65 written agreement is required to maintain liability coverage
66 of not less than \$1 million per occurrence.

67 (d) Notwithstanding the provisions of subsection (b) of
68 this section, a clinic organized, in whole or in part, for the
69 delivery of health care services without charge is not
70 relieved from imputed liability for the negligent acts of an
71 occupational therapist rendering voluntary occupational
72 therapy services at or for the clinic under a special volunteer
73 occupational therapist license authorized under subsection
74 (a) of this section or who renders such care and treatment
75 pursuant to an arrangement with a clinic as authorized
76 pursuant to subsection (b) of this section.

77 (e) For purposes of this section, “otherwise eligible for
78 licensure” means the satisfaction of all the requirements for
79 licensure as listed in section eight of this article and in the
80 legislative rules promulgated thereunder, excepting the fee
81 requirements of subsection (a), section eleven of this article
82 and of the legislative rules promulgated by the board
83 relating to fees.

84 (f) Nothing in this section may be construed as requiring
85 the board to issue a special volunteer occupational therapist
86 license to any occupational therapist whose occupational
87 therapist license is or has been subject to any disciplinary
88 action or to any occupational therapist who has surrendered
89 an occupational therapist license or caused such license to
90 lapse, expire and become invalid in lieu of having a
91 complaint initiated or other action taken against his or her
92 occupational therapist license, or who has elected to place
93 an occupational therapist license in inactive status in lieu of
94 having a complaint initiated or other action taken against his
95 or her occupational therapist license, or who has been
96 denied an occupational therapist license.

97 (g) Any policy or contract of liability insurance
98 providing coverage for liability sold, issued or delivered in
99 this state to any occupational therapist covered under the
100 provisions of this article shall be read so as to contain a
101 provision or endorsement whereby the company issuing
102 such policy waives or agrees not to assert as a defense on
103 behalf of the policyholder or any beneficiary thereof, to any
104 claim covered by the terms of such policy within the policy
105 limits, the immunity from liability of the insured by reason
106 of the care and treatment of needy and indigent patients by
107 an occupational therapist who holds a special volunteer
108 occupational therapist license or who renders such care and
109 treatment pursuant to an arrangement with a clinic as
110 authorized pursuant to subsection (b) of this section.



CHAPTER 172

**(H. B. 2628 - By Delegates Howell, Hamrick,
Summers, Ellington, Arvon, Rohrbach, Shott,
C. Miller, Storch, Lewis and Maynard)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §30-3-12 and §30-3-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-11 and §30-14-12a of said code, all relating generally to the regulation and licensing of medical professionals; modifying powers and duties of the Board of Medicine and the Board of Osteopathic Medicine with regard to evidence of serious misconduct of individuals subject to the boards' jurisdictions; authorizing the Board of Medicine to deny or refuse to reissue a license to any person convicted of a felony; authorizing the Board of Medicine to take disciplinary action against a licensee or applicant for licensure who knowingly fails to report any act of gross misconduct committed by another licensee; authorizing the Board of Medicine to revoke a license or other authorization to practice or prescribe or dispense controlled substances for any period of time, including for the life of the licensee; authorizing the Board of Osteopathic Medicine to refuse to issue a license, suspend or revoke a license, fine a licensee, or order restitution or rehabilitative action by a licensee for certain causes; requiring the Board of Osteopathic Medicine to revoke or refuse to reissue the license of a physician or physician's assistant convicted of a felony involving prescription drugs; authorizing the Board of Osteopathic Medicine to take disciplinary action against a licensee or applicant for licensure who knowingly fails to report any act of gross misconduct committed by another licensee; and requiring the Board of Medicine and the Board of Osteopathic

Medicine to report certain credible information received to appropriate authorities.

Be it enacted by the Legislature of West Virginia:

That §30-3-12 and §30-3-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §30-14-11 and §30-14-12a of said code be amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license; denial for conviction of felony offense.

1 (a) A license to practice medicine and surgery or
2 podiatry in this state is valid for a term of two years.

3 (b) The license shall be renewed:

4 (1) Upon receipt of a reasonable fee, as set by the board;

5 (2) Submission of an application on forms provided by
6 the board; and

7 (3) A certification of participation in and successful
8 completion of a minimum of fifty hours of continuing
9 medical or podiatric education satisfactory to the board, as
10 appropriate to the particular license, during the preceding
11 two-year period.

12 (c) The application may not require disclosure of a
13 voluntary agreement entered into pursuant to subsection (h),
14 section nine of this article.

15 (d) Continuing medical education satisfactory to the
16 board is continuing medical education designated as
17 Category I by the American Medical Association or the
18 Academy of Family Physicians and alternate categories
19 approved by the board.

20 (e) Continuing podiatric education satisfactory to the
21 board is continuing podiatric education approved by the
22 Council on Podiatric Education and alternate categories
23 approved by the board.

24 (f) Notwithstanding any provision of this chapter to the
25 contrary, beginning July 1, 2007, failure to timely submit to
26 the board a certification of successful completion of a
27 minimum of fifty hours of continuing medical or podiatric
28 education satisfactory to the board, as appropriate to the
29 particular license, shall result in the automatic expiration of
30 any license to practice medicine and surgery or podiatry
31 until such time as the certification, with all supporting
32 written documentation, is submitted to and approved by the
33 board.

34 (g) If a license is automatically expired and
35 reinstatement is sought within one year of the automatic
36 expiration, the former licensee shall:

37 (1) Provide certification with supporting written
38 documentation of the successful completion of the required
39 continuing education;

40 (2) Pay a renewal fee; and

41 (3) Pay a reinstatement fee equal to fifty percent of the
42 renewal fee.

43 (h) If a license is automatically expired and more than
44 one year has passed since the automatic expiration, the
45 former licensee shall:

46 (1) Apply for a new license;

47 (2) Provide certification with supporting written
48 documentation of the successful completion of the required
49 continuing education; and

50 (3) Pay such fees as determined by the board.

51 (i) Any individual who accepts the privilege of
52 practicing medicine and surgery or podiatry in this state is
53 required to provide supporting written documentation of the
54 continuing education represented as received within thirty
55 days of receipt of a written request to do so by the board. If
56 a licensee fails or refuses to provide supporting written
57 documentation of the continuing education represented as
58 received as required in this section, such failure or refusal
59 to provide supporting written documentation is prima facie
60 evidence of renewing a license to practice medicine and
61 surgery or podiatry by fraudulent misrepresentation.

62 (j) The board may renew, on an inactive basis, the
63 license of a physician or podiatrist who is currently licensed
64 to practice medicine and surgery or podiatry in, but is not
65 actually practicing, medicine and surgery or podiatry in this
66 state. A physician or podiatrist holding an inactive license
67 shall not practice medicine and surgery or podiatry in this
68 state.

69 (k) An inactive license may be converted by the board
70 to an active license upon a written request by the licensee to
71 the board that:

72 (1) Accounts for his or her period of inactivity to the
73 satisfaction of the board; and

74 (2) Submits written documentation of participation in
75 and successful completion of a minimum of fifty hours of
76 continuing medical or podiatric education satisfactory to the
77 board, as appropriate to the particular license, during each
78 preceding two-year period.

79 (l) An inactive license may be obtained upon receipt of
80 a reasonable fee, as set by the board, and submission of an
81 application on forms provided by the board on a biennial
82 basis.

83 (m) The board may not require any physician or
84 podiatrist who is retired or retiring from the active practice

85 of medicine and surgery or the practice of podiatry and who
86 is voluntarily surrendering their license to return to the
87 board the license certificate issued to them by the board.

88 (n) The board may deny or refuse to reissue a license to
89 any person who has been convicted of a felony under the
90 laws of this state, any other state, the United States or the
91 laws of any other country or state outside of the United
92 States.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations; referral to law enforcement authorities.

1 (a) The board may independently initiate disciplinary
2 proceedings as well as initiate disciplinary proceedings
3 based on information received from medical peer review
4 committees, physicians, podiatrists, hospital administrators,
5 professional societies and others.

6 The board may initiate investigations as to professional
7 incompetence or other reasons for which a licensed physician
8 or podiatrist may be adjudged unqualified based upon criminal
9 convictions; complaints by citizens, pharmacists, physicians,
10 podiatrists, peer review committees, hospital administrators,
11 professional societies or others; or unfavorable outcomes
12 arising out of medical professional liability. The board shall
13 initiate an investigation if it receives notice that three or more
14 judgments, or any combination of judgments and settlements
15 resulting in five or more unfavorable outcomes arising from
16 medical professional liability have been rendered or made
17 against the physician or podiatrist within a five-year period.
18 The board may not consider any judgments or settlements as

19 conclusive evidence of professional incompetence or
20 conclusive lack of qualification to practice.

21 (b) Upon request of the board, any medical peer review
22 committee in this state shall report any information that may
23 relate to the practice or performance of any physician or
24 podiatrist known to that medical peer review committee.
25 Copies of the requests for information from a medical peer
26 review committee may be provided to the subject physician
27 or podiatrist if, in the discretion of the board, the provision
28 of such copies will not jeopardize the board's investigation.
29 In the event that copies are provided, the subject physician
30 or podiatrist is allowed fifteen days to comment on the
31 requested information and such comments must be
32 considered by the board.

33 The chief executive officer of every hospital shall,
34 within sixty days after the completion of the hospital's
35 formal disciplinary procedure and also within sixty days
36 after the commencement of and again after the conclusion
37 of any resulting legal action, report in writing to the board
38 the name of any member of the medical staff or any other
39 physician or podiatrist practicing in the hospital whose
40 hospital privileges have been revoked, restricted, reduced or
41 terminated for any cause, including resignation, together
42 with all pertinent information relating to such action. The
43 chief executive officer shall also report any other formal
44 disciplinary action taken against any physician or podiatrist
45 by the hospital upon the recommendation of its medical staff
46 relating to professional ethics, medical incompetence,
47 medical professional liability, moral turpitude or drug or
48 alcohol abuse. Temporary suspension for failure to maintain
49 records on a timely basis or failure to attend staff or section
50 meetings need not be reported. Voluntary cessation of
51 hospital privileges for reasons unrelated to professional
52 competence or ethics need not be reported.

53 Any managed care organization operating in this state
54 which provides a formal peer review process shall report in
55 writing to the board, within sixty days after the completion

56 of any formal peer review process and also within sixty days
57 after the commencement of and again after the conclusion
58 of any resulting legal action, the name of any physician or
59 podiatrist whose credentialing has been revoked or not
60 renewed by the managed care organization. The managed
61 care organization shall also report in writing to the board
62 any other disciplinary action taken against a physician or
63 podiatrist relating to professional ethics, professional
64 liability, moral turpitude or drug or alcohol abuse within
65 sixty days after completion of a formal peer review process
66 which results in the action taken by the managed care
67 organization. For purposes of this subsection, “managed
68 care organization” means a plan that establishes, operates or
69 maintains a network of health care providers who have
70 entered into agreements with and been credentialed by the
71 plan to provide health care services to enrollees or insureds
72 to whom the plan has the ultimate obligation to arrange for
73 the provision of or payment for health care services through
74 organizational arrangements for ongoing quality assurance,
75 utilization review programs or dispute resolutions.

76 Any professional society in this state comprised
77 primarily of physicians or podiatrists which takes formal
78 disciplinary action against a member relating to professional
79 ethics, professional incompetence, medical professional
80 liability, moral turpitude or drug or alcohol abuse shall
81 report in writing to the board within sixty days of a final
82 decision the name of the member, together with all pertinent
83 information relating to the action.

84 Every person, partnership, corporation, association,
85 insurance company, professional society or other
86 organization providing professional liability insurance to a
87 physician or podiatrist in this state, including the state Board
88 of Risk and Insurance Management, shall submit to the
89 board the following information within thirty days from any
90 judgment or settlement of a civil or medical professional
91 liability action excepting product liability actions: The name
92 of the insured; the date of any judgment or settlement;

93 whether any appeal has been taken on the judgment and, if
94 so, by which party; the amount of any settlement or
95 judgment against the insured; and other information
96 required by the board.

97 Within thirty days from the entry of an order by a court
98 in a medical professional liability action or other civil action
99 in which a physician or podiatrist licensed by the board is
100 determined to have rendered health care services below the
101 applicable standard of care, the clerk of the court in which
102 the order was entered shall forward a certified copy of the
103 order to the board.

104 Within thirty days after a person known to be a
105 physician or podiatrist licensed or otherwise lawfully
106 practicing medicine and surgery or podiatry in this state or
107 applying to be licensed is convicted of a felony under the
108 laws of this state or of any crime under the laws of this state
109 involving alcohol or drugs in any way, including any
110 controlled substance under state or federal law, the clerk of
111 the court of record in which the conviction was entered shall
112 forward to the board a certified true and correct abstract of
113 record of the convicting court. The abstract shall include the
114 name and address of the physician or podiatrist or applicant,
115 the nature of the offense committed and the final judgment
116 and sentence of the court.

117 Upon a determination of the board that there is probable
118 cause to believe that any person, partnership, corporation,
119 association, insurance company, professional society or
120 other organization has failed or refused to make a report
121 required by this subsection, the board shall provide written
122 notice to the alleged violator stating the nature of the alleged
123 violation and the time and place at which the alleged
124 violator shall appear to show good cause why a civil penalty
125 should not be imposed. The hearing shall be conducted in
126 accordance with article five, chapter twenty-nine-a of this
127 code. After reviewing the record of the hearing, if the board
128 determines that a violation of this subsection has occurred,
129 the board shall assess a civil penalty of not less than \$1,000

130 nor more than \$10,000 against the violator. The board shall
131 notify any person so assessed of the assessment in writing
132 and the notice shall specify the reasons for the assessment.
133 If the violator fails to pay the amount of the assessment to
134 the board within thirty days, the Attorney General may
135 institute a civil action in the circuit court of Kanawha
136 County to recover the amount of the assessment. In any civil
137 action, the court's review of the board's action shall be
138 conducted in accordance with section four, article five,
139 chapter twenty-nine-a of this code. Notwithstanding any
140 other provision of this article to the contrary, when there are
141 conflicting views by recognized experts as to whether any
142 alleged conduct breaches an applicable standard of care, the
143 evidence must be clear and convincing before the board may
144 find that the physician or podiatrist has demonstrated a lack
145 of professional competence to practice with a reasonable
146 degree of skill and safety for patients.

147 Any person may report to the board relevant facts about
148 the conduct of any physician or podiatrist in this state which
149 in the opinion of that person amounts to medical
150 professional liability or professional incompetence.

151 The board shall provide forms for filing reports pursuant
152 to this section. Reports submitted in other forms shall be
153 accepted by the board.

154 The filing of a report with the board pursuant to any
155 provision of this article, any investigation by the board or
156 any disposition of a case by the board does not preclude any
157 action by a hospital, other health care facility or professional
158 society comprised primarily of physicians or podiatrists to
159 suspend, restrict or revoke the privileges or membership of
160 the physician or podiatrist.

161 (c) The board may deny an application for license or
162 other authorization to practice medicine and surgery or
163 podiatry in this state and may discipline a physician or
164 podiatrist licensed or otherwise lawfully practicing in this

165 state who, after a hearing, has been adjudged by the board
166 as unqualified due to any of the following reasons:

167 (1) Attempting to obtain, obtaining, renewing or
168 attempting to renew a license to practice medicine and
169 surgery or podiatry by bribery, fraudulent misrepresentation
170 or through known error of the board;

171 (2) Being found guilty of a crime in any jurisdiction,
172 which offense is a felony, involves moral turpitude or
173 directly relates to the practice of medicine. Any plea of nolo
174 contendere is a conviction for the purposes of this
175 subdivision;

176 (3) False or deceptive advertising;

177 (4) Aiding, assisting, procuring or advising any
178 unauthorized person to practice medicine and surgery or
179 podiatry contrary to law;

180 (5) Making or filing a report that the person knows to be
181 false; intentionally or negligently failing to file a report or
182 record required by state or federal law; willfully impeding
183 or obstructing the filing of a report or record required by
184 state or federal law; or inducing another person to do any of
185 the foregoing. The reports and records covered in this
186 subdivision mean only those that are signed in the capacity
187 as a licensed physician or podiatrist;

188 (6) Requesting, receiving or paying directly or
189 indirectly a payment, rebate, refund, commission, credit or
190 other form of profit or valuable consideration for the referral
191 of patients to any person or entity in connection with
192 providing medical or other health care services or clinical
193 laboratory services, supplies of any kind, drugs, medication
194 or any other medical goods, services or devices used in
195 connection with medical or other health care services;

196 (7) Unprofessional conduct by any physician or
197 podiatrist in referring a patient to any clinical laboratory or
198 pharmacy in which the physician or podiatrist has a

199 proprietary interest unless the physician or podiatrist
200 discloses in writing such interest to the patient. The written
201 disclosure shall indicate that the patient may choose any
202 clinical laboratory for purposes of having any laboratory
203 work or assignment performed or any pharmacy for
204 purposes of purchasing any prescribed drug or any other
205 medical goods or devices used in connection with medical
206 or other health care services;

207 As used in this subdivision, “proprietary interest” does
208 not include an ownership interest in a building in which
209 space is leased to a clinical laboratory or pharmacy at the
210 prevailing rate under a lease arrangement that is not
211 conditional upon the income or gross receipts of the clinical
212 laboratory or pharmacy;

213 (8) Exercising influence within a patient-physician
214 relationship for the purpose of engaging a patient in sexual
215 activity;

216 (9) Making a deceptive, untrue or fraudulent
217 representation in the practice of medicine and surgery or
218 podiatry;

219 (10) Soliciting patients, either personally or by an agent,
220 through the use of fraud, intimidation or undue influence;

221 (11) Failing to keep written records justifying the course
222 of treatment of a patient, including, but not limited to,
223 patient histories, examination and test results and treatment
224 rendered, if any;

225 (12) Exercising influence on a patient in such a way as
226 to exploit the patient for financial gain of the physician or
227 podiatrist or of a third party. Any influence includes, but is
228 not limited to, the promotion or sale of services, goods,
229 appliances or drugs;

230 (13) Prescribing, dispensing, administering, mixing or
231 otherwise preparing a prescription drug, including any
232 controlled substance under state or federal law, other than

233 in good faith and in a therapeutic manner in accordance with
234 accepted medical standards and in the course of the
235 physician's or podiatrist's professional practice. A
236 physician who discharges his or her professional obligation
237 to relieve the pain and suffering and promote the dignity and
238 autonomy of dying patients in his or her care and, in so
239 doing, exceeds the average dosage of a pain relieving
240 controlled substance, as defined in Schedules II and III of
241 the Uniform Controlled Substance Act, does not violate this
242 article;

243 (14) Performing any procedure or prescribing any
244 therapy that, by the accepted standards of medical practice
245 in the community, would constitute experimentation on
246 human subjects without first obtaining full, informed and
247 written consent;

248 (15) Practicing or offering to practice beyond the scope
249 permitted by law or accepting and performing professional
250 responsibilities that the person knows or has reason to know
251 he or she is not competent to perform;

252 (16) Delegating professional responsibilities to a person
253 when the physician or podiatrist delegating the
254 responsibilities knows or has reason to know that the person
255 is not qualified by training, experience or licensure to
256 perform them;

257 (17) Violating any provision of this article or a rule or
258 order of the board or failing to comply with a subpoena or
259 subpoena duces tecum issued by the board;

260 (18) Conspiring with any other person to commit an act
261 or committing an act that would tend to coerce, intimidate
262 or preclude another physician or podiatrist from lawfully
263 advertising his or her services;

264 (19) Gross negligence in the use and control of
265 prescription forms;

266 (20) Professional incompetence;

267 (21) The inability to practice medicine and surgery or
268 podiatry with reasonable skill and safety due to physical or
269 mental impairment, including deterioration through the
270 aging process, loss of motor skill or abuse of drugs or
271 alcohol. A physician or podiatrist adversely affected under
272 this subdivision shall be afforded an opportunity at
273 reasonable intervals to demonstrate that he or she may
274 resume the competent practice of medicine and surgery or
275 podiatry with reasonable skill and safety to patients. In any
276 proceeding under this subdivision, neither the record of
277 proceedings nor any orders entered by the board shall be
278 used against the physician or podiatrist in any other
279 proceeding; or

280 (22) Knowingly failing to report to the board any act of
281 gross misconduct committed by another licensee of the
282 board.

283 (d) The board shall deny any application for a license or
284 other authorization to practice medicine and surgery or
285 podiatry in this state to any applicant who, and shall revoke
286 the license of any physician or podiatrist licensed or
287 otherwise lawfully practicing within this state who, is found
288 guilty by any court of competent jurisdiction of any felony
289 involving prescribing, selling, administering, dispensing,
290 mixing or otherwise preparing any prescription drug,
291 including any controlled substance under state or federal
292 law, for other than generally accepted therapeutic purposes.
293 Presentation to the board of a certified copy of the guilty
294 verdict or plea rendered in the court is sufficient proof
295 thereof for the purposes of this article. A plea of nolo
296 contendere has the same effect as a verdict or plea of guilt.
297 Upon application of a physician that has had his or her
298 license revoked because of a drug related felony conviction,
299 upon completion of any sentence of confinement, parole,
300 probation or other court-ordered supervision and full
301 satisfaction of any fines, judgments or other fees imposed
302 by the sentencing court, the board may issue the applicant a
303 new license upon a finding that the physician is, except for

304 the underlying conviction, otherwise qualified to practice
305 medicine: *Provided*, That the board may place whatever
306 terms, conditions or limitations it deems appropriate upon a
307 physician licensed pursuant to this subsection.

308 (e) The board may refer any cases coming to its
309 attention to an appropriate committee of an appropriate
310 professional organization for investigation and report.
311 Except for complaints related to obtaining initial licensure
312 to practice medicine and surgery or podiatry in this state by
313 bribery or fraudulent misrepresentation, any complaint filed
314 more than two years after the complainant knew, or in the
315 exercise of reasonable diligence should have known, of the
316 existence of grounds for the complaint shall be dismissed:
317 *Provided*, That in cases of conduct alleged to be part of a
318 pattern of similar misconduct or professional incapacity
319 that, if continued, would pose risks of a serious or
320 substantial nature to the physician's or podiatrist's current
321 patients, the investigating body may conduct a limited
322 investigation related to the physician's or podiatrist's
323 current capacity and qualification to practice and may
324 recommend conditions, restrictions or limitations on the
325 physician's or podiatrist's license to practice that it
326 considers necessary for the protection of the public. Any
327 report shall contain recommendations for any necessary
328 disciplinary measures and shall be filed with the board
329 within ninety days of any referral. The recommendations
330 shall be considered by the board and the case may be further
331 investigated by the board. The board after full investigation
332 shall take whatever action it considers appropriate, as
333 provided in this section.

334 (f) The investigating body, as provided in subsection (e)
335 of this section, may request and the board under any
336 circumstances may require a physician or podiatrist or
337 person applying for licensure or other authorization to
338 practice medicine and surgery or podiatry in this state to
339 submit to a physical or mental examination by a physician
340 or physicians approved by the board. A physician or

341 podiatrist submitting to an examination has the right, at his
342 or her expense, to designate another physician to be present
343 at the examination and make an independent report to the
344 investigating body or the board. The expense of the
345 examination shall be paid by the board. Any individual who
346 applies for or accepts the privilege of practicing medicine
347 and surgery or podiatry in this state is considered to have
348 given his or her consent to submit to all examinations when
349 requested to do so in writing by the board and to have
350 waived all objections to the admissibility of the testimony
351 or examination report of any examining physician on the
352 ground that the testimony or report is privileged
353 communication. If a person fails or refuses to submit to an
354 examination under circumstances which the board finds are
355 not beyond his or her control, failure or refusal is prima facie
356 evidence of his or her inability to practice medicine and
357 surgery or podiatry competently and in compliance with the
358 standards of acceptable and prevailing medical practice.

359 (g) In addition to any other investigators it employs, the
360 board may appoint one or more licensed physicians to act
361 for it in investigating the conduct or competence of a
362 physician.

363 (h) In every disciplinary or licensure denial action, the
364 board shall furnish the physician or podiatrist or applicant
365 with written notice setting out with particularity the reasons
366 for its action. Disciplinary and licensure denial hearings
367 shall be conducted in accordance with article five, chapter
368 twenty-nine-a of this code. However, hearings shall be
369 heard upon sworn testimony and the rules of evidence for
370 trial courts of record in this state shall apply to all hearings.
371 A transcript of all hearings under this section shall be made,
372 and the respondent may obtain a copy of the transcript at his
373 or her expense. The physician or podiatrist has the right to
374 defend against any charge by the introduction of evidence,
375 the right to be represented by counsel, the right to present
376 and cross-examine witnesses and the right to have
377 subpoenas and subpoenas duces tecum issued on his or her

378 behalf for the attendance of witnesses and the production of
379 documents. The board shall make all its final actions public.
380 The order shall contain the terms of all action taken by the
381 board.

382 (i) In disciplinary actions in which probable cause has
383 been found by the board, the board shall, within twenty days
384 of the date of service of the written notice of charges or sixty
385 days prior to the date of the scheduled hearing, whichever is
386 sooner, provide the respondent with the complete identity,
387 address and telephone number of any person known to the
388 board with knowledge about the facts of any of the charges;
389 provide a copy of any statements in the possession of or
390 under the control of the board; provide a list of proposed
391 witnesses with addresses and telephone numbers, with a
392 brief summary of his or her anticipated testimony; provide
393 disclosure of any trial expert pursuant to the requirements
394 of Rule 26(b)(4) of the West Virginia Rules of Civil
395 Procedure; provide inspection and copying of the results of
396 any reports of physical and mental examinations or
397 scientific tests or experiments; and provide a list and copy
398 of any proposed exhibit to be used at the hearing: *Provided,*
399 That the board shall not be required to furnish or produce
400 any materials which contain opinion work product
401 information or would be a violation of the attorney-client
402 privilege. Within twenty days of the date of service of the
403 written notice of charges, the board shall disclose any
404 exculpatory evidence with a continuing duty to do so
405 throughout the disciplinary process. Within thirty days of
406 receipt of the board's mandatory discovery, the respondent
407 shall provide the board with the complete identity, address
408 and telephone number of any person known to the
409 respondent with knowledge about the facts of any of the
410 charges; provide a list of proposed witnesses with addresses
411 and telephone numbers, to be called at hearing, with a brief
412 summary of his or her anticipated testimony; provide
413 disclosure of any trial expert pursuant to the requirements
414 of Rule 26(b)(4) of the West Virginia Rules of Civil
415 Procedure; provide inspection and copying of the results of

416 any reports of physical and mental examinations or
417 scientific tests or experiments; and provide a list and copy
418 of any proposed exhibit to be used at the hearing.

419 (j) Whenever it finds any person unqualified because of
420 any of the grounds set forth in subsection (c) of this section,
421 the board may enter an order imposing one or more of the
422 following:

423 (1) Deny his or her application for a license or other
424 authorization to practice medicine and surgery or podiatry;

425 (2) Administer a public reprimand;

426 (3) Suspend, limit or restrict his or her license or other
427 authorization to practice medicine and surgery or podiatry
428 for not more than five years, including limiting the practice
429 of that person to, or by the exclusion of, one or more areas
430 of practice, including limitations on practice privileges;

431 (4) Revoke his or her license or other authorization to
432 practice medicine and surgery or podiatry or to prescribe or
433 dispense controlled substances for any period of time,
434 including for the life of the licensee, that the board may find
435 to be reasonable and necessary according to evidence
436 presented in a hearing before the board or its designee;

437 (5) Require him or her to submit to care, counseling or
438 treatment designated by the board as a condition for initial
439 or continued licensure or renewal of licensure or other
440 authorization to practice medicine and surgery or podiatry;

441 (6) Require him or her to participate in a program of
442 education prescribed by the board;

443 (7) Require him or her to practice under the direction of
444 a physician or podiatrist designated by the board for a
445 specified period of time; and

446 (8) Assess a civil fine of not less than \$1,000 nor more
447 than \$10,000.

448 (k) Notwithstanding the provisions of section eight,
449 article one of this chapter, if the board determines the
450 evidence in its possession indicates that a physician's or
451 podiatrist's continuation in practice or unrestricted practice
452 constitutes an immediate danger to the public, the board
453 may take any of the actions provided in subsection (j) of this
454 section on a temporary basis and without a hearing if
455 institution of proceedings for a hearing before the board are
456 initiated simultaneously with the temporary action and
457 begin within fifteen days of the action. The board shall
458 render its decision within five days of the conclusion of a
459 hearing under this subsection.

460 (l) Any person against whom disciplinary action is taken
461 pursuant to this article has the right to judicial review as
462 provided in articles five and six, chapter twenty-nine-a of
463 this code: *Provided*, That a circuit judge may also remand
464 the matter to the board if it appears from competent
465 evidence presented to it in support of a motion for remand
466 that there is newly discovered evidence of such a character
467 as ought to produce an opposite result at a second hearing
468 on the merits before the board and:

469 (1) The evidence appears to have been discovered since
470 the board hearing; and

471 (2) The physician or podiatrist exercised due diligence
472 in asserting his or her evidence and that due diligence would
473 not have secured the newly discovered evidence prior to the
474 appeal.

475 A person may not practice medicine and surgery or
476 podiatry or deliver health care services in violation of any
477 disciplinary order revoking, suspending or limiting his or
478 her license while any appeal is pending. Within sixty days,
479 the board shall report its final action regarding restriction,
480 limitation, suspension or revocation of the license of a
481 physician or podiatrist, limitation on practice privileges or
482 other disciplinary action against any physician or podiatrist
483 to all appropriate state agencies, appropriate licensed health

484 facilities and hospitals, insurance companies or associations
485 writing medical malpractice insurance in this state, the
486 American Medical Association, the American Podiatry
487 Association, professional societies of physicians or
488 podiatrists in the state and any entity responsible for the
489 fiscal administration of Medicare and Medicaid.

490 (m) Any person against whom disciplinary action has
491 been taken under this article shall, at reasonable intervals,
492 be afforded an opportunity to demonstrate that he or she can
493 resume the practice of medicine and surgery or podiatry on
494 a general or limited basis. At the conclusion of a suspension,
495 limitation or restriction period the physician or podiatrist
496 may resume practice if the board has so ordered.

497 (n) Any entity, organization or person, including the
498 board, any member of the board, its agents or employees
499 and any entity or organization or its members referred to in
500 this article, any insurer, its agents or employees, a medical
501 peer review committee and a hospital governing board, its
502 members or any committee appointed by it acting without
503 malice and without gross negligence in making any report
504 or other information available to the board or a medical peer
505 review committee pursuant to law and any person acting
506 without malice and without gross negligence who assists in
507 the organization, investigation or preparation of any such
508 report or information or assists the board or a hospital
509 governing body or any committee in carrying out any of its
510 duties or functions provided by law is immune from civil or
511 criminal liability, except that the unlawful disclosure of
512 confidential information possessed by the board is a
513 misdemeanor as provided in this article.

514 (o) A physician or podiatrist may request in writing to
515 the board a limitation on or the surrendering of his or her
516 license to practice medicine and surgery or podiatry or other
517 appropriate sanction as provided in this section. The board
518 may grant the request and, if it considers it appropriate, may
519 waive the commencement or continuation of other
520 proceedings under this section. A physician or podiatrist

521 whose license is limited or surrendered or against whom
522 other action is taken under this subsection may, at
523 reasonable intervals, petition for removal of any restriction
524 or limitation on or for reinstatement of his or her license to
525 practice medicine and surgery or podiatry.

526 (p) In every case considered by the board under this
527 article regarding discipline or licensure, whether initiated by
528 the board or upon complaint or information from any person
529 or organization, the board shall make a preliminary
530 determination as to whether probable cause exists to
531 substantiate charges of disqualification due to any reason set
532 forth in subsection (c) of this section. If probable cause is
533 found to exist, all proceedings on the charges shall be open
534 to the public who are entitled to all reports, records and
535 nondeliberative materials introduced at the hearing,
536 including the record of the final action taken: *Provided,*
537 That any medical records, which were introduced at the
538 hearing and which pertain to a person who has not expressly
539 waived his or her right to the confidentiality of the records,
540 may not be open to the public nor is the public entitled to
541 the records.

542 (q) If the board receives notice that a physician or
543 podiatrist has been subjected to disciplinary action or has
544 had his or her credentials suspended or revoked by the
545 board, a hospital or a professional society, as defined in
546 subsection (b) of this section, for three or more incidents
547 during a five-year period, the board shall require the
548 physician or podiatrist to practice under the direction of a
549 physician or podiatrist designated by the board for a
550 specified period of time to be established by the board.

551 (r) Notwithstanding any other provisions of this article,
552 the board may, at any time, on its own motion, or upon
553 motion by the complainant, or upon motion by the physician
554 or podiatrist, or by stipulation of the parties, refer the matter
555 to mediation. The board shall obtain a list from the West
556 Virginia State Bar's mediator referral service of certified
557 mediators with expertise in professional disciplinary

558 matters. The board and the physician or podiatrist may
559 choose a mediator from that list. If the board and the
560 physician or podiatrist are unable to agree on a mediator, the
561 board shall designate a mediator from the list by neutral
562 rotation. The mediation shall not be considered a proceeding
563 open to the public and any reports and records introduced at
564 the mediation shall not become part of the public record.
565 The mediator and all participants in the mediation shall
566 maintain and preserve the confidentiality of all mediation
567 proceedings and records. The mediator may not be
568 subpoenaed or called to testify or otherwise be subject to
569 process requiring disclosure of confidential information in
570 any proceeding relating to or arising out of the disciplinary
571 or licensure matter mediated: *Provided*, That any
572 confidentiality agreement and any written agreement made
573 and signed by the parties as a result of mediation may be
574 used in any proceedings subsequently instituted to enforce
575 the written agreement. The agreements may be used in other
576 proceedings if the parties agree in writing.

577 (s) A physician licensed under this article may not be
578 disciplined for providing expedited partner therapy in
579 accordance with article four-f, chapter sixteen of this code.

580 (t) Whenever the board receives credible information
581 that a licensee of the board is engaging or has engaged in
582 criminal activity or the commitment of a crime under state
583 or federal law, the board shall report the information, to the
584 extent that sensitive or confidential information may be
585 publicly disclosed under law, to the appropriate state or
586 federal law-enforcement authority and/or prosecuting
587 authority. This duty exists in addition to and is distinct from
588 the reporting required under federal law for reporting
589 actions relating to health care providers to the United States
590 Department of Health and Human Services.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-11. Refusal, suspension or revocation of license; suspension or revocation of certificate of authorization.

1 (a) The board may refuse to issue a license, suspend or
2 revoke a license, fine a licensee, order restitution or
3 rehabilitative action by a licensee, or order a combination
4 thereof for any one or more of the following causes:

5 (1) Conviction of a felony, as shown by a certified copy
6 of the record of the trial court: *Provided*, That if the
7 conviction is for an offense that involves the transfer,
8 delivery or illicit possession of a prescription drug, then the
9 board shall revoke or refuse to issue the license of the
10 convicted physician or physician's assistant for a period of
11 time until the physician or physician's assistant
12 demonstrates a record of rehabilitation and that he or she has
13 the integrity, moral character and professional competence
14 to practice in this state;

15 (2) Conviction of a misdemeanor involving moral
16 turpitude;

17 (3) Violation of any provision of this article regulating
18 the practice of osteopathic physicians and surgeons;

19 (4) Fraud, misrepresentation or deceit in procuring or
20 attempting to procure admission to practice;

21 (5) Gross malpractice;

22 (6) Advertising by means of knowingly false or
23 deceptive statements;

24 (7) Advertising, practicing or attempting to practice
25 under a name other than one's own;

26 (8) Habitual drunkenness, or habitual addiction to the
27 use of morphine, cocaine or other habit-forming drugs; or

28 (9) Knowingly failing to report to the board any act of
29 gross misconduct committed by another licensee of the board.

30 (b) The board shall also have the power to suspend or
31 revoke for cause any certificate of authorization issued by
32 it. It shall have the power to reinstate any certificate of
33 authorization suspended or revoked by it.

34 (c) An osteopathic physician licensed under this article
35 may not be disciplined for providing expedited partner
36 therapy in accordance with article four-f, chapter sixteen of
37 this code.

§30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations; referrals to law enforcement authorities.

1 (a) The board may independently initiate suspension or
2 revocation proceedings as well as initiate suspension or
3 revocation proceedings based on information received from
4 any person.

5 The board shall initiate investigations as to professional
6 incompetence or other reasons for which a licensed
7 osteopathic physician and surgeon may be adjudged
8 unqualified if the board receives notice that three or more
9 judgments or any combination of judgments and settlements
10 resulting in five or more unfavorable outcomes arising from
11 medical professional liability have been rendered or made
12 against such osteopathic physician within a five-year
13 period.

14 (b) Upon request of the board, any medical peer review
15 committee in this state shall report any information that may
16 relate to the practice or performance of any osteopathic
17 physician known to that medical peer review committee.
18 Copies of such requests for information from a medical peer
19 review committee may be provided to the subject osteopathic
20 physician if, in the discretion of the board, the provision of
21 such copies will not jeopardize the board's investigation. In the
22 event that copies are provided, the subject osteopathic

23 physician has fifteen days to comment on the requested
24 information and such comments must be considered by the
25 board.

26 After the completion of a hospital's formal disciplinary
27 procedure and after any resulting legal action, the chief
28 executive officer of such hospital shall report in writing to
29 the board within sixty days the name of any member of the
30 medical staff or any other osteopathic physician practicing
31 in the hospital whose hospital privileges have been revoked,
32 restricted, reduced or terminated for any cause, including
33 resignation, together with all pertinent information relating
34 to such action. The chief executive officer shall also report
35 any other formal disciplinary action taken against any
36 osteopathic physician by the hospital upon the
37 recommendation of its medical staff relating to professional
38 ethics, medical incompetence, medical malpractice, moral
39 turpitude or drug or alcohol abuse. Temporary suspension
40 for failure to maintain records on a timely basis or failure to
41 attend staff or section meetings need not be reported.

42 Any professional society in this state comprised primarily
43 of osteopathic physicians or physicians and surgeons of other
44 schools of medicine which takes formal disciplinary action
45 against a member relating to professional ethics, professional
46 incompetence, professional malpractice, moral turpitude or
47 drug or alcohol abuse, shall report in writing to the board
48 within sixty days of a final decision the name of such member,
49 together with all pertinent information relating to such action.

50 Every person, partnership, corporation, association,
51 insurance company, professional society or other
52 organization providing professional liability insurance to an
53 osteopathic physician in this state shall submit to the board
54 the following information within thirty days from any
55 judgment, dismissal or settlement of a civil action or of any
56 claim involving the insured: The date of any judgment,
57 dismissal or settlement; whether any appeal has been taken
58 on the judgment, and, if so, by which party; the amount of

59 any settlement or judgment against the insured; and such
60 other information required by the board.

61 Within thirty days after a person known to be an
62 osteopathic physician licensed or otherwise lawfully
63 practicing medicine and surgery in this state or applying to be
64 licensed is convicted of a felony under the laws of this state,
65 or of any crime under the laws of this state involving alcohol
66 or drugs in any way, including any controlled substance
67 under state or federal law, the clerk of the court of record in
68 which the conviction was entered shall forward to the board
69 a certified true and correct abstract of record of the convicting
70 court. The abstract shall include the name and address of such
71 osteopathic physician or applicant, the nature of the offense
72 committed and the final judgment and sentence of the court.

73 Upon a determination of the board that there is probable
74 cause to believe that any person, partnership, corporation,
75 association, insurance company, professional society or other
76 organization has failed or refused to make a report required
77 by this subsection, the board shall provide written notice to
78 the alleged violator stating the nature of the alleged violation
79 and the time and place at which the alleged violator shall
80 appear to show good cause why a civil penalty should not be
81 imposed. The hearing shall be conducted in accordance with
82 the provisions of article five, chapter twenty-nine-a of this
83 code. After reviewing the record of such hearing, if the board
84 determines that a violation of this subsection has occurred,
85 the board shall assess a civil penalty of not less than \$1,000
86 nor more than \$10,000 against such violator. The board shall
87 notify anyone assessed of the assessment in writing and the
88 notice shall specify the reasons for the assessment. If the
89 violator fails to pay the amount of the assessment to the board
90 within thirty days, the Attorney General may institute a civil
91 action in the circuit court of Kanawha County to recover the
92 amount of the assessment. In any such civil action, the court's
93 review of the board's action shall be conducted in accordance
94 with the provisions of section four, article five, chapter
95 twenty-nine-a of this code.

96 Any person may report to the board relevant facts about
97 the conduct of any osteopathic physician in this state which
98 in the opinion of such person amounts to professional
99 malpractice or professional incompetence.

100 The board shall provide forms for filing reports pursuant
101 to this section. Reports submitted in other forms shall be
102 accepted by the board.

103 The filing of a report with the board pursuant to any
104 provision of this article, any investigation by the board or any
105 disposition of a case by the board does not preclude any
106 action by a hospital, other health care facility or professional
107 society comprised primarily of osteopathic physicians or
108 physicians and surgeons of other schools of medicine to
109 suspend, restrict or revoke the privileges or membership of
110 such osteopathic physician.

111 (c) In every case considered by the board under this
112 article regarding suspension, revocation or issuance of a
113 license whether initiated by the board or upon complaint or
114 information from any person or organization, the board shall
115 make a preliminary determination as to whether probable
116 cause exists to substantiate charges of cause to suspend,
117 revoke or refuse to issue a license as set forth in subsection
118 (a), section eleven of this article. If such probable cause is
119 found to exist, all proceedings on such charges shall be open
120 to the public who are entitled to all reports, records, and
121 nondeliberative materials introduced at such hearing,
122 including the record of the final action taken: *Provided*, That
123 any medical records, which were introduced at such hearing
124 and which pertain to a person who has not expressly waived
125 his or her right to the confidentiality of such records, shall not
126 be open to the public nor is the public entitled to such records.
127 If a finding is made that probable cause does not exist, the
128 public has a right of access to the complaint or other
129 document setting forth the charges, the findings of fact and
130 conclusions supporting such finding that probable cause does
131 not exist, if the subject osteopathic physician consents to such
132 access.

133 (d) If the board receives notice that an osteopathic
134 physician has been subjected to disciplinary action or has had
135 his or her credentials suspended or revoked by the board, a
136 medical peer review committee, a hospital or professional
137 society, as defined in subsection (b) of this section, for three
138 or more incidents in a five-year period, the board shall require
139 the osteopathic physician to practice under the direction of
140 another osteopathic physician for a specified period to be
141 established by the board.

142 (e) Whenever the board receives credible information
143 that a licensee of the board is engaging or has engaged in
144 criminal activity or the commitment of a crime under state or
145 federal law, the board shall report the information, to the
146 extent that sensitive or confidential information may be
147 publicly disclosed under law, to the appropriate state or
148 federal law-enforcement authority and/or prosecuting
149 authority. This duty exists in addition to and is distinct from
150 the reporting required under federal law for reporting actions
151 relating to health care providers to the United States
152 Department of Health and Human Services.

CHAPTER 173

**(Com. Sub. for H. B. 2509 - By Delegates Ellington,
Summers, Rowan, Sobonya and Atkinson)**

[Passed April 7, 2017; in effect from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-12d of said code, all relating to the practice of telemedicine generally; prohibiting the prescribing of a drug with the intent of causing an abortion; and allowing a physician to prescribe controlled substances on Schedule II of the Uniform Controlled Substances Act in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §30-3-13a of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that §30-14-12d of said code be amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rule-making.

1 (a) *Definitions* – For the purposes of this section:

2 (1) “Chronic nonmalignant pain” means pain that has
3 persisted after reasonable medical efforts have been made
4 to relieve the pain or cure its cause and that has continued,
5 either continuously or episodically, for longer than three
6 continuous months. “Chronic nonmalignant pain” does not
7 include pain associated with a terminal condition or illness
8 or with a progressive disease that, in the normal course of
9 progression, may reasonably be expected to result in a
10 terminal condition or illness.

11 (2) “Physician” means a person licensed by the West
12 Virginia Board of Medicine to practice allopathic medicine
13 in West Virginia.

14 (3) “Store and forward telemedicine” means the
15 asynchronous computer-based communication of medical
16 data or images from an originating location to a physician
17 or podiatrist at another site for the purpose of diagnostic or
18 therapeutic assistance.

19 (4) “Telemedicine” means the practice of medicine
20 using tools such as electronic communication, information
21 technology, store and forward telecommunication, or other
22 means of interaction between a physician or podiatrist in
23 one location and a patient in another location, with or
24 without an intervening health care provider.

25 (5) “Telemedicine technologies” means technologies
26 and devices which enable secure electronic communications

27 and information exchange in the practice of telemedicine,
28 and typically involve the application of secure real-time
29 audio/video conferencing or similar secure video services,
30 remote monitoring or store and forward digital image
31 technology to provide or support health care delivery by
32 replicating the interaction of a traditional in-person
33 encounter between a physician or podiatrist and a patient.

34 (b) *Licensure* –

35 (1) The practice of medicine occurs where the patient is
36 located at the time the telemedicine technologies are used.

37 (2) A physician or podiatrist who practices telemedicine
38 must be licensed as provided in this article.

39 (3) This section does not apply to:

40 (A) An informal consultation or second opinion, at the
41 request of a physician or podiatrist who is licensed to
42 practice medicine or podiatry in this state, provided that the
43 physician or podiatrist requesting the opinion retains
44 authority and responsibility for the patient's care; and

45 (B) Furnishing of medical assistance by a physician or
46 podiatrist in case of an emergency or disaster, if no charge
47 is made for the medical assistance.

48 (c) *Physician-patient or Podiatrist-patient relationship*
49 *through telemedicine encounter* –

50 (1) A physician-patient or podiatrist-patient relationship
51 may not be established through:

52 (A) Audio-only communication;

53 (B) Text-based communications such as e-mail,
54 Internet questionnaires, text-based messaging or other
55 written forms of communication; or

56 (C) Any combination thereof.

57 (2) If an existing physician-patient or podiatrist-patient
58 relationship does not exist prior to the utilization to
59 telemedicine technologies, or if services are rendered solely
60 through telemedicine technologies, a physician-patient or
61 podiatrist-patient relationship may only be established:

62 (A) Through the use of telemedicine technologies
63 which incorporate interactive audio using store and forward
64 technology, real-time videoconferencing or similar secure
65 video services during the initial physician-patient or
66 podiatrist-patient encounter; or

67 (B) For the practice of pathology and radiology, a
68 physician-patient relationship may be established through
69 store and forward telemedicine or other similar
70 technologies.

71 (3) Once a physician-patient or podiatrist-patient
72 relationship has been established, either through an in-
73 person encounter or in accordance with subdivision (2) of
74 this subsection, the physician or podiatrist may utilize any
75 telemedicine technology that meets the standard of care and
76 is appropriate for the particular patient presentation.

77 (d) *Telemedicine practice* – A physician or podiatrist
78 using telemedicine technologies to practice medicine or
79 podiatry shall:

80 (1) Verify the identity and location of the patient;

81 (2) Provide the patient with confirmation of the identity
82 and qualifications of the physician or podiatrist;

83 (3) Provide the patient with the physical location and
84 contact information of the physician;

85 (4) Establish or maintain a physician-patient or
86 podiatrist-patient relationship that conforms to the standard
87 of care;

88 (5) Determine whether telemedicine technologies are
89 appropriate for the particular patient presentation for which
90 the practice of medicine or podiatry is to be rendered;

91 (6) Obtain from the patient appropriate consent for the
92 use of telemedicine technologies;

93 (7) Conduct all appropriate evaluations and history of
94 the patient consistent with traditional standards of care for
95 the particular patient presentation;

96 (8) Create and maintain health care records for the
97 patient which justify the course of treatment and which
98 verify compliance with the requirements of this section; and

99 (9) The requirements of subdivisions (1) through (8),
100 inclusive, of this subsection do not apply to the practice of
101 pathology or radiology medicine through store and forward
102 telemedicine.

103 (e) *Standard of care* –

104 The practice of medicine or podiatry provided via
105 telemedicine technologies, including the establishment of a
106 physician-patient or podiatrist-patient relationship and
107 issuing a prescription via electronic means as part of a
108 telemedicine encounter, are subject to the same standard of
109 care, professional practice requirements and scope of
110 practice limitations as traditional in-person physician-
111 patient or podiatrist-patient encounters. Treatment,
112 including issuing a prescription, based solely on an online
113 questionnaire, does not constitute an acceptable standard of
114 care.

115 (f) *Patient records* –

116 The patient record established during the use of
117 telemedicine technologies shall be accessible and
118 documented for both the physician or podiatrist and the
119 patient, consistent with the laws and legislative rules
120 governing patient health care records. All laws governing

121 the confidentiality of health care information and governing
122 patient access to medical records shall apply to records of
123 practice of medicine or podiatry provided through
124 telemedicine technologies. A physician or podiatrist solely
125 providing services using telemedicine technologies shall
126 make documentation of the encounter easily available to the
127 patient, and subject to the patient's consent, to any identified
128 care provider of the patient.

129 (g) *Prescribing limitations* –

130 (1) A physician or podiatrist who practices medicine to
131 a patient solely through the utilization of telemedicine
132 technologies may not prescribe to that patient any controlled
133 substances listed in Schedule II of the Uniform Controlled
134 Substances Act: *Provided*, That the prescribing limitations
135 do not apply when a physician is providing treatment to
136 patients who are minors, or if eighteen years of age or older,
137 who are enrolled in a primary or secondary education
138 program who are diagnosed with intellectual or
139 developmental disabilities, neurological disease, Attention
140 Deficit Disorder, Autism, or a traumatic brain injury in
141 accordance with guidelines as set forth by organizations
142 such as the American Psychiatric Association, the American
143 Academy of Child and Adolescent Psychiatry or the
144 American Academy of Pediatrics: *Provided, however*, That
145 the physician must maintain records supporting the
146 diagnosis and the continued need of treatment.

147 (2) A physician or podiatrist may not prescribe any pain-
148 relieving controlled substance listed in Schedules II through
149 V of the Uniform Controlled Substance Act as part of a
150 course of treatment for chronic nonmalignant pain solely
151 based upon a telemedicine encounter.

152 (3) A physician or health care provider may not
153 prescribe any drug with the intent of causing an abortion.
154 The term “abortion” has the same meaning ascribed to it in
155 section two, article two-f, chapter sixteen of this code.

156 (h) *Exceptions* –

157 This article does not prohibit the use of audio-only or
158 text-based communications by a physician or podiatrist who
159 is:

160 (1) Responding to a call for patients with whom a
161 physician-patient or podiatrist-patient relationship has been
162 established through an in-person encounter by the physician
163 or podiatrist;

164 (2) Providing cross coverage for a physician or
165 podiatrist who has established a physician-patient or
166 podiatrist-patient relationship with the patient through an in-
167 person encounter; or

168 (3) Providing medical assistance in the event of an
169 emergency situation.

170 (i) *Rulemaking* –

171 The West Virginia Board of Medicine and West
172 Virginia Board of Osteopathic Medicine may propose joint
173 rules for legislative approval in accordance with article
174 three, chapter twenty-nine-a of this code to implement
175 standards for and limitations upon the utilization of
176 telemedicine technologies in the practice of medicine and
177 podiatry in this state.

178 (j) *Preserving traditional physician-patient or*
179 *podiatrist-patient relationship* –

180 Nothing in this section changes the rights, duties,
181 privileges, responsibilities and liabilities incident to the
182 physician-patient or podiatrist-patient relationship, nor is it
183 meant or intended to change in any way the personal
184 character of the physician-patient or podiatrist-patient
185 relationship. This section does not alter the scope of practice
186 of any health care provider or authorize the delivery of
187 health care services in a setting, or in a manner, not
188 otherwise authorized by law.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**§30-14-12d. Telemedicine practice; requirements; exceptions; definitions; rulemaking.**

1 (a) *Definitions.* – For the purposes of this section:

2 (1) “Chronic nonmalignant pain” means pain that has
3 persisted after reasonable medical efforts have been made
4 to relieve the pain or cure its cause and that has continued,
5 either continuously or episodically, for longer than three
6 continuous months. “Chronic nonmalignant pain” does not
7 include pain associated with a terminal condition or illness
8 or with a progressive disease that, in the normal course of
9 progression, may reasonably be expected to result in a
10 terminal condition or illness.

11 (2) “Physician” means a person licensed by the West
12 Virginia Board of Osteopathic Medicine to practice
13 osteopathic medicine in West Virginia.

14 (3) “Store and forward telemedicine” means the
15 asynchronous computer-based communication of medical
16 data or images from an originating location to a physician at
17 another site for the purpose of diagnostic or therapeutic
18 assistance.

19 (4) “Telemedicine” means the practice of medicine
20 using tools such as electronic communication, information
21 technology, store and forward telecommunication or other
22 means of interaction between a physician in one location
23 and a patient in another location, with or without an
24 intervening health care provider.

25 (5) “Telemedicine technologies” means technologies
26 and devices which enable secure electronic communications
27 and information exchange in the practice of telemedicine,
28 and typically involve the application of secure real-time
29 audio/video conferencing or similar secure video services,
30 remote monitoring or store and forward digital image

31 technology to provide or support health care delivery by
32 replicating the interaction of a traditional in-person
33 encounter between a physician and a patient.

34 (b) *Licensure* –

35 (1) The practice of medicine occurs where the patient is
36 located at the time the telemedicine technologies are used.

37 (2) A physician who practices telemedicine must be
38 licensed as provided in this article.

39 (3) This section does not apply to:

40 (A) An informal consultation or second opinion, at the
41 request of a physician who is licensed to practice medicine
42 in this state, provided that the physician requesting the
43 opinion retains authority and responsibility for the patient's
44 care; and

45 (B) Furnishing of medical assistance by a physician in
46 case of an emergency or disaster if no charge is made for the
47 medical assistance.

48 (c) *Physician-patient relationship through telemedicine*
49 *encounter.*

50 (1) A physician-patient relationship may not be
51 established through:

52 (A) Audio-only communication;

53 (B) Text-based communications such as e-mail, Internet
54 questionnaires, text-based messaging or other written forms
55 of communication; or

56 (C) Any combination thereof.

57 (2) If an existing physician-patient relationship is not
58 present prior to the utilization to telemedicine technologies,
59 or if services are rendered solely through telemedicine

60 technologies, a physician-patient relationship may only be
61 established:

62 (A) Through the use of telemedicine technologies which
63 incorporate interactive audio using store and forward
64 technology, real-time videoconferencing or similar secure
65 video services during the initial physician-patient
66 encounter; or

67 (B) For the practice of pathology and radiology, a
68 physician-patient relationship may be established through
69 store and forward telemedicine or other similar
70 technologies.

71 (3) Once a physician-patient relationship has been
72 established, either through an in-person encounter or in
73 accordance with subdivision (2) of this subsection, the
74 physician may utilize any telemedicine technology that
75 meets the standard of care and is appropriate for the
76 particular patient presentation.

77 (d) *Telemedicine practice* – A physician using
78 telemedicine technologies to practice medicine shall:

79 (1) Verify the identity and location of the patient;

80 (2) Provide the patient with confirmation of the identity
81 and qualifications of the physician;

82 (3) Provide the patient with the physical location and
83 contact information of the physician;

84 (4) Establish or maintain a physician-patient
85 relationship which conforms to the standard of care;

86 (5) Determine whether telemedicine technologies are
87 appropriate for the particular patient presentation for which
88 the practice of medicine is to be rendered;

89 (6) Obtain from the patient appropriate consent for the
90 use of telemedicine technologies;

91 (7) Conduct all appropriate evaluations and history of
92 the patient consistent with traditional standards of care for
93 the particular patient presentation;

94 (8) Create and maintain health care records for the
95 patient which justify the course of treatment and which
96 verify compliance with the requirements of this section; and

97 (9) The requirements of subdivisions (1) through (7),
98 inclusive, of this subsection do not apply to the practice of
99 pathology or radiology medicine through store and forward
100 telemedicine.

101 (e) *Standard of care* –

102 The practice of medicine provided via telemedicine
103 technologies, including the establishment of a physician-
104 patient relationship and issuing a prescription via
105 electronic means as part of a telemedicine encounter, are
106 subject to the same standard of care, professional practice
107 requirements and scope of practice limitations as
108 traditional in-person physician-patient encounters.
109 Treatment, including issuing a prescription, based solely
110 on an online questionnaire does not constitute an
111 acceptable standard of care.

112 (f) *Patient records* –

113 The patient record established during the use of
114 telemedicine technologies shall be accessible and
115 documented for both the physician and the patient,
116 consistent with the laws and legislative rules governing
117 patient health care records. All laws governing the
118 confidentiality of health care information and governing
119 patient access to medical records shall apply to records of
120 practice of medicine provided through telemedicine
121 technologies. A physician solely providing services using
122 telemedicine technologies shall make documentation of the
123 encounter easily available to the patient, and subject to the

124 patient's consent, to any identified care provider of the
125 patient.

126 (g) *Prescribing limitations* –

127 (1) A physician who practices medicine to a patient
128 solely through the utilization of telemedicine
129 technologies may not prescribe to that patient any
130 controlled substances listed in Schedule II of the Uniform
131 Controlled Substances Act: *Provided*, That the
132 prescribing limitations do not apply when a physician is
133 providing treatment to patients who are minors, or if
134 eighteen years of age or older, who are enrolled in a
135 primary or secondary education program who are
136 diagnosed with intellectual or developmental disabilities,
137 neurological disease, Attention Deficit Disorder, Autism
138 or a traumatic brain injury in accordance with guidelines
139 as set forth by organizations such as the American
140 Psychiatric Association, the American Academy of Child
141 and Adolescent Psychiatry or the American Academy of
142 Pediatrics: *Provided, however*, That the physician must
143 maintain records supporting the diagnosis and the
144 continued need of treatment.

145 (2) A physician may not prescribe any pain-relieving
146 controlled substance listed in Schedules II through V of the
147 Uniform Controlled Substances Act as part of a course of
148 treatment for chronic nonmalignant pain solely based upon
149 a telemedicine encounter.

150 (3) A physician or health care provider may not
151 prescribe any drug with the intent of causing an abortion.
152 The term “abortion” has the same meaning ascribed to it in
153 section two, article two-f, chapter sixteen of this code.

154 (h) *Exceptions* –

155 This section does not prohibit the use of audio-only or
156 text-based communications by a physician who is:

157 (1) Responding to a call for patients with whom a
158 physician-patient relationship has been established through
159 an in-person encounter by the physician;

160 (2) Providing cross coverage for a physician who has
161 established a physician-patient or relationship with the
162 patient through an in-person encounter; or

163 (3) Providing medical assistance in the event of an
164 emergency situation.

165 (i) *Rulemaking* –

166 The West Virginia Board of Medicine and West
167 Virginia Board of Osteopathic Medicine may propose joint
168 rules for legislative approval in accordance with article
169 three, chapter twenty-nine-a of this code to implement
170 standards for and limitations upon the utilization of
171 telemedicine technologies in the practice of medicine in this
172 state.

173 (j) *Preservation of the traditional physician-patient*
174 *relationship.*

175 Nothing in this section changes the rights, duties,
176 privileges, responsibilities and liabilities incident to the
177 physician-patient relationship, nor is it meant or intended to
178 change in any way the personal character of the physician-
179 patient relationship. This section does not alter the scope of
180 practice of any health care provider or authorize the delivery
181 of health care services in a setting, or in a manner, not
182 otherwise authorized by law.

CHAPTER 174

(Com. Sub. for H. B. 2359 - By Delegate Arvon)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-18; to amend and reenact §30-14-12 of said code; and to amend said code by adding thereto a new section, designated §30-14-16, all relating generally to the West Virginia Medical Practice Act; authorizing the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine to share staff for functions common to both boards; providing offenses and penalties for practicing osteopathic medicine without a license; and creating a felony crime of practicing or attempting to practice osteopathic medicine without a license or permit 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 §30-3-18; that §30-14-12 be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-14-16, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-18. Combining staff functions with West Virginia Board of Osteopathic Medicine.

1 The West Virginia Board of Medicine may employ
2 investigators, attorneys, clerks and administrative staff in
3 collaboration with the West Virginia Board of Osteopathic
4 Medicine to share duties and functions between the two boards

5 when it may be efficient and practical for the functioning of
6 the boards. Any sharing of staff or staff resources shall be
7 documented and performed pursuant to the provisions of
8 section nineteen, article one of this chapter.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12. Offenses; penalties.

1 (a) Each of the following acts constitutes a
2 misdemeanor, punishable upon conviction by a fine of not
3 less than \$1,000 nor more than \$10,000:

4 (1) The obtaining of or an attempt to obtain a license or
5 permit to practice in the profession for money or any other
6 thing of value, by fraudulent misrepresentation;

7 (2) The making of any willfully false oath or affirmation
8 whenever an oath or affirmation is required by this article;
9 and

10 (3) Advertising, practicing or attempting to practice
11 under a name other than one's own.

12 (b) Any person who practices or attempts to practice
13 osteopathic medicine without a license or permit is guilty of
14 a felony and, upon conviction, shall be fined not more than
15 \$10,000, or imprisoned in a correctional facility for not less
16 than one year nor more than five years, or both fined and
17 imprisoned.

§30-14-16. Combining staff functions with West Virginia Board of Medicine.

1 The West Virginia Board of Osteopathic Medicine may
2 employ investigators, attorneys, clerks and administrative staff
3 in collaboration with the West Virginia Board of Medicine to
4 share duties and functions between the two boards when it may
5 be efficient and practical for the functioning of the boards. Any
6 sharing of staff or staff resources shall be documented and
7 performed pursuant to the provisions of section nineteen,
8 article one of this chapter.

CHAPTER 175

(Com. Sub. for H. B. 2301 - By Delegates Summers and Ellington)

[Passed March 15, 2017; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2017.]

AN ACT to repeal §16-2J-1, §16-2J-2, §16-2J-3, §16-2J-4, §16-2J-5, §16-2J-6, §16-2J-7, §16-2J-8 and §16-2J-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §30-3F-1, §30-3F-2, §30-3F-3, §30-3F-4 and §30-3F-5, all relating to direct primary care; defining terms; permitting individuals to enter into agreements, for direct primary care with an individual or other legal entity authorized to provide primary care services, outside of an insurance plan or outside of the Medicaid or Medicare program and pay for the care outside of insurance plans and the Medicaid or Medicare program; providing that insurance benefits are not forfeited by certain purchases; providing that certain products are not the offer of insurance; providing that direct primary care membership agreement is not considered insurance; prohibiting direct primary care providers from billing third-party payers for services or products under the direct primary care membership agreement; providing that a direct primary care provider is not required to obtain certain credentials; prohibiting the billing of third-party providers for direct primary care services; stating certain requirements for direct primary care membership agreement; providing rule-making authority by the West Virginia Board of Medicine, the West Virginia Board of Osteopathic Medicine, the West Virginia Board of Dentistry, the West Virginia Board of Chiropractic and the West Virginia Board of Examiners for Registered Professional Nurses to effectuate the provisions of this new article; and authorizing civil penalties in the form of sanctions

by the respective boards for violations that constitute unprofessional conduct.

Be it enacted by the Legislature of West Virginia:

That §16-2J-1, §16-2J-2, §16-2J-3, §16-2J-4, §16-2J-5, §16-2J-6, §16-2J-7, §16-2J-8 and §16-2J-9 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §30-3F-1, §30-3F-2, §30-3F-3, §30-3F-4 and §30-3F-5, all to read as follows:

ARTICLE 3F. DIRECT PRIMARY CARE PRACTICE.

§30-3F-1. Definitions.

1 As used in this section:

2 (1) “Boards” means the West Virginia Board of
3 Medicine; the West Virginia Board of Osteopathic
4 Medicine, the West Virginia Board of Optometry, West
5 Virginia Board of Chiropractic, West Virginia Board of
6 Dentistry and the West Virginia Board of Examiners for
7 Registered Professional Nurses;

8 (2) “Direct primary care membership agreement” means
9 a written contractual agreement between a primary care
10 provider and a person, or the person’s legal representative;

11 (3) “Direct primary care provider” means an individual
12 or legal entity, alone or with others professionally
13 associated with the provider or other legal entity, that is
14 authorized to provide primary care services and who
15 chooses to enter into a direct primary care membership
16 agreement;

17 (4) “Medical products” means any product used to
18 diagnose or manage a disease, including any medical
19 device, treatment or drug;

20 (5) “Medical services” means a screen, assessment,
21 diagnosis or treatment for the purpose of promotion of

22 health or the detection and management of disease or injury
23 within the competency and training of the direct primary
24 care provider; and

25 (6) “Primary care provider” means an individual or
26 other legal entity that is authorized to provide medical
27 services and medical products under his or her scope of
28 practice in this state.

§30-3F-2. Direct Primary Care.

1 (a) A person or a legal representative of a person may
2 seek care outside of an insurance plan, or outside of the
3 Medicaid or Medicare program, and pay for the care.

4 (b) A primary care provider may accept payment for
5 medical services or medical products outside of an
6 insurance plan.

7 (c) A primary care provider may accept payment for
8 medical services or medical products provided to a
9 Medicaid or Medicare beneficiary.

10 (d) A patient or legal representative does not forfeit
11 insurance benefits, Medicaid benefits or Medicare benefits
12 by purchasing medical services or medical products outside
13 the system.

14 (e) The offer and provision of medical services or
15 medical products purchased and provided under this article
16 is not an offer of insurance nor regulated by the insurance
17 laws of the state.

18 (f) The direct primary care provider may not bill third
19 parties on a fee for service basis for services provided under
20 the direct primary care membership agreement.

21 (g) A primary care provider may not bill any third-party
22 payer for services rendered or products sold pursuant to a
23 direct primary care membership agreement.

§30-3F-3. Prohibited and authorized practices.

1 (a) A direct primary care membership agreement is not
2 insurance and is not subject to regulation by the Office of
3 the Insurance Commission.

4 (b) A direct primary care provider or its agent is not
5 required to obtain a certification of authority or license
6 under chapter thirty-three to market, sell or offer to sell a
7 direct primary care agreement.

8 (c) A direct primary care membership agreement is not
9 a discount medical plan.

10 (d) A direct primary care membership agreement shall:

11 (1) Be in writing;

12 (2) Be signed by the primary care provider or agent of
13 the primary care provider and the individual patient or his
14 or her legal representative;

15 (3) Allow either party to terminate the agreement on at
16 least 30 days prior written notice to the other party;

17 (4) Describe the scope of primary care services that are
18 covered by the periodic fee;

19 (5) Specify the periodic fee and any additional fees
20 outside of the periodic fee for ongoing care under the
21 agreement;

22 (6) Specify the duration of the agreement and any
23 automatic renewal periods. Any per-visit charges under the
24 agreement will be less than the monthly equivalent of the
25 periodic fee. The person is not required to pay more than
26 twelve months of the fee in advance. Funds are not earned
27 by the practice until the month of ongoing care is completed.
28 Upon discontinuing the agreement all unearned funds are
29 returned to the patient; and

30 (7) Prominently state in writing that the agreement is not
31 health insurance.

§30-3F-4. Rules.

- 1 The boards may propose rules for legislative approval
- 2 in accordance with article three, chapter twenty-nine-a of
- 3 this code, to effectuate the provisions of this article.

§30-3F-5. Violations.

- 1 Violations of this article constitute unprofessional
- 2 conduct and may subject violators to sanctions which may
- 3 be pursued by the boards.

CHAPTER 176

**(H. B. 2518 - By Delegates Ellington, Summers,
Rohrbach, Rowan, Hollen and Atkinson)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §30-5-7 of the Code of West Virginia, 1931, as amended, relating to authorizing the Board of Pharmacy to create a legislative rule to permit a pharmacist or pharmacy intern to administer certain immunizations.

Be it enacted by the Legislature of West Virginia:

That §30-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.**

§30-5-7. Rule-making authority.

- 1 (a) The board shall propose rules for legislative
- 2 approval, in accordance with the provisions of article three,
- 3 chapter twenty-nine-a of this code, to implement the

4 provisions of this article, and articles two, three, eight, nine
5 and ten of chapter sixty-a including:

6 (1) Standards and requirements for a license, permit and
7 registration;

8 (2) Educational and experience requirements;

9 (3) Procedures for examinations and reexaminations;

10 (4) Requirements for third parties to prepare, administer
11 or prepare and administer examinations and reexaminations;

12 (5) The passing grade on the examination;

13 (6) Procedures for the issuance and renewal of a license,
14 permit and registration;

15 (7) A fee schedule;

16 (8) Continuing education requirements;

17 (9) Set standards for professional conduct;

18 (10) Establish equipment and facility standards for
19 pharmacies;

20 (11) Approve courses and standards for training
21 pharmacist technicians;

22 (12) Regulation of charitable clinic pharmacies;

23 (13) Regulation of mail order pharmacies: *Provided*, That
24 until the board establishes requirements that provide further
25 conditions for pharmacists whom consult with or who provide
26 pharmacist care to patients regarding prescriptions dispensed
27 in this state by a mail order pharmacy, the pharmacist in charge
28 of the out-of-state mail order pharmacy shall be licensed in
29 West Virginia and any other pharmacist providing pharmacist
30 care from the mail order pharmacy shall be licensed in the state
31 where the pharmacy is located;

- 32 (14) Agreements with organizations to form pharmacist
33 recovery networks;
- 34 (15) Create an alcohol or chemical dependency
35 treatment program;
- 36 (16) Establish a ratio of pharmacy technicians to on-
37 duty pharmacist operating in any outpatient, mail order or
38 institutional pharmacy;
- 39 (17) Regulation of telepharmacy;
- 40 (18) The minimum standards for a charitable clinic
41 pharmacy and rules regarding the applicable definition of a
42 pharmacist-in-charge, who may be a volunteer, at charitable
43 clinic pharmacies: *Provided*, That a charitable clinic
44 pharmacy may not be charged any applicable licensing fees
45 and such clinics may receive donated drugs;
- 46 (19) Establish standards for substituted drug products;
- 47 (20) Establish the regulations for E-prescribing;
- 48 (21) Establish the proper use of the automated data
49 processing system;
- 50 (22) Registration and control of the manufacture and
51 distribution of controlled substances within this state;
- 52 (23) Regulation of pharmacies;
- 53 (24) Sanitation and equipment requirements for
54 wholesalers, distributors and pharmacies;
- 55 (25) Procedures for denying, suspending, revoking,
56 reinstating or limiting the practice of a licensee, permittee
57 or registrant;
- 58 (26) Regulations on prescription paper as provided in
59 section five, article five-w, chapter sixteen;

60 (27) Regulations on controlled substances as provided
61 in article two, chapter sixty-a;

62 (28) Regulations on manufacturing, distributing, or
63 dispensing any controlled substance as provided in article
64 three, chapter sixty-a;

65 (29) Regulations on wholesale drug distribution as
66 provided in article eight, chapter sixty-a;

67 (30) Regulations on controlled substances monitoring as
68 provided in article nine, chapter sixty-a;

69 (31) Regulations on Methamphetamine Laboratory
70 Eradication Act as provided in article ten, chapter sixty-a;

71 (32) Establish and maintain an official prescription
72 paper program; and

73 (33) Any other rules necessary to effectuate the
74 provisions of this article.

75 (b) The board may provide an exemption to the
76 pharmacist-in-charge requirement for the opening of a new
77 retail pharmacy or during a declared emergency;

78 (c) The board, the Board of Medicine and the Board of
79 Osteopathic Medicine shall jointly agree and propose rules
80 concerning collaborative pharmacy practice for legislative
81 approval in accordance with the provisions of article three,
82 chapter twenty-nine-a of the code;

83 (d) The board with the advice of the Board of Medicine
84 and the Board of Osteopathic Medicine shall propose rules
85 for legislative approval in accordance with the provisions of
86 article three, chapter twenty-nine-a of this code to perform
87 influenza and pneumonia immunizations, on a person of
88 eighteen years of age or older. These rules shall provide, at
89 a minimum, for the following:

90 (1) Establishment of a course, or provide a list of
91 approved courses, in immunization administration. The

92 courses shall be based on the standards established for such
93 courses by the Centers for Disease Control and Prevention
94 in the public health service of the United States Department
95 of Health and Human Services;

96 (2) Definitive treatment guidelines which shall include,
97 but not be limited to, appropriate observation for an adverse
98 reaction of an individual following an immunization;

99 (3) Prior to administration of immunizations, a
100 pharmacist shall have completed a board approved
101 immunization administration course and completed an
102 American Red Cross or American Heart Association basic
103 life-support training, and maintain certification in the same;

104 (4) Continuing education requirements for this area of
105 practice;

106 (5) Reporting requirements for pharmacists
107 administering immunizations to report to the primary care
108 physician or other licensed health care provider as identified
109 by the person receiving the immunization;

110 (6) Reporting requirements for pharmacists
111 administering immunizations to report to the West Virginia
112 Statewide Immunization Information (WWSII);

113 (7) That a pharmacist may not delegate the authority to
114 administer immunizations to any other person; unless
115 administered by a licensed pharmacy intern under the direct
116 supervision of a pharmacist of whom both pharmacist and
117 intern have successfully completed all board required
118 training; and

119 (8) Any other provisions necessary to implement the
120 provisions of this section.

121 (e) The board, the Board of Medicine and the Board of
122 Osteopathic Medicine shall propose joint rules for
123 legislative approval in accordance with the provisions of
124 article three, chapter twenty-nine-a of this code to permit a
125 licensed pharmacist or pharmacy intern to administer other
126 immunizations such as Hepatitis A, Hepatitis B, Herpes

127 Zoster, Human Papilloma Virus, and Tetanus. In addition,
128 the joint rules shall permit a licensed pharmacist or
129 pharmacy intern to administer influenza and Human
130 Papilloma Virus immunizations to a person age eleven
131 through eighteen, with written informed parental consent
132 when presented with a prescription from a physician and
133 there are no contraindications to that patient receiving that
134 vaccine. These rules shall provide, at a minimum, the same
135 provisions contained in subsection (d)(1) through (d)(8) of
136 this section.

137 (f) All of the board's rules in effect and not in conflict
138 with these provisions, shall remain in effect until they are
139 amended or rescinded.



CHAPTER 177

**(Com. Sub. for H. B. 2846 - By Delegates Fast,
O'Neal, Kessinger, Sobonya, Rowan, G. Foster,
Mr. Speaker (Mr. Armstead) and Frich)**

[Passed April 8, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §30-5-11a, all relating to pharmacy technician trainees; establishing qualifications; requiring a criminal background check; providing rule-making authority; and providing emergency 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 §30-5-11a, all to read as follows:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,
PHARMACY INTERNS AND PHARMACIES.**

§30-5-11a. Pharmacy technician trainee qualifications.

1 (a) To be eligible for registration as a pharmacy
2 technician trainee to assist in the practice of pharmacist care,
3 the applicant shall:

4 (1) Submit a written application to the board;

5 (2) Pay the applicable fees;

6 (3) (A) Have graduated from a high school or obtained
7 a Certificate of General Educational Development (GED),
8 or

9 (B) Be currently enrolled in a high school competency
10 based pharmacy technician education and training program;

11 (4) (A) Be currently enrolled in a competency-based
12 pharmacy technician education and training program of a
13 learning institution or training center approved by the board;
14 or

15 (B) Be an employee of a pharmacy in an on-the-job
16 competency-based pharmacy technician training program.

17 (5) Not be an alcohol or drug abuser as these terms are
18 defined in section 11, article one-a, chapter twenty-seven of
19 this code: *Provided*, That an applicant in an active recovery
20 process, which may, in the discretion of the board, be
21 evidenced by participation in a twelve-step program or other
22 similar group or process, may be considered;

23 (6) Not have been convicted of a felony in any jurisdiction
24 within ten years preceding the date of application for
25 registration, which conviction remains unreversed;

26 (7) Not have been convicted of a misdemeanor or felony
27 in any jurisdiction which bears a rational nexus to the practice
28 of pharmacist care, which conviction remains unreversed; and

29 (8) Have requested and submitted to the board the results
30 of a fingerprint-based state and a national electronic criminal
31 history records check.

32 (b) The rules, authorized duties and unauthorized
33 prohibitions as set out in section twelve of this article for
34 pharmacy technicians apply to pharmacy technician trainees.

35 (c) The board shall promulgate an emergency rule and
36 legislative rule pursuant article two, chapter twenty-nine-a, to
37 authorize the requirements of this section to permit pharmacy
38 technician trainees.



CHAPTER 178

**(H. B. 2522 - By Delegates Ellington, Summers,
Rohrbach, Sobonya, Dean, Cooper, Hollen and
Rowan)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-7F-1, §30-7F-2, §30-7F-3, §30-7F-4, §30-7F-5, §30-7F-6, §30-7F-7, §30-7F-8, §30-7F-9, §30-7F-10 and §30-7F-11, all relating to the establishment and operation of an interstate compact for licensure of nurses; setting forth findings; setting forth the purposes for the compact; defining terms; establishing jurisdiction of the compact; providing eligibility requirements; requiring a nurse to designate a state of principal license; providing licensure requirements; establishing a licensure process; establishing application process; providing for fees; providing requirements for renewal of a license; providing for joint investigation of nurses by member boards; establishing the effect of

disciplinary actions; creating the commission to administer the compact; setting forth commission composition; establishing the authority of the commission; providing immunity; establishing commission rule-making authority; establishing licensure information system; providing for compact administrators; providing for judicial review; providing for state enforcement; providing the commission may intervene in proceedings; providing for legal enforcement of compact rules and provisions; providing for termination or withdrawal of a member state; providing for compact oversight and dispute resolution; setting forth provisions for resolution of disputes; establishing provisions for state eligibility; setting forth the circumstances under which the compact will become effective; providing for amending the compact; setting forth procedures for states to withdraw from the compact; providing process to amend the compact; and establishing provisions related to severability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §30-7F-1, §30-7F-2, §30-7F-3, §30-7F-4, §30-7F-5, §30-7F-6, §30-7F-7, §30-7F-8, §30-7F-9, §30-7F-10 and §30-7F-11, all to read as follows:

ARTICLE 7F. NURSE LICENSURE COMPACT.

§30-7F-1. Findings and Declaration of Purpose.

1 (a) The party states find that:

2 (1) The health and safety of the public are affected by
3 the degree of compliance with and the effectiveness of
4 enforcement activities related to state nurse licensure laws;

5 (2) Violations of nurse licensure and other laws
6 regulating the practice of nursing may result in injury or
7 harm to the public;

8 (3) The expanded mobility of nurses and the use of
9 advanced communication technologies as part of our
10 nation's health care delivery system require greater
11 coordination and cooperation among states in the areas of
12 nurse licensure and regulation;

13 (4) New practice modalities and technology make
14 compliance with individual state nurse licensure laws
15 difficult and complex;

16 (5) The current system of duplicative licensure for
17 nurses practicing in multiple states is cumbersome and
18 redundant for both nurses and states; and

19 (6) Uniformity of nurse licensure requirements
20 throughout the states promotes public safety and public
21 health benefits.

22 (b) The general purposes of this compact are to:

23 (1) Facilitate the states' responsibility to protect the
24 public's health and safety;

25 (2) Ensure and encourage the cooperation of party states
26 in the areas of nurse licensure and regulation;

27 (3) Facilitate the exchange of information between party
28 states in the areas of nurse regulation, investigation and
29 adverse actions;

30 (4) Promote compliance with the laws governing the
31 practice of nursing in each jurisdiction;

32 (5) Invest all party states with the authority to hold a
33 nurse accountable for meeting all state practice laws in the
34 state in which the patient is located at the time care is
35 rendered through the mutual recognition of party state
36 licenses;

37 (6) Decrease redundancies in the consideration and
38 issuance of nurse licenses; and

39 (7) Provide opportunities for interstate practice by
40 nurses who meet uniform licensure requirements.

§30-7F-2. Definitions.

1 As used in this compact:

2 (1) “Adverse action” means any administrative, civil,
3 equitable or criminal action permitted by a state’s laws
4 which is imposed by a licensing board or other authority
5 against a nurse, including actions against an individual’s
6 license or multistate licensure privilege such as revocation,
7 suspension, probation, monitoring of the licensee, limitation
8 on the licensee’s practice, or any other encumbrance on
9 licensure affecting a nurse’s authorization to practice,
10 including issuance of a cease and desist action.

11 (2) “Alternative program” means a nondisciplinary
12 monitoring program approved by a licensing board.

13 (3) “Coordinated licensure information system” means
14 an integrated process for collecting, storing and sharing
15 information on nurse licensure and enforcement activities
16 related to nurse licensure laws that is administered by a
17 nonprofit organization composed of and controlled by
18 licensing boards.

19 (4) “Current significant investigative information”
20 means:

21 (A) Investigative information that a licensing board,
22 after a preliminary inquiry that includes notification and an
23 opportunity for the nurse to respond, if required by state law,
24 has reason to believe is not groundless and, if proven true,
25 would indicate more than a minor infraction; or

26 (B) Investigative information that indicates that the
27 nurse represents an immediate threat to public health and
28 safety regardless of whether the nurse has been notified and
29 had an opportunity to respond.

30 (5) “Encumbrance” means a revocation or suspension
31 of, or any limitation on, the full and unrestricted practice of
32 nursing imposed by a licensing board.

33 (6) “Home state” means the party state which is the
34 nurse’s primary state of residence.

35 (7) “Licensing board” means a party state’s regulatory
36 body responsible for issuing nurse licenses.

37 (8) “Multistate license” means a license to practice as a
38 registered or a licensed practical/vocational nurse
39 (LPN/VN) issued by a home state licensing board that
40 authorizes the licensed nurse to practice in all party states
41 under a multistate licensure privilege.

42 (9) “Multistate licensure privilege” means a legal
43 authorization associated with a multistate license permitting
44 the practice of nursing as either a registered nurse (RN) or
45 LPN/VN in a remote state.

46 (10) “Nurse” means RN or LPN/VN, as those terms are
47 defined by each party state’s practice laws.

48 (11) “Party state” means any state that has adopted this
49 compact.

50 (12) “Remote state” means a party state, other than the
51 home state.

52 (13) “Single-state license” means a nurse license issued
53 by a party state that authorizes practice only within the
54 issuing state and does not include a multistate licensure
55 privilege to practice in any other party state.

56 (14) “State” means a state, territory or possession of the
57 United States and the District of Columbia.

58 (15) “State practice laws” means a party state’s laws,
59 rules and regulations that govern the practice of nursing,
60 define the scope of nursing practice, and create the methods

61 and grounds for imposing discipline. “State practice laws”
62 do not include requirements necessary to obtain and retain
63 a license, except for qualifications or requirements of the
64 home state.

§30-7F-3. General Provisions and Jurisdiction.

1 (a) A multistate license to practice registered or licensed
2 practical/vocational nursing issued by a home state to a
3 resident in that state will be recognized by each party state
4 as authorizing a nurse to practice as a registered nurse (RN)
5 or as a licensed practical/vocational nurse (LPN/VN), under
6 a multistate licensure privilege, in each party state.

7 (b) A state must implement procedures for considering
8 the criminal history records of applicants for initial
9 multistate license or licensure by endorsement. Such
10 procedures shall include the submission of fingerprints or
11 other biometric-based information by applicants for the
12 purpose of obtaining an applicant’s criminal history record
13 information from the Federal Bureau of Investigation and
14 the agency responsible for retaining that state’s criminal
15 records.

16 (c) Each party state shall require the following for an
17 applicant to obtain or retain a multistate license in the home
18 state:

19 (1) Meets the home state’s qualifications for licensure
20 or renewal of licensure, as well as, all other applicable state
21 laws;

22 (2) (A) Has graduated or is eligible to graduate from a
23 licensing board-approved RN or LPN/VN prelicensure
24 education program; or

25 (B) Has graduated from a foreign RN or LPN/VN
26 prelicensure education program that:

27 (i) Has been approved by the authorized accrediting
28 body in the applicable country and;

29 (ii) Has been verified by an independent credentials
30 review agency to be comparable to a licensing board-
31 approved prelicensure education program.

32 (3) Has, if a graduate of a foreign prelicensure education
33 program not taught in English or if English is not the
34 individual's native language, successfully passed an English
35 proficiency examination that includes the components of
36 reading, speaking, writing and listening;

37 (4) Has successfully passed an NCLEX-RN® or
38 NCLEX-PN® Examination or recognized predecessor, as
39 applicable;

40 (5) Is eligible for or holds an active, unencumbered
41 license;

42 (6) Has submitted, in connection with an application for
43 initial licensure or licensure by endorsement, fingerprints or
44 other biometric data for the purpose of obtaining criminal
45 history record information from the Federal Bureau of
46 Investigation and the agency responsible for retaining that
47 state's criminal records;

48 (7) Has not been convicted or found guilty, or has
49 entered into an agreed disposition, of a felony offense under
50 applicable state or federal criminal law;

51 (8) Has not been convicted or found guilty, or has
52 entered into an agreed disposition, of a misdemeanor
53 offense related to the practice of nursing as determined on a
54 case-by-case basis;

55 (9) Is not currently enrolled in an alternative program;

56 (10) Is subject to self-disclosure requirements regarding
57 current participation in an alternative program; and

58 (11) Has a valid United States Social Security number.

59 (d) All party states shall be authorized, in accordance
60 with existing state due process law, to take adverse action
61 against a nurse's multistate licensure privilege such as
62 revocation, suspension, probation or any other action that
63 affects a nurse's authorization to practice under a multistate
64 licensure privilege, including cease and desist actions. If a
65 party state takes such action, it shall promptly notify the
66 administrator of the coordinated licensure information
67 system. The administrator of the coordinated licensure
68 information system shall promptly notify the home state of
69 any such actions by remote states.

70 (e) A nurse practicing in a party state must comply with
71 the state practice laws of the state in which the client is
72 located at the time service is provided. The practice of
73 nursing is not limited to patient care, but shall include all
74 nursing practice as defined by the state practice laws of the
75 party state in which the client is located. The practice of
76 nursing in a party state under a multistate licensure privilege
77 will subject a nurse to the jurisdiction of the licensing board,
78 the courts and the laws of the party state in which the client
79 is located at the time service is provided.

80 (f) Individuals not residing in a party state shall continue
81 to be able to apply for a party state's single-state license as
82 provided under the laws of each party state. However, the
83 single- state license granted to these individuals will not be
84 recognized as granting the privilege to practice nursing in
85 any other party state. Nothing in this compact shall affect
86 the requirements established by a party state for the issuance
87 of a single-state license.

88 (g) Any nurse holding a home state multistate license,
89 on the effective date of this compact, may retain and renew
90 the multistate license issued by the nurse's then-current
91 home state, provided that:

92 (1) A nurse, who changes primary state of residence
93 after this compact's effective date, must meet all applicable

94 subsection (c) section three requirements to obtain a
95 multistate license from a new home state.

96 (2) A nurse who fails to satisfy the multistate licensure
97 requirements in subsection (c) section three due to a
98 disqualifying event occurring after this compact's effective
99 date shall be ineligible to retain or renew a multistate
100 license, and the nurse's multistate license shall be revoked
101 or deactivated in accordance with applicable rules adopted
102 by the Interstate Commission of Nurse Licensure Compact
103 Administrators ("Commission").

§30-7F-4. Applications for Licensure in a Party State.

1 (a) Upon application for a multistate license, the
2 licensing board in the issuing party state shall ascertain,
3 through the coordinated licensure information system,
4 whether the applicant has ever held, or is the holder of, a
5 license issued by any other state, whether there are any
6 encumbrances on any license or multistate licensure
7 privilege held by the applicant, whether any adverse action
8 has been taken against any license or multistate licensure
9 privilege held by the applicant and whether the applicant is
10 currently participating in an alternative program.

11 (b) A nurse may hold a multistate license, issued by the
12 home state, in only one party state at a time.

13 (c) If a nurse changes primary state of residence by
14 moving between two party states, the nurse must apply for
15 licensure in the new home state, and the multistate license
16 issued by the prior home state will be deactivated in
17 accordance with applicable rules adopted by the
18 commission.

19 (1) The nurse may apply for licensure in advance of a
20 change in primary state of residence.

21 (2) A multistate license shall not be issued by the new
22 home state until the nurse provides satisfactory evidence of
23 a change in primary state of residence to the new home state

24 and satisfies all applicable requirements to obtain a
25 multistate license from the new home state.

26 (d) If a nurse changes primary state of residence by
27 moving from a party state to a nonparty state, the multistate
28 license issued by the prior home state will convert to a
29 single-state license, valid only in the former home state.

**§30-7F-5. Additional Authorities Invested in Party State
Licensing Boards.**

1 (a) In addition to the other powers conferred by state
2 law, a licensing board shall have the authority to:

3 (1) Take adverse action against a nurse's multistate
4 licensure privilege to practice within that party state.

5 (A) Only the home state shall have the power to take
6 adverse action against a nurse's license issued by the home
7 state.

8 (B) For purposes of taking adverse action, the home
9 state licensing board shall give the same priority and effect
10 to reported conduct received from a remote state as it would
11 if such conduct had occurred within the home state. In so
12 doing, the home state shall apply its own state laws to
13 determine appropriate action.

14 (2) Issue cease and desist orders or impose an
15 encumbrance on a nurse's authority to practice within that
16 party state.

17 (3) Complete any pending investigations of a nurse who
18 changes primary state of residence during the course of such
19 investigations. The licensing board shall also have the
20 authority to take appropriate action(s) and shall promptly
21 report the conclusions of such investigations to the
22 administrator of the coordinated licensure information
23 system. The administrator of the coordinated licensure
24 information system shall promptly notify the new home
25 state of any such actions.

26 (4) Issue subpoenas for both hearings and investigations
27 that require the attendance and testimony of witnesses, as
28 well as, the production of evidence. Subpoenas issued by a
29 licensing board in a party state for the attendance and
30 testimony of witnesses or the production of evidence from
31 another party state shall be enforced in the latter state by any
32 court of competent jurisdiction, according to the practice
33 and procedure of that court applicable to subpoenas issued
34 in proceedings pending before it. The issuing authority shall
35 pay any witness fees, travel expenses, mileage and other
36 fees required by the service statutes of the state in which the
37 witnesses or evidence are located.

38 (5) Obtain and submit, for each nurse licensure
39 applicant, fingerprint or other biometric-based information
40 to the Federal Bureau of Investigation for criminal
41 background checks, receive the results of the Federal
42 Bureau of Investigation record search on criminal
43 background checks and use the results in making licensure
44 decisions.

45 (6) If otherwise permitted by state law, recover from the
46 affected nurse the costs of investigations and disposition of
47 cases resulting from any adverse action taken against that
48 nurse.

49 (7) Take adverse action based on the factual findings of
50 the remote state, provided that the licensing board follows
51 its own procedures for taking such adverse action.

52 (b) If adverse action is taken by the home state against
53 a nurse's multistate license, the nurse's multistate licensure
54 privilege to practice in all other party states shall be
55 deactivated until all encumbrances have been removed from
56 the multistate license. All home state disciplinary orders that
57 impose adverse action against a nurse's multistate license
58 shall include a statement that the nurse's multistate
59 licensure privilege is deactivated in all party states during
60 the pendency of the order.

61 (c) Nothing in this compact shall override a party state's
62 decision that participation in an alternative program may be
63 used in lieu of adverse action. The home state licensing
64 board shall deactivate the multistate licensure privilege
65 under the multistate license of any nurse for the duration of
66 the nurse's participation in an alternative program.

§30-7F-6. Coordinated Licensure Information System and Exchange of Information.

1 (a) All party states shall participate in a coordinated
2 licensure information system of all licensed registered
3 nurses (RNs) and licensed practical/vocational nurses
4 (LPNs/VNs). This system will include information on the
5 licensure and disciplinary history of each nurse, as
6 submitted by party states, to assist in the coordination of
7 nurse licensure and enforcement efforts.

8 (b) The commission, in consultation with the
9 administrator of the coordinated licensure information
10 system, shall formulate necessary and proper procedures for
11 the identification, collection and exchange of information
12 under this compact.

13 (c) All licensing boards shall promptly report to the
14 coordinated licensure information system any adverse
15 action, any current significant investigative information,
16 denials of applications (with the reasons for such denials)
17 and nurse participation in alternative programs known to the
18 licensing board regardless of whether such participation is
19 deemed nonpublic or confidential under state law.

20 (d) Current significant investigative information and
21 participation in nonpublic or confidential alternative
22 programs shall be transmitted through the coordinated
23 licensure information system only to party state licensing
24 boards.

25 (e) Notwithstanding any other provision of law, all party
26 state licensing boards contributing information to the
27 coordinated licensure information system may designate

28 information that may not be shared with nonparty states or
29 disclosed to other entities or individuals without the express
30 permission of the contributing state.

31 (f) Any personally identifiable information obtained
32 from the coordinated licensure information system by a
33 party state licensing board shall not be shared with nonparty
34 states or disclosed to other entities or individuals except to
35 the extent permitted by the laws of the party state
36 contributing the information.

37 (g) Any information contributed to the coordinated
38 licensure information system that is subsequently required
39 to be expunged by the laws of the party state contributing
40 that information shall also be expunged from the
41 coordinated licensure information system.

42 (h) The compact administrator of each party state shall
43 furnish a uniform data set to the compact administrator of
44 each other party state, which shall include, at a minimum:

45 (1) Identifying information;

46 (2) Licensure data;

47 (3) Information related to alternative program
48 participation; and

49 (4) Other information that may facilitate the
50 administration of this compact, as determined by
51 commission rules.

52 (i) The compact administrator of a party state shall
53 provide all investigative documents and information
54 requested by another party state.

**§30-7F-7. Establishment of the Interstate Commission of
Nurse Licensure Compact Administrators.**

1 (a) The party states hereby create and establish a joint
2 public entity known as the Interstate Commission of Nurse
3 Licensure Compact Administrators.

4 (1) The commission is an instrumentality of the party
5 states.

6 (2) Venue is proper, and judicial proceedings by or
7 against the commission shall be brought solely and
8 exclusively, in a court of competent jurisdiction where the
9 principal office of the commission is located. The
10 commission may waive venue and jurisdictional defenses to
11 the extent it adopts or consents to participate in alternative
12 dispute resolution proceedings.

13 (3) Nothing in this compact shall be construed to be a
14 waiver of sovereign immunity.

15 (b) Membership, Voting and Meetings.

16 (1) Each party state shall have and be limited to one
17 administrator. The head of the state licensing board or
18 designee shall be the administrator of this compact for each
19 party state. Any administrator may be removed or
20 suspended from office as provided by the law of the state
21 from which the administrator is appointed. Any vacancy
22 occurring in the commission shall be filled in accordance
23 with the laws of the party state in which the vacancy exists.

24 (2) Each administrator shall be entitled to one vote with
25 regard to the promulgation of rules and creation of bylaws
26 and shall otherwise have an opportunity to participate in the
27 business and affairs of the commission. An administrator
28 shall vote in person or by such other means as provided in
29 the bylaws. The bylaws may provide for an administrator's
30 participation in meetings by telephone or other means of
31 communication.

32 (3) The commission shall meet at least once during each
33 calendar year. Additional meetings shall be held as set forth
34 in the bylaws or rules of the commission.

35 (4) All meetings shall be open to the public, and public
36 notice of meetings shall be given in the same manner as
37 required under the rulemaking provisions in section eight.

38 (5) The commission may convene in a closed, nonpublic
39 meeting if the commission must discuss:

40 (A) Noncompliance of a party state with its obligations
41 under this compact;

42 (B) The employment, compensation, discipline or other
43 personnel matters, practices or procedures related to
44 specific employees or other matters related to the
45 commission's internal personnel practices and procedures;

46 (C) Current, threatened or reasonably anticipated
47 litigation;

48 (D) Negotiation of contracts for the purchase or sale of
49 goods, services or real estate;

50 (E) Accusing any person of a crime or formally
51 censuring any person;

52 (F) Disclosure of trade secrets or commercial or
53 financial information that is privileged or confidential;

54 (G) Disclosure of information of a personal nature
55 where disclosure would constitute a clearly unwarranted
56 invasion of personal privacy;

57 (H) Disclosure of investigatory records compiled for
58 law enforcement purposes;

59 (I) Disclosure of information related to any reports
60 prepared by or on behalf of the commission for the purpose
61 of investigation of compliance with this compact; or

62 (J) Matters specifically exempted from disclosure by
63 federal or state statute.

64 (6) If a meeting, or portion of a meeting, is closed
65 pursuant to this provision, the commission's legal counsel
66 or designee shall certify that the meeting may be closed and
67 shall reference each relevant exempting provision. The
68 commission shall keep minutes that fully and clearly
69 describe all matters discussed in a meeting and shall provide
70 a full and accurate summary of actions taken, and the
71 reasons therefor, including a description of the views
72 expressed. All documents considered in connection with an
73 action shall be identified in such minutes. All minutes and
74 documents of a closed meeting shall remain under seal,
75 subject to release by a majority vote of the commission or
76 order of a court of competent jurisdiction.

77 (c) The commission shall, by a majority vote of the
78 administrators, prescribe bylaws or rules to govern its
79 conduct as may be necessary or appropriate to carry out the
80 purposes and exercise the powers of this compact, including
81 but not limited to:

82 (1) Establishing the fiscal year of the commission;

83 (2) Providing reasonable standards and procedures:

84 (A) For the establishment and meetings of other
85 committees; and

86 (B) Governing any general or specific delegation of any
87 authority or function of the commission;

88 (3) Providing reasonable procedures for calling and
89 conducting meetings of the commission, ensuring
90 reasonable advance notice of all meetings and providing an
91 opportunity for attendance of such meetings by interested
92 parties, with enumerated exceptions designed to protect the
93 public's interest, the privacy of individuals, and proprietary
94 information, including trade secrets. The commission may
95 meet in closed session only after a majority of the
96 administrators vote to close a meeting in whole or in part.
97 As soon as practicable, the commission must make public a

98 copy of the vote to close the meeting revealing the vote of
99 each administrator, with no proxy votes allowed;

100 (4) Establishing the titles, duties and authority and
101 reasonable procedures for the election of the officers of the
102 commission;

103 (5) Providing reasonable standards and procedures for
104 the establishment of the personnel policies and programs of
105 the commission. Notwithstanding any civil service or other
106 similar laws of any party state, the bylaws shall exclusively
107 govern the personnel policies and programs of the
108 commission; and

109 (6) Providing a mechanism for winding up the
110 operations of the commission and the equitable disposition
111 of any surplus funds that may exist after the termination of
112 this compact after the payment or reserving of all of its debts
113 and obligations;

114 (d) The commission shall publish its bylaws and rules,
115 and any amendments thereto, in a convenient form on the
116 website of the commission.

117 (e) The commission shall maintain its financial records
118 in accordance with the bylaws.

119 (f) The commission shall meet and take such actions as
120 are consistent with the provisions of this compact and the
121 bylaws.

122 (g) The commission shall have the following powers:

123 (1) To promulgate uniform rules to facilitate and
124 coordinate implementation and administration of this
125 compact. The rules shall have the force and effect of law
126 and shall be binding in all party states;

127 (2) To bring and prosecute legal proceedings or actions
128 in the name of the commission, provided that the standing

129 of any licensing board to sue or be sued under applicable
130 law shall not be affected;

131 (3) To purchase and maintain insurance and bonds;

132 (4) To borrow, accept or contract for services of
133 personnel, including, but not limited to, employees of a
134 party state or nonprofit organizations;

135 (5) To cooperate with other organizations that
136 administer state compacts related to the regulation of
137 nursing, including but not limited to sharing administrative
138 or staff expenses, office space or other resources;

139 (6) To hire employees, elect or appoint officers, fix
140 compensation, define duties, grant such individuals
141 appropriate authority to carry out the purposes of this
142 compact, and to establish the commission's personnel
143 policies and programs relating to conflicts of interest,
144 qualifications of personnel and other related personnel
145 matters;

146 (7) To accept any and all appropriate donations, grants
147 and gifts of money, equipment, supplies, materials and
148 services, and to receive, utilize and dispose of the same;
149 provided that at all times the commission shall avoid any
150 appearance of impropriety or conflict of interest;

151 (8) To lease, purchase, accept appropriate gifts or
152 donations of, or otherwise to own, hold, improve or use, any
153 property, whether real, personal or mixed; provided that at
154 all times the commission shall avoid any appearance of
155 impropriety;

156 (9) To sell, convey, mortgage, pledge, lease, exchange,
157 abandon or otherwise dispose of any property, whether real,
158 personal or mixed;

159 (10) To establish a budget and make expenditures;

160 (11) To borrow money;

161 (12) To appoint committees, including advisory
162 committees comprised of administrators, state nursing
163 regulators, state legislators or their representatives, and
164 consumer representatives, and other such interested
165 persons;

166 (13) To provide and receive information from, and to
167 cooperate with, law-enforcement agencies;

168 (14) To adopt and use an official seal; and

169 (15) To perform such other functions as may be
170 necessary or appropriate to achieve the purposes of this
171 compact consistent with the state regulation of nurse
172 licensure and practice.

173 (h) Financing of the commission.

174 (1) The commission shall pay, or provide for the
175 payment of, the reasonable expenses of its establishment,
176 organization and ongoing activities.

177 (2) The commission may also levy on and collect an
178 annual assessment from each party state to cover the cost of
179 its operations, activities and staff in its annual budget as
180 approved each year. The aggregate annual assessment
181 amount, if any, shall be allocated based upon a formula to
182 be determined by the commission, which shall promulgate
183 a rule that is binding upon all party states.

184 (3) The commission shall not incur obligations of any
185 kind prior to securing the funds adequate to meet the same;
186 nor shall the commission pledge the credit of any of the
187 party states, except by, and with the authority of, such party
188 state.

189 (4) The commission shall keep accurate accounts of all
190 receipts and disbursements. The receipts and disbursements
191 of the commission shall be subject to the audit and
192 accounting procedures established under its bylaws.
193 However, all receipts and disbursements of funds handled

194 by the commission shall be audited yearly by a certified or
195 licensed public accountant, and the report of the audit shall
196 be included in and become part of the annual report of the
197 commission.

198 (i) Qualified Immunity, Defense and Indemnification.

199 (1) The administrators, officers, executive director,
200 employees and representatives of the commission shall be
201 immune from suit and liability, either personally or in their
202 official capacity, for any claim for damage to or loss of
203 property or personal injury or other civil liability caused by
204 or arising out of any actual or alleged act, error or omission
205 that occurred, or that the person against whom the claim is
206 made had a reasonable basis for believing occurred, within
207 the scope of commission employment, duties or
208 responsibilities; provided that nothing in this paragraph
209 shall be construed to protect any such person from suit or
210 liability for any damage, loss, injury or liability caused by
211 the intentional, willful or wanton misconduct of that person.

212 (2) The commission shall defend any administrator,
213 officer, executive director, employee or representative of
214 the commission in any civil action seeking to impose
215 liability arising out of any actual or alleged act, error or
216 omission that occurred within the scope of commission
217 employment, duties or responsibilities, or that the person
218 against whom the claim is made had a reasonable basis for
219 believing occurred within the scope of commission
220 employment, duties or responsibilities; provided that
221 nothing herein shall be construed to prohibit that person
222 from retaining his or her own counsel; and provided further
223 that the actual or alleged act, error or omission did not result
224 from that person's intentional, willful or wanton
225 misconduct.

226 (3) The commission shall indemnify and hold harmless
227 any administrator, officer, executive director, employee or
228 representative of the commission for the amount of any
229 settlement or judgment obtained against that person arising

230 out of any actual or alleged act, error or omission that
231 occurred within the scope of commission employment,
232 duties or responsibilities, or that such person had a
233 reasonable basis for believing occurred within the scope of
234 commission employment, duties or responsibilities,
235 provided that the actual or alleged act, error or omission did
236 not result from the intentional, willful or wanton misconduct
237 of that person.

§30-7F-8. Rulemaking.

1 (a) The commission shall exercise its rulemaking
2 powers pursuant to the criteria set forth in this section and
3 the rules adopted thereunder. Rules and amendments shall
4 become binding as of the date specified in each rule or
5 amendment and shall have the same force and effect as
6 provisions of this compact.

7 (b) Rules or amendments to the rules shall be adopted at
8 a regular or special meeting of the commission.

9 (c) Prior to promulgation and adoption of a final rule or
10 rules by the commission, and at least sixty days in advance
11 of the meeting at which the rule will be considered and
12 voted upon, the commission shall file a notice of proposed
13 rulemaking:

14 (1) On the website of the commission; and

15 (2) On the website of each licensing board or the
16 publication in which each state would otherwise publish
17 proposed rules.

18 (d) The notice of proposed rulemaking shall include:

19 (1) The proposed time, date and location of the meeting
20 in which the rule will be considered and voted upon;

21 (2) The text of the proposed rule or amendment, and the
22 reason for the proposed rule;

23 (3) A request for comments on the proposed rule from
24 any interested person; and

25 (4) The manner in which interested persons may submit
26 notice to the commission of their intention to attend the
27 public hearing and any written comments.

28 (e) Prior to adoption of a proposed rule, the commission
29 shall allow persons to submit written data, facts, opinions
30 and arguments, which shall be made available to the public.

31 (f) The commission shall grant an opportunity for a
32 public hearing before it adopts a rule or amendment.

33 (g) The commission shall publish the place, time and
34 date of the scheduled public hearing.

35 (1) Hearings shall be conducted in a manner providing
36 each person who wishes to comment a fair and reasonable
37 opportunity to comment orally or in writing. All hearings
38 will be recorded, and a copy will be made available upon
39 request.

40 (2) Nothing in this section shall be construed as
41 requiring a separate hearing on each rule. Rules may be
42 grouped for the convenience of the commission at hearings
43 required by this section.

44 (h) If no one appears at the public hearing, the
45 commission may proceed with promulgation of the
46 proposed rule.

47 (i) Following the scheduled hearing date, or by the close
48 of business on the scheduled hearing date if the hearing was
49 not held, the commission shall consider all written and oral
50 comments received.

51 (j) The commission shall, by majority vote of all
52 administrators, take final action on the proposed rule and
53 shall determine the effective date of the rule, if any, based
54 on the rulemaking record and the full text of the rule.

55 (k) Upon determination that an emergency exists, the
56 commission may consider and adopt an emergency rule
57 without prior notice, opportunity for comment or hearing,
58 provided that the usual rulemaking procedures provided in
59 this compact and in this section shall be retroactively
60 applied to the rule as soon as reasonably possible, in no
61 event later than ninety days after the effective date of the
62 rule. For the purposes of this provision, an emergency rule
63 is one that must be adopted immediately in order to:

64 (1) Meet an imminent threat to public health, safety or
65 welfare;

66 (2) Prevent a loss of commission or party state funds; or

67 (3) Meet a deadline for the promulgation of an
68 administrative rule that is required by federal law or rule.

69 (l) The commission may direct revisions to a previously
70 adopted rule or amendment for purposes of correcting
71 typographical errors, errors in format, errors in consistency
72 or grammatical errors. Public notice of any revisions shall
73 be posted on the website of the commission. The revision
74 shall be subject to challenge by any person for a period of
75 thirty days after posting. The revision may be challenged
76 only on grounds that the revision results in a material change
77 to a rule. A challenge shall be made in writing, and delivered
78 to the commission, prior to the end of the notice period. If
79 no challenge is made, the revision will take effect without
80 further action. If the revision is challenged, the revision may
81 not take effect without the approval of the commission.

§30-7F-9. Oversight, Dispute Resolution and Enforcement.

1 (a) Oversight

2 (1) Each party state shall enforce this compact and take
3 all actions necessary and appropriate to effectuate this
4 compact's purposes and intent.

5 (2) The commission shall be entitled to receive service
6 of process in any proceeding that may affect the powers,
7 responsibilities or actions of the commission, and shall have
8 standing to intervene in such a proceeding for all purposes.
9 Failure to provide service of process in such proceeding to
10 the commission shall render a judgment or order void as to
11 the commission, this compact or promulgated rules.

12 (b) Default, Technical Assistance and Termination

13 (1) If the commission determines that a party state has
14 defaulted in the performance of its obligations or
15 responsibilities under this compact or the promulgated
16 rules, the commission shall:

17 (A) Provide written notice to the defaulting state and
18 other party states of the nature of the default, the proposed
19 means of curing the default or any other action to be taken
20 by the commission; and

21 (B) Provide remedial training and specific technical
22 assistance regarding the default.

23 (2) If a state in default fails to cure the default, the
24 defaulting state's membership in this compact may be
25 terminated upon an affirmative vote of a majority of the
26 administrators, and all rights, privileges and benefits
27 conferred by this compact may be terminated on the
28 effective date of termination. A cure of the default does not
29 relieve the offending state of obligations or liabilities
30 incurred during the period of default.

31 (3) Termination of membership in this compact shall be
32 imposed only after all other means of securing compliance
33 have been exhausted. Notice of intent to suspend or
34 terminate shall be given by the commission to the Governor
35 of the defaulting state and to the executive officer of the
36 defaulting state's licensing board and each of the party
37 states.

38 (4) A state whose membership in this compact has been
39 terminated is responsible for all assessments, obligations
40 and liabilities incurred through the effective date of
41 termination, including obligations that extend beyond the
42 effective date of termination.

43 (5) The commission shall not bear any costs related to a
44 state that is found to be in default or whose membership in
45 this compact has been terminated unless agreed upon in
46 writing between the commission and the defaulting state.

47 (6) The defaulting state may appeal the action of the
48 commission by petitioning the U.S. District Court for the
49 District of Columbia or the federal district in which the
50 commission has its principal offices. The prevailing party
51 shall be awarded all costs of such litigation, including
52 reasonable attorneys' fees.

53 (c) Dispute Resolution

54 (1) Upon request by a party state, the commission shall
55 attempt to resolve disputes related to the compact that arise
56 among party states and between party and nonparty states.

57 (2) The commission shall promulgate a rule providing
58 for both mediation and binding dispute resolution for
59 disputes, as appropriate.

60 (3) In the event the commission cannot resolve disputes
61 among party states arising under this compact:

62 (A) The party states may submit the issues in dispute to
63 an arbitration panel, which will be comprised of individuals
64 appointed by the compact administrator in each of the
65 affected party states and an individual mutually agreed upon
66 by the compact administrators of all the party states
67 involved in the dispute.

68 (B) The decision of a majority of the arbitrators shall be
69 final and binding.

70 (d) Enforcement

71 (1) The commission, in the reasonable exercise of its
72 discretion, shall enforce the provisions and rules of this
73 compact.

74 (2) By majority vote, the commission may initiate legal
75 action in the U.S. District Court for the District of Columbia
76 or the federal district in which the commission has its
77 principal offices against a party state that is in default to
78 enforce compliance with the provisions of this compact and
79 its promulgated rules and bylaws. The relief sought may
80 include both injunctive relief and damages. In the event
81 judicial enforcement is necessary, the prevailing party shall
82 be awarded all costs of such litigation, including reasonable
83 attorneys' fees.

84 (3) The remedies herein shall not be the exclusive
85 remedies of the commission. The commission may pursue
86 any other remedies available under federal or state law.

§30-7F-10. Effective Date, Withdrawal and Amendment.

1 (a) This compact shall become effective and binding on
2 the earlier of the date of legislative enactment of this
3 compact into law by no less than twenty-six states or
4 December 31, 2018. All party states to this compact, that
5 also were parties to the prior Nurse Licensure Compact,
6 superseded by this compact, ("prior compact"), shall be
7 deemed to have withdrawn from said prior compact within
8 six months after the effective date of this compact.

9 (b) Each party state to this compact shall continue to
10 recognize a nurse's multistate licensure privilege to practice
11 in that party state issued under the prior compact until such
12 party state has withdrawn from the prior compact.

13 (c) Any party state may withdraw from this compact by
14 enacting a statute repealing the same. A party state's
15 withdrawal shall not take effect until six (6) months after
16 enactment of the repealing statute.

17 (d) A party state's withdrawal or termination shall not
18 affect the continuing requirement of the withdrawing or
19 terminated state's licensing board to report adverse actions
20 and significant investigations occurring prior to the
21 effective date of such withdrawal or termination.

22 (e) Nothing contained in this compact shall be construed
23 to invalidate or prevent any nurse licensure agreement or
24 other cooperative arrangement between a party state and a
25 nonparty state that is made in accordance with the other
26 provisions of this compact.

27 (f) This compact may be amended by the party states.
28 No amendment to this compact shall become effective and
29 binding upon the party states unless and until it is enacted
30 into the laws of all party states.

31 (g) Representatives of nonparty states to this compact
32 shall be invited to participate in the activities of the
33 commission, on a nonvoting basis, prior to the adoption of
34 this compact by all states.

§30-7F-11. Construction and Severability.

1 This compact shall be liberally construed so as to
2 effectuate the purposes thereof. The provisions of this
3 compact shall be severable, and if any phrase, clause,
4 sentence or provision of this compact is declared to be
5 contrary to the Constitution of any party state or of the
6 United States, or if the applicability thereof to any
7 government, agency, person or circumstance is held invalid,
8 the validity of the remainder of this compact and the
9 applicability thereof to any government, agency, person or
10 circumstance shall not be affected thereby. If this compact
11 shall be held to be contrary to the Constitution of any party
12 state, this compact shall remain in full force and effect as to
13 the remaining party states and in full force and effect as to
14 the party state affected as to all severable matters.

CHAPTER 179

**(H. B. 2691 - By Delegates Hamrick, Martin, Ward,
Howell, Boggs, Arvon, Storch, Westfall, Dean,
McGeehan and Frich)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT to amend and reenact §30-27-8 and §30-27-10 of the Code of West Virginia, 1931, as amended, all relating to allowing a person who is qualified by training to be a barber and a cosmetologist to elect to practice solely as a barber and maintain licensure through continuing education subjects related to barbering.

Be it enacted by the Legislature of West Virginia:

That §30-27-8 and §30-27-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-8. Professional license requirements.

1 (a) An applicant for a professional license to practice as
2 an aesthetician, barber, barber crossover, cosmetologist,
3 hair stylist, cosmetologist crossover or nail technician shall
4 present satisfactory evidence that he or she:

5 (1) Is at least eighteen years of age;

6 (2) Is of good moral character;

7 (3) Has a high school diploma, a GED, or has passed the
8 “ability to benefit test” approved by the United States
9 Department of Education;

10 (4) Has graduated from a licensed school which has
11 been approved by the West Virginia Council for
12 Community and Technical College Education (CCTCE),
13 Department of Education in conjunction with CCTCE or
14 Department of Education with the Department of
15 Corrections or has completed education requirements in
16 another state and meets the licensure provisions of the
17 board;

18 (5) Has passed an examination that tests the applicant's
19 knowledge of subjects specified by the board: *Provided*,
20 That the board may recognize a certificate or similar license
21 in lieu of the examination or part of the examination that the
22 board requires: *Provided, however*, That any examination
23 meets national standards;

24 (6) Has paid the applicable fee;

25 (7) Presents a certificate of health from a licensed
26 physician;

27 (8) Is a citizen of the United States or is eligible for
28 employment in the United States; and

29 (9) Has fulfilled any other requirement specified by the
30 board.

31 (b) A license to practice issued by the board prior to July
32 1, 2016, shall for all purposes be considered a professional
33 license issued under this article: *Provided*, That a person
34 holding a license issued prior to July 1, 2016, must renew
35 the license pursuant to the provisions of this article.

36 (c) A person, who by education and experience qualifies
37 to be a barber and a cosmetologist or a barber crossover or
38 cosmetologist crossover, may elect at any time to practice
39 solely as a barber and, after notice and application to the
40 board, may be licensed as a barber without other
41 designation.

§30-27-10. Professional license and certificate renewal requirements.

1 (a) A professional licensee and certificate holder shall
2 annually on or before January 1, renew his or her
3 professional license or certificate by completing a form
4 prescribed by the board, paying the renewal fee and
5 submitting any other information required by the board.

6 (b) The board shall charge a fee for each renewal of a
7 license or certificate, and a late fee for any renewal not paid
8 by the due date.

9 (c) The board shall require as a condition of renewal of
10 a professional license or certificate that each licensee or
11 certificate holder complete continuing education: subject to
12 the following exceptions:

13 (1) When a barber or cosmetologist has been licensed
14 and in practice for ten years, that barber or cosmetologist
15 will not be required to complete any continuing education
16 other than a three-hour sanitation class every other year for
17 a period of ten years; and

18 (2) A person, who by education and experience qualifies
19 to be a barber and a cosmetologist or a barber crossover or
20 cosmetologist crossover, may elect to be licensed solely as
21 a barber and shall not be required to attend or participate in
22 continuing education programs that are not required of
23 licensed barbers.

24 (d) The board may approve for continuing education
25 credit any education course providing instruction in any
26 curriculum, subject matter or discipline included in the
27 education required for licensure that is submitted to the
28 board or offered by:

29 (1) A licensed school or instructor, outside of school
30 instruction;

31 (2) A manufacturer or distributor of barbering,
32 aesthetics, nail technology or cosmetology products;

33 (3) A barber or cosmetology trade organization; or

34 (4) Any course offered at an accredited private or public
35 university, college or community college in this state that
36 relates to the profession or a general business class.

37 (e) The board may deny an application for renewal for
38 any reason which would justify the denial of an original
39 application for a license or certificate.

40 (f) The board shall recognize reciprocity for military
41 barbers for the purpose of the state examination for barbers.

CHAPTER 180

**(H. B. 2348 - By Delegates Howell, Maynard, Walters,
McGeehan, Sypolt, Westfall, C. Miller, Hamrick,
Higginbotham, Harshbarger and Ward)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §30-27-12 of the Code of West Virginia, 1931, as amended, relating to eliminating any requirement that class hours of students be consecutive.

Be it enacted by the Legislature of West Virginia:

That §30-27-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-12. Student registration; classes.

1 (a) Prior to commencing studies in a licensed school, a
2 student shall acquire a student registration issued by the
3 board.

4 (b) An applicant for a student registration shall present
5 satisfactory evidence that he or she meets the following
6 conditions:

7 (1) Is enrolled as a student in a licensed school;

8 (2) Is of good moral character;

9 (3) Has paid the required fee;

10 (4) Has presented a certificate of health issued by a
11 licensed physician; and

12 (5) Is a citizen of the United States or is eligible for
13 employment in the United States.

14 (c) The student registration is good during the
15 prescribed period of study for the student.

16 (d) The student may perform acts constituting
17 barbering, hairstyling, cosmetology, aesthetics or nail care
18 in a school under the general supervision of a master or
19 certified instructor.

20 (e) The student is not required to take class hours that
21 are consecutive.



CHAPTER 181

**(Com. Sub. for H. B. 2347 - By Delegates Howell,
Maynard, Walters, McGeehan, Sypolt, C. Miller,
Westfall, Hamrick, Higginbotham, Harshbarger and
Atkinson)**

[Passed March 11, 2017; in effect ninety days from passage.]
[Approved by the Governor on March 17, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §30-27-15,

relating to allowing schools licensed to provide barber, cosmetology and related training to hold theory classes and clinical classes at separate locations; and prohibiting schools licensed to provide barber, cosmetology and related training from being established within the same physical structure as a salon, spa, or similar business.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-27-15, to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-15. Schools may provide certain classes at different locations.

1 A licensed school may provide clinical instruction and
2 theory instruction in separate locations. Any school
3 authorized under this article cannot be established within
4 the same physical structure as a salon, spa or similar
5 business licensed under W. Va. Code §30-27-17.



CHAPTER 182

(Com. Sub. for S. B. 350 - By Senator Blair)

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §30-31-3, §30-31-6, §30-31-8 and §30-31-9 of the Code of West Virginia, 1931, as amended, all relating to licenses and temporary permits for licensure for professional counselors and marriage and family therapists.

Be it enacted by the Legislature of West Virginia:

That §30-31-3, §30-31-6, §30-31-8 and §30-31-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings, unless the context clearly
3 indicates otherwise:

4 (a) “Applicant” means a person making an application
5 for a license or renewal under the provisions of this article.

6 (b) “Board” means the West Virginia Board of
7 Examiners in Counseling.

8 (c) “Clinical counseling procedures” means an approach
9 to counseling that emphasizes the counselor's role in
10 systematically assisting clients through all of the following
11 including, but are not limited to, observing, assessing and
12 analyzing background and current information; utilizing
13 assessment techniques useful in appraising aptitudes,
14 abilities, achievements, interests or attitudes; diagnosing;
15 and developing a treatment plan. The goal of these
16 procedures is the prevention or elimination of symptomatic,
17 maladaptive or undesired behavior, cognitions or emotions
18 in order to integrate a wellness, preventative, pathology and
19 multicultural model of human behavior to assist an
20 individual, couple, family, group of individuals,
21 organization, institution or community to achieve mental,
22 emotional, physical, social, moral, educational, spiritual,
23 vocational or career development and adjustment through
24 the life span of the individual, couple, family, group of
25 individuals, organization, institution or community.

26 (d) “Licensed professional counselor” means a person
27 licensed under the provisions of this article to practice
28 professional counseling.

29 (e) “Licensee” means a person holding a license issued
30 under the provisions of this article.

31 (f) “Licensed marriage and family therapist” means a
32 person licensed under the provisions of this article to
33 practice marriage and family therapy.

34 (g) “Marriage and family therapy” means the diagnosis
35 and treatment of mental and emotional disorders, whether
36 cognitive, affective or behavioral, specifically within the
37 context of marriage and family systems, that involve the
38 professional application of theories and techniques to
39 individuals, couples and families, singly or in groups.

40 (h) “Permit” means a temporary permit to practice
41 professional counseling or marriage and family therapy
42 issued by the board under the provisions of this article.

43 (i) “Permittee” means a person holding a temporary
44 permit under the provisions of this article.

45 (j) “Professional counseling” means the assessment,
46 diagnosis, treatment and prevention of mental, emotional or
47 addiction disorders through the application of clinical
48 counseling procedures. Professional counseling includes the
49 use of psychotherapy, assessment instruments, counseling,
50 consultation, treatment planning and supervision in the
51 delivery of services to individuals, couples, families and
52 groups.

§30-31-6. Rulemaking.

1 (a) The board shall propose rules for legislative
2 approval, in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, to implement the
4 provisions of this article, including:

- 5 (1) Standards and requirements for licenses to practice
6 professional counseling and marriage and family therapy;
- 7 (2) Procedures for examinations and reexaminations;
- 8 (3) Requirements for third parties to prepare and/or
9 administer examinations and reexaminations;
- 10 (4) Educational and experience requirements;
- 11 (5) The passing grade on the examination;
- 12 (6) Standards for approval of courses;
- 13 (7) Procedures for the issuance and renewal of a license
14 or permit;
- 15 (8) A fee schedule;
- 16 (9) Continuing education requirements for licensees;
- 17 (10) The procedures for denying, suspending, revoking,
18 reinstating or limiting the practice of a licensee;
- 19 (11) Requirements to reinstate a revoked license;
- 20 (12) Specific master's and doctoral degree programs
21 considered to be equivalent to a master's or doctoral degree
22 program required under this article;
- 23 (13) The nature of supervised professional experience
24 approved by the board for the purposes of licensure of this
25 article;
- 26 (14) A code of ethics; and
- 27 (15) Any other rules necessary to effectuate the
28 provisions of this article.
- 29 (b) All of the board's rules in effect on July 1, 2009,
30 shall remain in effect until they are amended or repealed and
31 references to provisions of former enactments of this article
32 are interpreted to mean provisions of this article.

§30-31-8. Requirements for license to practice counseling.

- 1 (a) To be eligible for a license to practice professional
2 counseling, an applicant must:
 - 3 (1) Be of good moral character;
 - 4 (2) Be at least eighteen years of age;
 - 5 (3) Be a citizen of the United States or be eligible for
6 employment in the United States;
 - 7 (4) Pay the applicable fee;
 - 8 (5)(A)(i) Have earned a master's degree in an accredited
9 counseling program or in a field closely related to an
10 accredited counseling program as determined by the board
11 or have received training equivalent to such degree as may
12 be determined by the board; and
 - 13 (ii) Have at least two years of supervised professional
14 experience in counseling of such a nature as is designated
15 by the board after earning a master's degree or equivalent;
16 or
 - 17 (B)(i) Have earned a doctorate degree in an accredited
18 counseling program or in a field closely related to an
19 accredited counseling program as determined by the board
20 or have received training equivalent to such degree as may
21 be determined by the board; and
 - 22 (ii) Have at least one year of supervised professional
23 experience in counseling of such a nature as is designated
24 by the board after earning a doctorate degree or equivalent;
- 25 (6) Have passed a standardized national certification
26 examination in counseling approved by the board;
- 27 (7) Not have been convicted of a felony or crime
28 involving moral turpitude under the laws of any jurisdiction:

29 (A) If the applicant has never been convicted of a felony
30 or a crime involving moral turpitude, the applicant shall
31 submit letters of recommendation from three persons not
32 related to the applicant and a sworn statement from the
33 applicant stating that he or she has never been convicted of
34 a felony or a crime involving moral turpitude; or

35 (B) If the applicant has been convicted of a felony or a
36 crime involving moral turpitude, it is a rebuttable
37 presumption that the applicant is unfit for licensure unless
38 he or she submits competent evidence of sufficient
39 rehabilitation and present fitness to perform the duties of a
40 licensed professional counselor as may be established by the
41 production of:

42 (i) Documentary evidence including a copy of the
43 relevant release or discharge order, evidence showing
44 compliance with all conditions of probation or parole,
45 evidence showing that at least one year has elapsed since
46 release or discharge without subsequent conviction, and
47 letters of reference from three persons who have been in
48 contact with the applicant since his or her release or
49 discharge; and

50 (ii) Any collateral evidence and testimony as may be
51 requested by the board which shows the nature and
52 seriousness of the crime, the circumstances relative to the
53 crime or crimes committed and any mitigating
54 circumstances or social conditions surrounding the crime or
55 crimes and any other evidence necessary for the board to
56 judge present fitness for licensure or whether licensure will
57 enhance the likelihood that the applicant will commit the
58 same or similar offenses;

59 (8) Not be an alcohol or drug abuser as these terms are
60 defined in section eleven, article one-a, chapter twenty-
61 seven of this code: *Provided*, That an applicant who has had
62 at least two continuous years of uninterrupted sobriety in an
63 active recovery process, which may, in the discretion of the
64 board, be evidenced by participation in a twelve-step

65 program or other similar group or process, may be
66 considered; and

67 (9) Has fulfilled any other requirement specified by the
68 board.

69 (b) A person who holds a license or other authorization
70 to practice counseling issued by another state, the
71 qualifications for which license or other authorization are
72 determined by the board to be at least substantially
73 equivalent to the license requirements in this article, is
74 eligible for licensure.

75 (c) A person seeking licensure under the provisions of
76 this section shall submit an application on a form prescribed
77 by the board and pay all applicable fees. A person applying
78 for licensure may elect for a temporary permit to utilize
79 during the application process while the applicant takes the
80 required examination. The temporary permit shall be valid
81 for a period not to exceed six months and may not be
82 renewed. The fee for the temporary permit is \$50. The
83 permittee shall be supervised by an approved licensed
84 professional supervisor while practicing under the
85 temporary permit. Supervision hours completed under the
86 temporary permit count as supervised professional
87 experience as required for licensure under this section. The
88 supervision requirements are the same as required with a
89 provisional license as defined in section six of this article.
90 The temporary permit may be revoked at any time by a
91 majority vote of the board.

92 (d) A person who has been continually licensed under
93 this article since 1987, pursuant to prior enactments
94 permitting waiver of certain examination and other
95 requirements, is eligible for renewal under the provisions of
96 this article.

97 (e) A license to practice professional counseling issued
98 by the board prior to July 1, 2009, shall for all purposes be
99 considered a license issued under this article: *Provided,*

100 That a person holding a license issued prior to July 1, 2009,
101 must renew the license pursuant to the provisions of this
102 article.

§30-31-9. Requirements for a license to practice marriage and family therapy.

1 (a) To be eligible for a license to practice marriage and
2 family therapy, an applicant must:

3 (1) Be of good moral character;

4 (2) Be at least eighteen years of age;

5 (3) Be a citizen of the United States or be eligible for
6 employment in the United States;

7 (4) Pay the applicable fee;

8 (5)(A)(i) Have earned a master's degree in marriage and
9 family therapy from a program accredited by the
10 Commission on Accreditation for Marriage and Family
11 Therapy Education, the Council for Accreditation of
12 Counseling and Related Education Programs, or a
13 comparable accrediting body as approved by the board, or
14 in a field closely related to an accredited marriage and
15 family therapy program as determined by the board, or have
16 received training equivalent to such degree as may be
17 determined by the board; and

18 (ii) Have at least two years of supervised professional
19 experience in marriage and family therapy of such a nature
20 as is designated by the board after earning a master's degree
21 or equivalent; or

22 (B)(i) Have earned a doctorate degree in marriage and
23 family therapy from a program accredited by the
24 Commission on Accreditation for Marriage and Family
25 Therapy Education, the Council for Accreditation of
26 Counseling and Related Education Programs, or a
27 comparable accrediting body as approved by the board, or

28 in a field closely related to an accredited marriage and
29 family therapy program as determined by the board, or have
30 received training equivalent to such degree as may be
31 determined by the board; and

32 (ii) Have at least one year of supervised professional
33 experience in marriage and family therapy of such a nature
34 as is designated by the board after earning a doctorate
35 degree or equivalent;

36 (6) Have passed a standardized national certification
37 examination in marriage and family therapy as approved by
38 the board;

39 (7) Not have been convicted of a felony or crime
40 involving moral turpitude under the laws of any jurisdiction:

41 (A) If the applicant has never been convicted of a felony
42 or a crime involving moral turpitude, the applicant shall
43 submit letters of recommendation from three persons not
44 related to the applicant and a sworn statement from the
45 applicant stating that he or she has never been convicted of
46 a felony or a crime involving moral turpitude; or

47 (B) If the applicant has been convicted of a felony or a
48 crime involving moral turpitude, it is a rebuttable
49 presumption that the applicant is unfit for licensure unless
50 he or she submits competent evidence of sufficient
51 rehabilitation and present fitness to perform the duties of a
52 person licensed to practice marriage and family therapy as
53 may be established by the production of:

54 (i) Documentary evidence including a copy of the
55 relevant release or discharge order, evidence showing
56 compliance with all conditions of probation or parole,
57 evidence showing that at least one year has elapsed since
58 release or discharge without subsequent conviction, and
59 letters of reference from three persons who have been in
60 contact with the applicant since his or her release or
61 discharge; and

62 (ii) Any collateral evidence and testimony as may be
63 requested by the board which shows the nature and
64 seriousness of the crime, the circumstances relative to the
65 crime or crimes committed and any mitigating
66 circumstances or social conditions surrounding the crime or
67 crimes, and any other evidence necessary for the board to
68 judge present fitness for licensure or whether licensure will
69 enhance the likelihood that the applicant will commit the
70 same or similar offenses;

71 (8) Not be an alcohol or drug abuser as these terms are
72 defined in section eleven, article one-a, chapter twenty-
73 seven of this code: *Provided*, That an applicant who has had
74 at least two continuous years of uninterrupted sobriety in an
75 active recovery process, which may, in the discretion of the
76 board, be evidenced by participation in a twelve-step
77 program or other similar group or process, may be
78 considered; and

79 (9) Has fulfilled any other requirement specified by the
80 board.

81 (b) A person who holds a license or other authorization
82 to practice marriage and family therapy issued by another
83 state, the qualifications for which license or other
84 authorization are determined by the board to be at least
85 substantially equivalent to the license requirements in this
86 article, is eligible for licensure.

87 (c) A person seeking licensure under the provisions of
88 this section shall submit an application on a form prescribed
89 by the board and pay all applicable fees. A person applying
90 for licensure may elect for a temporary permit to utilize
91 during the application process while the applicant takes the
92 required examination. The temporary permit shall be valid
93 for a period not to exceed six months and may not be
94 renewed. The fee for the temporary permit is \$50. The
95 permittee shall be supervised by an approved licensed
96 professional supervisor while practicing under the
97 temporary permit. Supervision hours completed under the

98 temporary permit count as supervised professional
99 experience as required for licensure under this section. The
100 supervision requirements are the same as required with a
101 provisional license as defined in section six of this article.
102 The temporary permit may be revoked at any time by a
103 majority vote of the board.

104 (d) A person who is licensed for five years as of July 1,
105 2010, and has substantially similar qualifications as
106 required by subdivisions (1), (2), (3), (4), (5)(A)(i) or
107 (5)(B)(i), (7) and (8), subsection (a) of this section is eligible
108 for a license to practice marriage and family therapy until
109 July 1, 2012, and is eligible for renewal under section ten of
110 this article.

CHAPTER 183

(Com. Sub. for S. B. 523 - By Senator Weld)

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §4-2A-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §11B-2-12 of said code; to amend and reenact §12-3-12a and §12-3-13b of said code; to amend and reenact §15-2-5 of said code; to amend and reenact §18-3-1 of said code; to amend and reenact §20-1-5 of said code; to amend and reenact §20-7-1 of said code; to amend and reenact §22C-1-4 of said code; to amend and reenact §24-1-3 of said code; to amend and reenact §24A-6-6 of said code; to amend and reenact §24B-5-2 of said code; to amend and reenact §25-1-19 of said code; to amend and reenact §31-19-4 of said code; to amend and reenact §33-2-2 of said code; to amend and reenact §50-1-8 and §50-1-9 of said code; to amend and reenact §51-7-3 and §51-7-5 of said code; to amend and reenact §51-8-2 of said

code; and to amend and reenact §62-12-5 of said code, all relating to converting to a biweekly pay cycle from a monthly or semimonthly cycle for state employees; modifying pay cycle of members of the legislature; submitting expenditure schedules to the Secretary of the Department of Revenue; modifying pay cycle of employees of the Higher Education Policy Commission, Council for Community and Technical College Education and institutions which they govern; modifying pay cycle of the West Virginia State Police; modifying pay cycle of the State Superintendent of Schools; modifying pay cycle of the Division of Natural Resources; modifying pay cycle of the Water Development Authority; modifying pay cycle of the Public Service Commission; modifying pay cycle of the Division of Corrections; modifying pay cycle of West Virginia Community Infrastructure Authority; modifying pay cycle of the Insurance Commissioner; modifying pay cycle of magistrate courts; modifying pay cycle of official court reporters; modifying pay cycle of state law librarian and assistants; and modifying pay cycle of probation officers and clerical assistants.

Be it enacted by the Legislature of West Virginia:

That §4-2A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11B-2-12 of said code be amended and reenacted; that §12-3-12a and §12-3-13b of said code be amended and reenacted; that §15-2-5 of said code be amended and reenacted; that §18-3-1 of said code be amended and reenacted; that §20-1-5 of said code be amended and reenacted; that §20-7-1 of said code be amended and reenacted; that §22C-1-4 of said code be amended and reenacted; that §24-1-3 of said code be amended and reenacted; that §24A-6-6 of said code be amended and reenacted; that §24B-5-2 of said code be amended and reenacted; that §25-1-19 of said code be amended and reenacted; that §31-19-4 of said code be amended and reenacted; that §33-2-2 of said code be amended and reenacted; that §50-1-8 and §50-1-9 of said code be amended and reenacted; that §51-7-3 and §51-7-5 of said code be amended and reenacted; that §51-8-2 of said code be amended and reenacted; and that

§62-12-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

§4-2A-2. Basic compensation for services; proration.

1 (a) Beginning in the calendar year 2009 and for each
2 calendar year after that, each member of the Legislature
3 shall receive as basic compensation for his or her services
4 the sum of \$20,000 per calendar year, to be paid as provided
5 in subsection (b) of this section. In addition to the basic
6 compensation, members shall receive the additional
7 compensations as are expressly provided in sections three,
8 four and five of this article. All other increased amounts or
9 new amounts in respect to the compensation of members of
10 the Legislature, set forth in the resolution of the Citizens
11 Legislative Compensation Commission, dated January 9,
12 2007, and implemented in sections two, four, six and eight
13 of this article providing for new amounts or amounts
14 increased to new amounts greater than those in force and
15 effect on January 1, 2007, become effective for calendar
16 year 2009 and each calendar year after that: *Provided*, That
17 increased amounts or new amounts in respect to the
18 expenses of members of the Legislature, set forth in said
19 resolution, and implemented in sections six and eight of this
20 article providing for new amounts or amounts increased to
21 new amounts greater than those in force and effect on
22 January 1, 2007, become effective for calendar year 2008
23 and each calendar year after that.

24 (b) The basic compensation is payable as follows:

25 (1) In the year 2009, and every fourth year after that:

26 (A) Five thousand dollars in each of February, March
27 and April, payable at least twice per month; and

28 (B) Six hundred twenty-five dollars in each of January,
29 May, June, July, August, September, October and
30 November, payable at least twice per month;

31 (2) Beginning in 2010, in all years except those
32 described in subdivision (1) of this subsection:

33 (A) Five thousand dollars in each of January, February
34 and March, payable at least twice per month; and

35 (B) Six hundred twenty-five dollars in each of April,
36 May, June, July, August, September, October and
37 November, payable at least twice per month.

38 (c) In the event of the death, resignation or removal of a
39 member of the Legislature and the appointment and
40 qualification of his or her successor, the compensation
41 provided in this section for the month in which the death,
42 resignation or removal of the member of the Legislature
43 occurs shall be prorated between the original member and
44 his or her successor on the basis of the number of days
45 served, including Saturdays and Sundays in the month.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-12. Submission of expenditure schedules; contents; submission of information on unpaid obligations; copies to Legislative Auditor.

1 (a) Prior to the beginning of each fiscal year, the
2 spending officer of a spending unit shall submit to the
3 secretary a detailed expenditure schedule for the ensuing
4 fiscal year. The schedule shall be submitted in such form
5 and at such time as the secretary may require. The schedule
6 shall show:

7 (1) A proposed biweekly rate of expenditure for
8 amounts appropriated for personal services;

9 (2) Each and every position budgeted under personal
10 services for the next ensuing fiscal year, with the biweekly
11 salary or compensation of each position;

12 (3) A proposed quarterly rate of expenditure for
13 amounts appropriated for employee benefits, current
14 expenses, equipment and repairs and alterations classified
15 by a uniform system of accounting as called for in section
16 twenty-five of this article for each item of every
17 appropriation;

18 (4) A proposed yearly plan of expenditure for amounts
19 appropriated for buildings and lands; and

20 (5) A proposed quarterly plan of receipts itemized by
21 type of revenue.

22 (b) The secretary may accept a differently itemized
23 expenditure schedule from a spending unit to which the
24 above itemizations are not applicable.

25 (c) The secretary shall consult with and assist spending
26 officers in the preparation of expenditure schedules.

27 (d) Within fifteen days after the end of each month of
28 the fiscal year, the head of every spending unit shall certify
29 to the Legislative Auditor the status of obligations and
30 payments of the spending unit for amounts of employee
31 benefits, including, but not limited to, obligations and
32 payments for social security withholding and employer
33 matching, public employees' insurance premiums and
34 public employees' retirement and Teachers Retirement
35 Systems.

36 (e) In the event the Legislative Auditor determines from
37 certified reports or from other sources that any spending unit
38 is not making all payments and transfers for employee
39 benefits from funds appropriated for that purpose, the
40 Legislative Auditor shall notify the secretary of
41 administration, Auditor and Treasurer of the determination
42 and thereafter no funds appropriated to the spending unit

43 shall be encumbered or expended for the salary or
44 compensation to the head of the spending unit until the
45 Legislative Auditor determines that the payments or
46 transfers are being made on a timely basis.

47 (f) When a spending officer submits an expenditure
48 schedule to the secretary as required by this section, the
49 spending officer shall at the same time transmit a copy
50 thereof to the Legislative Auditor and the Joint Committee
51 on Government and Finance or its designee. If a spending
52 officer of a spending unit fails to transmit a copy to the
53 Legislative Auditor on or before the beginning of the fiscal
54 year, the Legislative Auditor shall notify the secretary,
55 Auditor and Treasurer of the failure and thereafter no funds
56 appropriated to the spending unit shall be encumbered or
57 expended until the spending officer thereof has transmitted
58 a copy to the Legislative Auditor.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-12a. Payment of salaries of employees of Higher Education Policy Commission, Council for Community and Technical College Education and institutions of higher education over the twenty-six biweekly pay cycle.

1 Notwithstanding the provisions of section twelve of this
2 article, in the event that an employee of the Higher
3 Education Policy Commission, Council for Community and
4 Technical College Education or of any of the institutions
5 which they govern elects to receive his or her salary over
6 the complete twenty-six biweekly pay cycle, warrants may
7 be drawn for the biweekly pay periods covering the months
8 of July and August following the fiscal year during which
9 such salary was earned: *Provided*, That such warrants have
10 been encumbered by the commission, council or institution
11 and the Budget Office prior to June 30 of said fiscal year.

§12-3-13b. Voluntary deductions by State Auditor from salaries of employees to pay association dues or fees and to pay supplemental health and life insurance premiums.

1 Any officer or employee of the State of West Virginia
2 may authorize that a voluntary deduction from his or her net
3 wages be made for the payment of membership dues or fees
4 to an employee association. Voluntary deductions may also
5 be authorized by an officer or employee for any
6 supplemental health and life insurance premium, subject to
7 prior approval by the Auditor. Such deductions shall be
8 authorized on a form provided by the Auditor of the State of
9 West Virginia and shall state: (a) The identity of the
10 employee; (b) the amount and frequency of such
11 deductions; and (c) the identity and address of the
12 association or insurance company to which such dues shall
13 be paid. Upon execution of such authorization and its
14 receipt by the office of the Auditor, such deductions shall be
15 made in the manner specified on the form and remitted to
16 the designated association or insurance company on the
17 tenth day of each month: *Provided*, That voluntary other
18 deductions, as approved and authorized by the Auditor, may
19 be made in accordance with rules proposed by the Auditor
20 pursuant to article three, chapter twenty-nine-a of this code:
21 *Provided, however*, That deductions shall be made at least
22 twice monthly. Deduction authorizations may be revoked at
23 any time thirty days prior to the date on which the deduction
24 is regularly made and on a form to be provided by the office
25 of the State Auditor: *Provided further*, That nothing in this
26 section shall interfere with or remove any existing
27 arrangement for dues deduction between an employer or
28 any political subdivision of the state and its employees.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

1 (a) The superintendent shall establish within the West
 2 Virginia State Police a system to provide for: The promotion
 3 of members to the supervisory ranks of sergeant, first
 4 sergeant, second lieutenant and first lieutenant; the
 5 classification of nonsupervisory members within the field
 6 operations force to the ranks of trooper, senior trooper,
 7 trooper first class or corporal; the classification of members
 8 assigned to the forensic laboratory as criminalist I-VIII; and
 9 the temporary reclassification of members assigned to
 10 administrative duties as administrative support specialist
 11 I-VIII.

12 (b) The superintendent may propose legislative rules for
 13 promulgation in accordance with article three, chapter
 14 twenty-nine-a of this code for the purpose of ensuring
 15 consistency, predictability and independent review of any
 16 system developed under the provisions of this section.

17 (c) The superintendent shall provide to each member a
 18 written manual governing any system established under the
 19 provisions of this section and specific procedures shall be
 20 identified for the evaluation and testing of members for
 21 promotion or reclassification and the subsequent placement
 22 of any members on a promotional eligibility or
 23 reclassification recommendation list.

24 (d) Beginning on July 1, 2011, members shall receive
 25 annual salaries payable at least twice per month as
 26 follows:

27	ANNUAL SALARY SCHEDULE (BASE PAY)	
28	SUPERVISORY AND NONSUPERVISORY RANKS	
29	Cadet During Training.....	\$ 33,994
30	Cadet Trooper After Training.....	\$ 41,258
31	Trooper Second Year.....	42,266
32	Trooper Third Year.....	42,649

33	Senior Trooper.....	43,048
34	Trooper First Class	43,654
35	Corporal.....	44,260
36	Sergeant	48,561
37	First Sergeant.....	50,712
38	Second Lieutenant	52,862
39	First Lieutenant.....	55,013
40	Captain.....	57,164
41	Major	59,314
42	Lieutenant Colonel	61,465
43	ANNUAL SALARY SCHEDULE (BASE PAY)	
44	ADMINISTRATION SUPPORT SPECIALIST	
45	CLASSIFICATION	
46	I	42,266
47	II	43,048
48	III	43,654
49	IV	44,260
50	V	48,561
51	VI	50,712
52	VII	52,862
53	VIII	55,013
54	ANNUAL SALARY SCHEDULE (BASE PAY)	
55	CRIMINALIST CLASSIFICATION	

56 I42,266

57 II43,048

58 III43,654

59 IV44,260

60 V48,561

61 VI50,712

62 VII52,862

63 VIII55,013

64 Each member of the West Virginia State Police whose
 65 salary is fixed and specified in this annual salary schedule
 66 is entitled to the length of service increases set forth in
 67 subsection (e) of this section and supplemental pay as
 68 provided in subsection (g) of this section.

69 (e) Each member of the West Virginia State Police
 70 whose salary is fixed and specified pursuant to this section
 71 shall receive, and is entitled to, an increase in salary over
 72 that set forth in subsection (d) of this section for grade in
 73 rank, based on length of service, including that service
 74 served before and after the effective date of this section with
 75 the West Virginia State Police as follows: Beginning on
 76 January 1, 2015 and continuing thereafter, at the end of two
 77 years of service with the West Virginia State Police, the
 78 member shall receive a salary increase of \$500 to be
 79 effective during his or her next year of service and a like
 80 increase at yearly intervals thereafter, with the increases to
 81 be cumulative.

82 (f) In applying the salary schedules set forth in this
 83 section where salary increases are provided for length of
 84 service, members of the West Virginia State Police in
 85 service at the time the schedules become effective shall be
 86 given credit for prior service and shall be paid the salaries

87 the same length of service entitles them to receive under the
88 provisions of this section.

89 (g) The Legislature finds and declares that because of
90 the unique duties of members of the West Virginia State
91 Police, it is not appropriate to apply the provisions of state
92 wage and hour laws to them. Accordingly, members of the
93 West Virginia State Police are excluded from the provisions
94 of state wage and hour law. This express exclusion shall not
95 be construed as any indication that the members were or
96 were not covered by the wage and hour law prior to this
97 exclusion.

98 In lieu of any overtime pay they might otherwise have
99 received under the wage and hour law, and in addition to
100 their salaries and increases for length of service, members
101 who have completed basic training and who are exempt
102 from federal Fair Labor Standards Act guidelines may
103 receive supplemental pay as provided in this section.

104 The authority of the superintendent to propose a
105 legislative rule or amendment thereto for promulgation in
106 accordance with article three, chapter twenty-nine-a of this
107 code to establish the number of hours which constitute the
108 standard pay period for the members of the West Virginia
109 State Police is hereby continued. The rule shall further
110 establish, on a graduated hourly basis, the criteria for receipt
111 of a portion or all of supplemental payment when hours are
112 worked in excess of the standard pay period. The
113 superintendent shall certify at least twice per month to the
114 West Virginia State Police's payroll officer the names of
115 those members who have worked in excess of the standard
116 pay period and the amount of their entitlement to
117 supplemental payment. The supplemental payment may not
118 exceed \$200 per pay period. The superintendent and civilian
119 employees of the West Virginia State Police are not eligible
120 for any supplemental payments.

121 (h) Each member of the West Virginia State Police,
122 except the superintendent and civilian employees, shall

123 execute, before entering upon the discharge of his or her
124 duties, a bond with security in the sum of \$5,000 payable to
125 the State of West Virginia, conditioned upon the faithful
126 performance of his or her duties, and the bond shall be
127 approved as to form by the Attorney General and as to
128 sufficiency by the Governor.

129 (i) In consideration for compensation paid by the West
130 Virginia State Police to its members during those members'
131 participation in the West Virginia State Police Cadet
132 Training Program pursuant to section eight, article
133 twenty-nine, chapter thirty of this code, the West Virginia
134 State Police may require of its members by written
135 agreement entered into with each of them in advance of such
136 participation in the program that, if a member should
137 voluntarily discontinue employment any time within one
138 year immediately following completion of the training
139 program, he or she shall be obligated to pay to the West
140 Virginia State Police a pro rata portion of such
141 compensation equal to that part of such year which the
142 member has chosen not to remain in the employ of the West
143 Virginia State Police.

144 (j) Any member of the West Virginia State Police who
145 is called to perform active duty training or inactive duty
146 training in the National Guard or any reserve component of
147 the armed forces of the United States annually shall be
148 granted, upon request, leave time not to exceed thirty
149 calendar days for the purpose of performing the active duty
150 training or inactive duty training and the time granted may
151 not be deducted from any leave accumulated as a member
152 of the West Virginia State Police.

CHAPTER 18. EDUCATION.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence; evaluation.

1 There shall be appointed by the state board a State
2 Superintendent of Schools who serves at the will and
3 pleasure of the state board. He or she shall be a person of
4 good moral character, shall be able to perform the duties
5 listed in this article and possess such other educational,
6 administrative, experiential and other qualifications as
7 determined by the State Board of Education. He or she shall
8 hold at least a master's degree from a regionally accredited
9 institution of higher education or equivalent degree as
10 determined by the state board. He or she shall receive an
11 annual salary set by the state board, to be paid at least twice
12 per month. The state superintendent also shall receive
13 necessary traveling expenses incident to the performance of
14 his or her duties to be paid out of the General School Fund
15 upon warrants of the State Auditor. The state superintendent
16 shall have his or her office at the state Capitol. The state
17 board shall report to the Legislative Oversight Commission
18 on Education Accountability upon request concerning its
19 progress during any hiring process for a state
20 superintendent.

21 The state board annually shall evaluate the performance
22 of the state superintendent and publicly announce the results
23 of the evaluation.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-5. Salary, expenses, oath and bond of director.

1 The director shall receive an annual salary as provided
2 in section two-a, article seven, chapter six of this code,
3 payable at least twice per month and shall be allowed and
4 paid necessary expenses incident to the performance of his
5 or her official duties. Prior to the assumption of the duties
6 of his or her office, he or she shall take and subscribe to the
7 oath required of public officers by the Constitution of West
8 Virginia and shall execute a bond, with surety approved by
9 the Governor, in the penal sum of \$10,000, which executed

10 oath and bond shall be filed in the office of the Secretary of
11 State. Premiums on the bond shall be paid from division
12 funds.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

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

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

7 (b) Under the supervision of the director, the chief
8 natural resources police officer shall organize, develop and
9 maintain law-enforcement practices, means and methods
10 geared, timed and adjustable to seasonal, emergency and
11 other needs and requirements of the division's
12 comprehensive natural resources program. All division
13 personnel detailed and assigned to law-enforcement duties
14 and services under this section shall be known and
15 designated as natural resources police officers and are under
16 the immediate supervision and direction of the chief natural
17 resources police officer except as otherwise provided. All
18 natural resources police officers shall be trained, equipped
19 and conditioned for duty and services wherever and
20 whenever required by division law-enforcement needs. The
21 chief natural resources police officer may also assign
22 natural resources police officers to perform
23 law-enforcement duties on any trail, grounds, appurtenant
24 facility or other areas accessible to the public within the
25 Hatfield-McCoy Recreation Area, under agreement that the
26 Hatfield-McCoy Regional Recreation Authority, created
27 pursuant to article fourteen of this chapter, shall reimburse
28 the division for salaries paid to the officers and shall either

29 pay directly or reimburse the division for all other expenses
30 of the officers in accordance with actual or estimated costs
31 determined by the chief natural resources police officer.

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

48 (d) The chief natural resources police officer, acting
49 under supervision of the director, is also authorized to select
50 and appoint as special natural resources police officers any
51 full-time civil service employee who is assigned to, and has
52 direct responsibility for management of, an area owned,
53 leased or under the control of the division and who has
54 satisfactorily completed a course of training established and
55 administered by the chief natural resources police officer,
56 when the action is considered necessary because of
57 law-enforcement needs. The powers and duties of a special
58 natural resources police officer, appointed under this
59 provision, is the same within his or her assigned area as
60 prescribed for full-time salaried natural resources police
61 officers. The jurisdiction of the person appointed as a
62 special natural resources police officer, under this provision,
63 shall be limited to the division area or areas to which he or
64 she is assigned and directly manages.

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

75 (f) The chief natural resources police officer, with the
76 approval of the director, has the power and authority to
77 revoke any appointment of an emergency natural resources
78 police officer or of a special natural resources police officer
79 at any time.

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

84 (h) The chief natural resources police officer shall
85 designate the area of primary residence of each natural
86 resources police officer, including himself or herself. Since
87 the area of business activity of the division is actually
88 anywhere within the territorial confines of the State of West
89 Virginia, actual expenses incurred shall be paid whenever
90 the duties are performed outside the area of primary
91 assignment and still within the state.

92 (i) Natural resources police officers shall receive, in
93 addition to their base pay salary, a minimum biweekly
94 subsistence allowance for their required telephone service,
95 dry cleaning or required uniforms, and meal expenses while
96 performing their regular duties in their area of primary
97 assignment in the amount of \$60 per biweekly pay. This
98 subsistence allowance does not apply to special or
99 emergency natural resources police officers appointed
100 under this section.

101 (j) After June 30, 2010, all those full-time
102 law-enforcement officers employed by the Division of
103 Natural Resources as conservation officers shall be titled
104 and known as natural resources police officers. Wherever
105 used in this code the term “conservation officer”, or its
106 plural, means “natural resources police officer”, or its
107 plural, respectively.

108 (k) Notwithstanding any provision of this code to the
109 contrary, the provisions of subdivision (6), subsection c,
110 section twelve, article twenty-one, chapter eleven of this
111 code are inapplicable to pensions of natural resources police
112 officers paid through the Public Employees Retirement
113 System.

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

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-4. Water Development Authority; Water Development Board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; Director of Authority; compensation.

1 (a) The Water Development Authority is continued. The
2 authority is a governmental instrumentality of the state and
3 a body corporate. The exercise by the authority of the
4 powers conferred by this article and the carrying out of its
5 purposes and duties are essential governmental functions
6 and for a public purpose.

7 (b) The authority is controlled, managed and operated
8 by a seven-member board known as the Water Development
9 Board. The Governor or designee, the secretary of the
10 Department of Environmental Protection or designee and
11 the Commissioner of the Bureau for Public Health or
12 designee are members ex officio of the board. Four
13 members are appointed by the Governor, by and with the
14 advice and consent of the Senate, for six-year terms, which

15 are staggered in accordance with the initial appointments
16 under prior enactment of this section. In the event of a
17 vacancy, appointments are filled in the same manner as the
18 original appointment for the remainder of the unexpired
19 term. A member continues to serve until the appointment
20 and qualification of the successor. More than two appointed
21 board members may not at any one time belong to the same
22 political party. Appointed board members may be
23 reappointed to serve additional terms.

24 (c) All members of the board shall be citizens of the
25 state. Each appointed member of the board, before entering
26 upon his or her duties, shall comply with the requirements
27 of article one, chapter six of this code and give bond in the
28 sum of \$25,000 in the manner provided in article two of said
29 chapter. The Governor may remove any board member for
30 cause as provided in article six of said chapter.

31 (d) The Governor or designee serves as chair. The board
32 annually elects one of its appointed members as vice chair
33 and appoints a secretary-treasurer, who need not be a
34 member of the board. Four members of the board is a
35 quorum and the affirmative vote of four members is
36 necessary for any action taken by vote of the board. A
37 vacancy in the membership of the board does not impair the
38 rights of a quorum by such vote to exercise all the rights and
39 perform all the duties of the board and the authority. The
40 person appointed as secretary-treasurer, including a board
41 member if so appointed, shall give bond in the sum of
42 \$50,000 in the manner provided in article two, chapter six
43 of this code.

44 (e) The Governor or designee, the Secretary of the
45 Department of Environmental Protection and the
46 Commissioner of the Bureau for Public Health do not
47 receive compensation for serving as board members. Each
48 appointed member receives an annual salary of \$12,000,
49 payable at least twice per month. Each of the seven board
50 members is reimbursed for all reasonable and necessary
51 expenses actually incurred in the performance of duties as a

52 member of the board in a manner consistent with guidelines
53 of the Travel Management Office of the Department of
54 Administration. All expenses incurred by the board are
55 payable solely from funds of the authority or from funds
56 appropriated for that purpose by the Legislature. Liability or
57 obligation is not incurred by the authority beyond the extent
58 to which moneys are available from funds of the authority
59 or from such appropriations.

60 (f) There is a director of the authority appointed by the
61 Governor, with the advice and consent of the Senate, who
62 serves at the Governor's will and pleasure. The director is
63 responsible for managing and administering the daily
64 functions of the authority and for performing other
65 functions necessary to the effective operation of the
66 authority. The compensation of the director is fixed
67 annually by the board.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation; quorum.

1 (a) The Public Service Commission of West Virginia is
2 continued and directed as provided by this chapter, chapter
3 twenty-four-a, chapter twenty-four-b and chapter
4 twenty-four-d of this code. The Public Service Commission
5 may sue and be sued by that name.

6 (b) The Public Service Commission shall consist of
7 three members who shall be appointed by the Governor,
8 with the advice and consent of the Senate. The
9 commissioners shall be citizens and residents of this state
10 and at least one of them shall be duly licensed to practice
11 law in West Virginia, with not less than ten years' actual
12 work experience in the legal profession as a member of a
13 State Bar.

14 (c) No more than two of the commissioners shall be
15 members of the same political party.

16 (d) Each commissioner shall, before entering upon the
17 duties of his or her office, take and subscribe to the oath
18 provided by section five, article IV of the Constitution of
19 West Virginia. The oath shall be filed in the office of the
20 Secretary of State.

21 (e) The Governor shall designate one of the
22 commissioners to serve as chairman at the Governor's will
23 and pleasure. The chairman shall be the chief administrative
24 officer of the commission. The Governor may remove any
25 commissioner only for incompetency, neglect of duty, gross
26 immorality, malfeasance in office or violation of
27 subsections (g) and (h) of this section.

28 (f) Upon expiration of the terms, appointments are for
29 terms of six years, except that an appointment to fill a
30 vacancy is for the unexpired term only.

31 (g) No person while in the employ of, or holding any
32 official relation to, any public utility subject to the
33 provisions of this chapter or holding any stocks or bonds of
34 a public utility subject to the provisions of this chapter or
35 who is pecuniarily interested in a public utility subject to the
36 provisions of this chapter may serve as a member of the
37 commission or as an employee of the commission.

38 (h) Nor may any commissioner be a candidate for or
39 hold public office or be a member of any political committee
40 while acting as a commissioner; nor may any commissioner
41 or employee of the commission receive any pass, free
42 transportation or other thing of value, either directly or
43 indirectly, from any public utility or motor carrier subject to
44 the provisions of this chapter. In case any of the
45 commissioners becomes a candidate for any public office or
46 a member of any political committee, the Governor shall
47 remove him or her from office and shall appoint a new
48 commissioner to fill the vacancy created.

49 (i) The annual salary of each commissioner provided in
50 section two-a, article seven, chapter six of this code shall be
51 paid at least twice per month from the special funds in the
52 percentages that follow:

53 (1) From the Public Service Commission Fund collected
54 under the provisions of section six, article three of this
55 chapter, eighty percent;

56 (2) From the Public Service Commission Motor Carrier
57 Fund collected under the provisions of section six, article
58 six, chapter twenty-four-a of this code, seventeen percent;
59 and

60 (3) From the Public Service Commission Gas Pipeline
61 Safety Fund collected under the provisions of section three,
62 article five, chapter twenty-four-b of this code, three
63 percent.

64 (j) In addition to the salary provided for all
65 commissioners in section two-a, article seven, chapter six of
66 this code, the chairman of the commission shall receive
67 \$5,000 per annum to be paid at least twice per month from
68 the Public Service Commission Fund collected under the
69 provisions of section six, article three of this chapter.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 6. DUTIES AND PRIVILEGES OF MOTOR CARRIERS SUBJECT TO REGULATION OF THE COMMISSION.

§24A-6-6. Special annual assessment against motor carriers for expenses of administering chapter; Public Service Commission Motor Carrier Fund.

1 In addition to the license fees, registration fees, or any
2 other taxes required by law to be collected from motor
3 carriers subject to this chapter, each such motor carrier shall
4 be subject to, and shall pay to the Public Service
5 Commission, a special annual assessment for the purpose of

6 paying the salaries, compensation, costs and expenses of
 7 administering and enforcing this chapter. All proceeds or
 8 funds derived from such assessment shall be paid into the
 9 State Treasury and credited to a special fund, designated
 10 Public Service Commission Motor Carrier Fund, to be
 11 appropriated as provided by law for the purposes herein
 12 stated. Each member of the commission shall receive a
 13 salary in the amount set forth in section three, article one,
 14 chapter twenty-four of this code as compensation for the
 15 administration of this chapter in addition to all other salary
 16 or compensation otherwise provided by law, to be paid from
 17 said fund at least twice per month. The special assessment
 18 against each motor carrier shall be apportioned upon the
 19 number and capacity of motor vehicles used by said carrier,
 20 computed as hereinafter provided.

21 (a) For each uniform identification card\$ 3.00

22 (b) Upon each power unit of such carriers of property,
 23 in accordance with its capacity as rated by its manufacturer,
 24 in addition to amount of subdivision (a):

25 of one ton or less capacity.\$ 9.00

26 of over one to one and one-half tons capacity13.50

27 of over one and one-half tons to two

28 tons capacity18.00

29 of over two tons to three tons capacity22.50

30 of over three tons to four tons capacity27.00

31 of over four tons to five tons capacity31.50

32 of over five tons to six tons capacity36.00

33 of over six tons to seven tons capacity40.50

34 of over seven tons to eight tons capacity45.00

35 of over eight tons to nine tons capacity49.50

36 of over nine tons to ten tons capacity54.00
 37 of over ten tons capacity, \$54.00 plus \$4.50 for each
 38 additional ton of capacity in excess of ten tons.

39 (c) Upon each trailer and semitrailer of such carriers of
 40 property, in accordance with its capacity as rated by its
 41 manufacturer, in an amount of two thirds of the amount
 42 provided for vehicles of its capacity in subdivision (b) of
 43 this section.

44 (d) Upon each power unit of such carriers of passengers,
 45 in accordance with the seating capacity thereof, in addition
 46 to amount in subdivision (a):

47 of ten passengers or less\$13.50

48 of eleven to twenty passengers, inclusive22.50

49 of twenty-one to thirty passengers, inclusive31.50

50 of thirty-one to forty passengers, inclusive45.00

51 of over forty passengers54.00

52 (e) The annual assessment of each motor carrier shall be
 53 paid on or before July 1 of each year. Additional
 54 assessments shall be collected upon the placing in use of any
 55 additional motor vehicle: *Provided*, That such additional
 56 assessments shall be subject to a reduction in the amounts
 57 shown in subdivisions (b), (c) and (d) of this section
 58 corresponding to the unexpired quarterly periods of the
 59 fiscal year, but shall not in any event be less than one fourth
 60 of such amount plus the sum of \$3 provided in subdivision
 61 (a) of this section.

62 (f) Upon payment by any motor carrier of the
 63 assessment provided for, the Public Service Commission
 64 shall advise the Division of Motor Vehicles by notice in
 65 writing that such assessment has been paid, whereupon the

66 Division of Motor Vehicles may issue motor vehicle license
67 for the vehicles described in said notice.

68 (g) Prior to the beginning of any fiscal year the Public
69 Service Commission, after taking into consideration any
70 unexpended balance in the Motor Carrier Fund, the probable
71 receipts to be received in the ensuing fiscal year, and the
72 probable costs of administering and enforcing this chapter
73 for the ensuing fiscal year, may fix the assessments
74 provided for in this section for the ensuing fiscal year in
75 amounts which, in the commission's judgment, will produce
76 sufficient revenue to administer and enforce this chapter for
77 said fiscal year: *Provided*, That in no event shall such
78 assessments exceed the amounts set up in this section.

CHAPTER 24B. GAS PIPELINE SAFETY.

ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

§24B-5-2. Compensation to commissioners.

1 Each member of the commission shall receive a salary
2 in the amount set forth in section three, article one, chapter
3 twenty-four of this code as compensation for the
4 administration of this chapter in addition to all other salary
5 or compensation otherwise provided for by law, to be paid
6 at least twice per month from the Public Service
7 Commission Pipeline Safety Fund.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-19. Reports by Commissioner of Corrections and chief officers of institutions to Auditor.

1 The Commissioner of Corrections shall, from time to
2 time, as may be necessary, make a report to the Auditor,
3 which shall state the name of each person employed at any
4 of the institutions named in section three of this article, his
5 or her official designation and biweekly rate of

6 compensation, and out of what funds or appropriation the
7 same is payable. The chief officer of any such institution, or
8 other person who may have been appointed for the purpose
9 by the Commissioner of Corrections, shall make out and
10 certify to the Auditor at the end of each month a list of
11 persons to whom any payments may be due, stating for what
12 purpose due, the amount due each person, and the fund or
13 appropriation from which payable; one copy whereof shall
14 be filed in the office of the institution where made, and one
15 in the office of the Commissioner of Corrections. If the
16 Auditor finds such list correct and in accordance with the
17 reports made to him or her by the Commissioner of
18 Corrections, he or she may pay to the persons entitled
19 thereto the amounts so certified as due each.

CHAPTER 31. CORPORATIONS.

ARTICLE 19. WEST VIRGINIA COMMUNITY INFRASTRUCTURE AUTHORITY.

§31-19-4. West Virginia Community Infrastructure Authority created; West Virginia Community Infrastructure Board created; organization of Authority and Board; appointment of board members; their term of office, compensation and expenses; duties and responsibilities of director and staff of authority.

1 (a) There is hereby created the West Virginia
2 Community Infrastructure Authority. The authority is a
3 governmental instrumentality of the state and a body
4 corporate. The exercise by the authority of the powers
5 conferred by this article and the carrying out of its purposes
6 and duties are essential governmental functions and for a
7 public purpose.

8 The authority shall be controlled, managed and operated
9 by the five-member board known as the West Virginia
10 Community Infrastructure Board, which is hereby created.
11 The Director of the West Virginia Development Office, or
12 her or his designee, the Director of the Division of

13 Environmental Protection, or her or his designee, and the
14 Commissioner of the Division of Highways, or her or his
15 designee, are members ex officio of the board. The
16 Executive Director of the West Virginia Development
17 Office, or her or his designee, is the ex officio chair. Two
18 members of the board shall be representative of the general
19 public, one of which shall have had experience or a
20 demonstrated interest in local government. The two
21 members who are not ex officio members of the board shall
22 be appointed by the Governor, by and with the advice and
23 consent of the Senate, for initial terms of three and six years,
24 respectively. The successor of each such appointed member
25 shall be appointed for a term of six years in the same manner
26 as the original appointments were made, except that any
27 person appointed to fill a vacancy occurring prior to the
28 expiration of the term for which her or his predecessor was
29 appointed shall be appointed only for the remainder of such
30 term. Each board member shall serve until the appointment
31 and qualification of her or his successor. The two appointed
32 board members shall not at any one time belong to the same
33 political party. Appointed board members may be
34 reappointed to serve additional terms, not to exceed two
35 consecutive full terms. All members of the board shall be
36 citizens of the state. Each appointed member of the board,
37 before entering upon her or his duties, shall comply with the
38 requirements of article one, chapter six of this code and give
39 bond in the sum of \$20,000 in the manner provided in article
40 two, chapter six of this code. The Governor may remove any
41 board member for cause as provided in article six, chapter
42 six of this code.

43 Annually the board shall elect one of its appointed
44 members as chair, and shall appoint a secretary-treasurer,
45 who need not be a member of the board. Three members of
46 the board is a quorum and the affirmative vote of three
47 members is necessary for any action taken by vote of the
48 board. No vacancy in the membership of the board impairs
49 the rights of a quorum by such vote to exercise all the rights
50 and perform all the duties of the board and the authority.

51 The person appointed as secretary-treasurer, including a
52 board member if she or he is so appointed, shall give bond
53 in the sum of \$50,000 in the manner provided in article two,
54 chapter six of this code.

55 The Executive Director of the West Virginia
56 Development Office or her or his designee, the Director of
57 the Division of Environmental Protection or her or his
58 designee, and the Commissioner of the Division of
59 Highways or her or his designee, shall not receive any
60 compensation for serving as board members. Each of the
61 two appointed board members of the board shall receive an
62 annual salary of \$5,000, payable at least twice per month.
63 Each of the five board members shall be reimbursed for all
64 reasonable and necessary expenses actually incurred in the
65 performance of her or his duties as a member of such board.
66 All such expenses incurred by the board are payable solely
67 from funds of the authority or from funds appropriated for
68 such purpose by the Legislature and no liability or
69 obligation shall be incurred by the authority beyond the
70 extent for which moneys are available from funds of the
71 authority or from such appropriations.

72 (b) There shall be a director of the authority appointed
73 by the board who shall supervise and manage the
74 Community Infrastructure Authority, and the West Virginia
75 Development Office shall serve as the staff for the authority.
76 Except as otherwise provided in this section, the duties and
77 responsibilities of the director and of the staff shall be
78 established by the authority. At the board's discretion, it
79 may provide for the position of general counsel, who shall
80 be an employee of the authority, or for the appointment of
81 special counsel. As the board deems necessary and
82 desirable, it may at any time elect to change its decision on
83 the employment or appointment of a counsel.

84 (c) The director, or her or his designee, may employ or
85 appoint any staff members in addition to those provided by
86 the West Virginia Development Office, including general or
87 special counsel if the position is established by the board.

88 The number of employees needed, the positions to be filled
89 and their salaries or wages shall be determined by the
90 director with the approval of the board, unless the board
91 elects to not require its approval. At any time the board may
92 elect to change its decision concerning approval of
93 additional staff hiring and salaries.

94 (d) The board shall meet at least quarterly, and more
95 often as it deems necessary. The director and any other staff
96 member or members as the director deems expedient shall
97 attend board meetings.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-2. Compensation and expenses of commissioner and employees; location of office.

1 The commissioner shall receive an annual salary as
2 provided in section two-a, article seven, chapter six of this
3 code and actual expenses incurred in the performance of
4 official business, which compensation shall be in full for all
5 services. The office of the commissioner shall be
6 maintained in the Capitol or other suitable place in
7 Charleston. The commissioner may employ such persons
8 and incur such expenses as may be necessary in the
9 discharge of his or her duties and shall fix the compensation
10 of such employees, but such compensation shall not exceed
11 the appropriation therefor. The commissioner may
12 reimburse employees for reasonable expenses incurred for
13 job-related training and educational seminars and courses.
14 All compensation for salaries and expenses of the
15 commissioner and his or her employees shall be paid at least
16 twice per month out of the State Treasury by requisition
17 upon the Auditor, properly certified by the commissioner.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

1 (a) In each county having three or more magistrates the
2 judge of the circuit court or the chief judge of the circuit
3 court, if there is more than one judge of the circuit court,
4 shall appoint a magistrate court clerk. In all other counties
5 the judge may appoint a magistrate court clerk or may by
6 rule require the duties of the magistrate court clerk to be
7 performed by the clerk of the circuit court, in which event
8 the circuit court clerk is entitled to additional compensation
9 in the amount of \$2,500 per year. The magistrate court clerk
10 serves at the will and pleasure of the circuit judge.

11 (b) Magistrate court clerks shall be paid at least twice
12 per month by the state. Magistrate court clerks serving
13 magistrates who serve less than seven thousand three
14 hundred in population shall be paid up to \$39,552 per year
15 and magistrate court clerks serving magistrates who serve
16 seven thousand three hundred or more in population shall be
17 paid up to \$44,712 per year: *Provided*, That after the
18 effective date of this section, any general salary increase
19 granted to all state employees, whose salaries are not set by
20 statute, expressed as a percentage increase or an
21 across-the-board increase, may also be granted to magistrate
22 court clerks. For the purpose of determining the population
23 served by each magistrate, the number of magistrates
24 authorized for each county shall be divided into the
25 population of each county. The salary of the magistrate
26 court clerk shall be established by the judge of the circuit
27 court, or the chief judge of the circuit court if there is more
28 than one judge of the circuit court, within the limits set forth
29 in this section.

30 (c) In addition to other duties that may be imposed by
31 the provisions of this chapter or by the rules of the Supreme
32 Court of Appeals or the judge of the circuit court or the chief
33 judge of the circuit court if there is more than one judge of
34 the circuit court, it is the duty of the magistrate court clerk
35 to establish and maintain appropriate dockets and records in

36 a centralized system for the magistrate court, to assist in the
37 preparation of the reports required of the court and to carry
38 out on behalf of the magistrates or chief magistrate if a chief
39 magistrate is appointed, the administrative duties of the
40 court.

41 (d) The magistrate court clerk, or if there is no
42 magistrate court clerk in the county, the clerk of the circuit
43 court, may issue all manner of civil process and require the
44 enforcement of subpoenas and subpoenas duces tecum in
45 magistrate court.

46 (e) Notwithstanding any provision of this code to the
47 contrary, the amendments made to this section during the
48 2013 first extraordinary session are effective upon passage
49 and are retroactive to January 1, 2013.

50 (f) Beginning January 1, 2017, the annual salary of all
51 magistrate court clerks is \$44,720. After the effective date
52 of this section, a general salary increase granted to state
53 employees, whose salaries are not set by statute, expressed
54 as a percentage increase or an across-the-board increase,
55 may also be granted to magistrate court clerks.

§50-1-9. Magistrate assistants; salary; duties.

1 (a) In each county there shall be one magistrate assistant
2 for each magistrate. Each magistrate assistant shall be
3 appointed by the magistrate under whose authority and
4 supervision and at whose will and pleasure he or she shall
5 serve. The assistant shall not be a member of the immediate
6 family of any magistrate and shall not have been convicted
7 of a felony or any misdemeanor involving moral turpitude
8 and shall reside in the State of West Virginia. For the
9 purpose of this section, “immediate family” means the
10 relationships of mother, father, sister, brother, child or
11 spouse.

12 (b) A magistrate assistant shall have the duties, clerical
13 or otherwise, assigned by the magistrate and prescribed by
14 the rules of the Supreme Court of Appeals or the judge of

15 the circuit court or the chief judge of the circuit court if there
16 is more than one judge of the circuit court. In addition to
17 these duties, magistrate assistants shall perform and are
18 accountable to the magistrate court clerks with respect to the
19 following duties:

20 (1) The preparation of summons in civil actions;

21 (2) The assignment of civil actions to the various
22 magistrates;

23 (3) The collection of all costs, fees, fines, forfeitures and
24 penalties which are payable to the court;

25 (4) The submission of moneys, along with an
26 accounting of the moneys, to appropriate authorities as
27 provided by law;

28 (5) The daily disposition of closed files which are to be
29 located in the magistrate clerk's office;

30 (6) All duties related to the gathering of information and
31 documents necessary for the preparation of administrative
32 reports and documents required by the rules of the Supreme
33 Court of Appeals or the judge of the circuit court or the chief
34 judge of the circuit court if there is more than one judge of
35 the circuit court;

36 (7) All duties relating to the notification, certification
37 and payment of jurors serving pursuant to the terms of this
38 chapter; and

39 (8) All other duties or responsibilities whereby the
40 magistrate assistant is accountable to the magistrate court
41 clerk as determined by the magistrate.

42 (c) Magistrate assistants shall be paid at least twice per
43 month by the state. Magistrate assistants serving magistrates
44 who serve less than seven thousand three hundred in
45 population shall be paid up to \$36,048 per year and
46 magistrate assistants serving magistrates who serve seven

47 thousand three hundred or more in population shall be paid
48 up to \$39,348 per year: *Provided*, That after the effective
49 date of this section, any general salary increase granted to
50 all state employees, whose salaries are not set by statute,
51 expressed as a percentage increase or an across-the-board
52 increase, may also be granted to magistrate assistants. For
53 the purpose of determining the population served by each
54 magistrate, the number of magistrates authorized for each
55 county shall be divided into the population of each county.
56 The salary of the magistrate assistant shall be established by
57 the magistrate within the limits set forth in this section.

58 (d) Notwithstanding any provision of this code to the
59 contrary, the amendments made to this section during the
60 2013 first extraordinary session are effective upon passage
61 and are retroactive to January 1, 2013.

62 (e) Beginning January 1, 2017, the annual salary of all
63 magistrate assistants is \$39,348. After the effective date of
64 this section, a general salary increase granted to state
65 employees, whose salaries are not set by statute, expressed
66 as a percentage increase or an across-the-board increase,
67 may also be granted to magistrate assistants.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-3. Compensation for attending court and taking notes.

1 The official reporter shall receive, for his or her services
2 and expenses in attending the court or judge and in taking
3 the notes provided for in section two of this article, such
4 salary or other compensation as the court or judge, in
5 accordance with the rules of the Supreme Court of Appeals,
6 may allow. If such salary be allowed, it shall be paid at least
7 twice per month, out of the State Treasury. If no such salary
8 be allowed, such other compensation and expenses as may
9 be allowed in civil cases shall be certified by the court or
10 judge to the Auditor and the same shall be paid out of the
11 State Treasury. Such other compensation and expenses in

12 felony and, misdemeanor cases shall be certified to the
13 Auditor and paid out of the State Treasury. The salary or
14 other compensation provided for in this section shall not be
15 deemed to include the making of typewritten transcripts as
16 provided for in section four of this article.

§51-7-5. Salary in lieu of all other compensation.

1 If neither of the methods of compensation provided for
2 in section three of this article be adopted, a salary may be
3 allowed in lieu of all other compensation, which shall be
4 paid at least twice per month, out of the State Treasury, in
5 such proportions as the court or judge may fix in accordance
6 with the rules of the Supreme Court of Appeals. All fees for
7 services rendered by the official reporter in the discharge of
8 his or her duties as such, when he or she is allowed a salary
9 under the provisions of this section, may be collected, and
10 shall, when collected by the sheriff or official reporter, be
11 paid into the State Treasury; and it shall be the duty of such
12 reporter to make out, sign and deliver to the sheriff a fee bill
13 in every case, civil or criminal, giving the style thereof and
14 the amount due, and from whom, which amount may be
15 collected or levied for by the sheriff, and such fee bill shall
16 have the force and effect of an execution when levied. An
17 official reporter compensated under the provisions of this
18 section shall collect the fees mentioned in section four of
19 this article for any transcript of his or her shorthand notes of
20 the testimony or proceedings furnished by him or her to any
21 party, and shall pay the same over to the sheriff of the
22 county in which the services were performed, to be by him
23 or her accounted for and paid into the State Treasury.

**ARTICLE 8. STATE AND COUNTY LAW LIBRARIES;
LAW CLERKS.**

§51-8-2. Librarian; bond; assistants; compensation.

1 The Supreme Court of Appeals, or the judges thereof in
2 vacation, shall appoint a competent librarian to have
3 immediate custody of the West Virginia Law Library under

4 the direction of the court. Such librarian shall give bond in
5 a penalty fixed by the court of not less than two nor more
6 than \$5,000, with surety thereon, to be approved by the
7 court, and conditioned as provided for official bonds. Such
8 bond shall be deposited for safekeeping with the clerk of the
9 court. The librarian shall be an officer of the court and shall
10 hold his or her office and be removable at its pleasure.
11 Vacancies in the office of librarian occurring during
12 vacation of the court may be filled by appointment in
13 writing made by the judges of the court, or any three of
14 them. When, in the opinion of the court, other employees
15 are needed for the proper protection and use of the library,
16 it may employ such assistants as may be necessary for that
17 purpose. The salary of the librarian and assistants shall be
18 fixed by the court and shall be paid at least twice per month.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

1 (a) Each circuit court, subject to the approval of the
2 Supreme Court of Appeals and in accordance with its rules,
3 is authorized to appoint one or more probation officers and
4 clerical assistants.

5 (b) The appointment of probation officers and clerical
6 assistants shall be in writing and entered on the order book
7 of the court by the judge making such appointment and a
8 copy of said order of appointment shall be delivered to the
9 Administrative Director of the Supreme Court of Appeals.
10 The order of appointment shall state the annual salary, fixed
11 by the judge and approved by the Supreme Court of
12 Appeals, to be paid to the probation officer or clerical
13 assistants so appointed.

14 (c) The salary of probation officers and clerical
15 assistants shall be paid at least twice per month, as the
16 Supreme Court of Appeals by rule may direct and they shall
17 be reimbursed for all reasonable and necessary expenses

18 actually incurred in the line of duty in the field. The salary
19 and expenses shall be paid by the state from the judicial
20 accounts thereof. The county commission shall provide
21 adequate office space for the probation officer and his or her
22 assistants to be approved by the appointing court. The
23 equipment and supplies as may be needed by the probation
24 officer and his or her assistants shall be provided by the state
25 and the cost thereof shall be charged against the judicial
26 accounts of the state.

27 (d) No judge may appoint any probation officer,
28 assistant probation officer or clerical assistant who is related
29 to him or her either by consanguinity or affinity.

30 (e) Subject to the approval of the Supreme Court of
31 Appeals and in accordance with its rules, a judge of a circuit
32 court whose circuit comprises more than one county may
33 appoint a probation officer and a clerical assistant in each
34 county of the circuit or may appoint the same persons to
35 serve in these respective positions in two or more counties
36 in the circuit.

37 (f) Nothing contained in this section alters, modifies,
38 affects or supersedes the appointment or tenure of any
39 probation officer, medical assistant or psychiatric assistant
40 appointed by any court under any special act of the
41 Legislature heretofore enacted, and the salary or
42 compensation of those persons shall remain as specified in
43 the most recent amendment of any special act until changed
44 by the court, with approval of the Supreme Court of
45 Appeals, by order entered of record, and any such salary or
46 compensation shall be paid out of the State Treasury.

47 (g) In order to carry out the supervision responsibilities
48 set forth in section twenty-six, article twelve, chapter
49 sixty-two of this code, the Administrative Director of the
50 Supreme Court of Appeals, or his or her designee, in
51 accordance with the court's procedures, is authorized to hire
52 multijudicial-circuit probation officers, to be employed
53 through the court's Division of Probation Services. Such

54 officers may also supervise probationers who are on
55 probation for sexual offences with the approval of the
56 administrative director of the Supreme Court of Appeals or
57 his or her designee.

CHAPTER 184

**(Com. Sub. for H. B. 2006 - By Delegates Shott, Mr.
Speaker, Mr. Armstead, Hanshaw, Sobonya, Atkinson,
Hill, Fleischauer, Pushkin, Lovejoy and Canestraro)**

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §6C-1-6 of the Code of West Virginia, 1931, as amended, relating to increasing the penalties for violating the Whistle-Blower Law; increasing the civil fine; clarifying that the civil fine is a personal liability; removing the authority of the court to suspend a person from public service; authorizing a Court's finding of a violation to be deemed a finding of official misconduct and malfeasance in office; providing that a court finding of a violation may be relied upon as admissible evidence in any subsequent proceeding or petition to remove the person from public office; authorizing a Court's finding of a violation to be relied upon by the public body as a basis to impose discipline upon an employee; and clarifying that a civil action, civil penalty or a court finding under this section is not a condition or prerequisite for a public body to take disciplinary action.

Be it enacted by the Legislature of West Virginia:

That §6C-1-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WHISTLE-BLOWER LAW.**§6C-1-6. Civil penalty; termination from public service.**

1 (a) A person who, as an employer or under color of an
2 employer's authority, violates this article is personally
3 liable for a civil fine of not more than \$5,000. A civil fine
4 which is collected under this section shall be paid to the
5 State Treasurer for deposit into the General Fund.

6 (b) In addition to subsection (a) of this section, and
7 notwithstanding any provision in this code to the
8 contrary, if the court specifically finds that the person,
9 while in the employment of a public body, committed a
10 violation of section three of this article with the intent to
11 discourage the disclosure of information, such finding:
12 (1) shall be deemed a finding of official misconduct and
13 malfeasance in office, and may be relied upon as
14 admissible evidence in any subsequent proceeding or
15 petition to remove the person from public office; and (2)
16 may be relied upon by the public body as a basis to
17 discipline the person, including, but not limited to,
18 termination from employment: *Provided*, That nothing
19 shall be construed as requiring a civil action, civil penalty
20 or a court finding under this section as a condition or
21 prerequisite for a public body to take disciplinary action
22 against the person.

**CHAPTER 185**

**(Com. Sub. for H. B. 2459 - By Delegates Ellington,
Summers, Rohrbach and Hollen)**

[Passed March 30, 2017; in effect from passage.]
[Approved by the Governor on April 10, 2017.]

AN ACT to repeal §16-2D-5f of the Code of West Virginia, 1931,
as amended; to repeal §16-5F-1, §16-5F-2, §16-5F-3, §16-5F-

4, §16-5F-5, §16-5F-6 and §16-5F-7; to repeal §16-29B-6, §16-29B-7, §16-29B-9, §16-29B-10, §16-29B-11, §16-29B-17, §16-29B-18, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25, §16-25B-27 and §16-29B-29; to repeal §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10; to amend and reenact §5F-1-3a of said code; to amend and reenact §6-7-2a of said code; to amend and reenact §9-4C-7 and §9-4C-8 of said code; to amend and reenact §11-27-9 and §11-27-11 of said code; to amend and reenact §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13, §16-2D-15 and §16-2D-16 of said code; to amend and reenact §16-5B-17 of said code; to amend and reenact §16-29B-2, §16-29B-3, §16-29B-5, §16-29B-8, §16-29B-12, §16-29B-26 and §16-29B-28; to amend said code by adding thereto a new section, designated §16-29B-5a; to amend said code by adding thereto a new section, designated §16-29B-30; to amend said code by adding thereto a new section, designated §16-29G-1a; to amend and reenact §16-29G-4 of said code; to amend and reenact §21-5F-4 of said code; to amend and reenact §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-5, §33-4A-6 and §33-4A-7 of said code; and to amend and reenact §33-16D-16 of said code, all relating to regulation of health care; repealing redundant code section relative to neonatal abstinence facilities; repealing health care facility financial disclosure; repealing uniform system of financial reporting; repealing information gathering and coordination advisory group; updating the certificate of need process; placing certificate of need under Secretary of Department of Health and Human Resources; defining terms; adding exemptions to certificate of need; clarifying exemptions; modifying computed technology exemption from certificate of need; clarifying skilled nursing facility exemption for counties with no skilled nursing facility; allowing skilled nursing facility bed transfers; requiring skilled nursing facility beds retain identical certification status; clarifying appeals process; removing autonomy of

Health Care Authority; placing Health Care Authority under direct supervision of Secretary of the Department of Health and Human Resources; repealing unnecessary code sections made unnecessary with transfer to Department of Health and Human Resources; eliminating powers related to insurance policies and health organizations; modifying health care provider tax relative to rate review; eliminating public disclosure; eliminating granting authority; eliminating unnecessary penalties; eliminating unnecessary severability section; eliminating three full time board members; replacing existing board with a five member board; appointment of board members; setting out qualifications of board members; setting out terms of offices, filling of vacancies and oath for board members; providing for payment of board member expenses; providing for appointment of a chairman; setting out meeting requirements; creating the position of Executive Director; setting out power and duties of the Executive Director; setting compensation for the Executive Director; eliminating certain powers of the Health Care Authority; eliminating hospital and health care facility assessments; updating authority power relative to cooperative agreements; providing for transfer of necessary duties of Health Care Authority to Department of Health and Human Resources; requiring a transition plan; setting forth necessary elements of transition plan; allowing transfer of West Virginia Health Information Network to private entity; granting access to West Virginia Health Information Network to Secretary of Department of Health and Human Resources; providing for transfer of encumbered amounts of West Virginia Health Information Network to private entity upon transfer date; providing for administrative penalties for nurses overtime be paid into the general revenue fund; eliminating discretionary spending of Health Care Authority for amounts from penalties for violation of the nurse overtime act; substituting executive director of Health Care Authority or Secretary of Department of Health and Human Resources for chair of Health Care Authority in various code sections; transferring authority of

Health Care Authority regarding uninsured small group health benefit plans to the Insurance Commission; eliminating archaic revolving loan and grant fund; making conforming amendments; and setting effective dates.

Be it enacted by the Legislature of West Virginia:

That §16-2D-5f of the Code of West Virginia, 1931, as amended, be repealed; that §16-5F-1, §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5, §16-5F-6 and §16-5F-7 be repealed; that §16-29B-6, §16-29B-7, §16-29B-9, §16-29B-10, §16-29B-11, §16-29B-17, §16-29B-18, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25, §16-25B-27 and §16-29B-29 be repealed; that §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10 be repealed; that §5F-1-3a of said code be amended and reenacted; that §6-7-2a of said code be amended and reenacted; that §9-4C-7 and §9-4C-8 of said code be amended and reenacted; that §11-27-9 and §11-27-11 of said code be amended and reenacted; that §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13, §16-2D-15 and §16-2D-16 of said code be amended and reenacted; that §16-5B-17 of said code be amended and reenacted; that §16-29B-2, §16-29B-3, §16-29B-5, §16-29B-8, §16-29B-12, §16-29B-26 and §16-29B-28 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §16-29B-5a; that said code be amended by adding thereto a new section, designated §16-29B-30; that said code be amended by adding thereto a new section, designated §16-29G-1a; that §16-29G-4 of said code be amended and reenacted; that §21-5F-4 of said code be amended and reenacted; that §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-5, §33-4A-6, and §33-4A-7 of said code be amended and reenacted; and that §33-16D-16 of said code be amended and reenacted, all to read as follows:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3a. Executive compensation commission.

1 There is hereby created an executive compensation
2 commission composed of three members, one of whom
3 shall be the secretary of administration, one of whom shall
4 be appointed by the Governor from the names of two or
5 more nominees submitted by the President of the Senate,
6 and one of whom shall be appointed by the Governor from
7 the names of two or more nominees submitted by the
8 Speaker of the House of Delegates. The names of such
9 nominees shall be submitted to the Governor by not later
10 than June 1, 2000, and the appointment of such members
11 shall be made by the Governor by not later than July 1, 2000.
12 The members appointed by the Governor shall have had
13 significant business management experience at the time of
14 their appointment and shall serve without compensation
15 other than reimbursement for their reasonable expenses
16 necessarily incurred in the performance of their commission
17 duties. For the 2001 regular session of the Legislature and
18 every four years thereafter, the commission shall review the
19 compensation for cabinet secretaries and other appointed
20 officers of this state, including, but not limited to, the
21 following: Commissioner, Division of Highways;
22 commissioner, Bureau of Employment Programs; director,
23 Division of Environmental Protection; commissioner,
24 Bureau of Senior Services; director of tourism;
25 commissioner, division of tax; administrator, division of
26 health; commissioner, Division of Corrections; director,
27 Division of Natural Resources; superintendent, state police;
28 administrator, lottery division; director, Public Employees
29 Insurance Agency; administrator, Alcohol Beverage
30 Control Commission; commissioner, Division of Motor
31 Vehicles; director, Division of Personnel; Adjutant General;
32 the Executive Director of the Health Care Authority;
33 director, Division of Rehabilitation Services; executive
34 director, educational broadcasting authority; executive
35 secretary, Library Commission; chairman and members of
36 the Public Service Commission; director of emergency
37 services; administrator, division of human services;
38 executive director, Human Rights Commission; director,
39 division of Veterans Affairs; director, office of miner's

40 health safety and training; commissioner, Division of
41 Banking; commissioner, division of insurance;
42 commissioner, Division of Culture and History;
43 commissioner, Division of Labor; director, Prosecuting
44 Attorneys Institute; director, Board of Risk and Insurance
45 Management; commissioner, oil and gas conservation
46 commission; director, geological and economic survey;
47 executive director, water development authority; executive
48 director, Public Defender Services; director, state rail
49 authority; chairman and members of the Parole Board;
50 members, employment security review board; members,
51 workers' compensation appeal board; chairman, Racing
52 Commission; executive director, women's commission; and
53 director, hospital finance authority.

54 Following this review, but not later than the twenty-first
55 day of such regular session, the commission shall submit an
56 executive compensation report to the Legislature to include
57 specific recommendations for adjusting the compensation
58 for the officers described in this section. The
59 recommendation may be in the form of a bill to be
60 introduced in each house to amend this section to
61 incorporate the recommended adjustments.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

1 (a) Each of the following appointive state officers
2 named in this subsection shall be appointed by the
3 Governor, by and with the advice and consent of the Senate.
4 Each of the appointive state officers serves at the will and
5 pleasure of the Governor for the term for which the
6 Governor was elected and until the respective state officers'
7 successors have been appointed and qualified. Each of the

8 appointive state officers are subject to the existing
9 qualifications for holding each respective office and each
10 has and is hereby granted all of the powers and authority and
11 shall perform all of the functions and services heretofore
12 vested in and performed by virtue of existing law respecting
13 each office.

14 The annual salary of each named appointive state officer
15 is as follows:

16 Commissioner, Division of Highways, \$92,500;
17 Commissioner, Division of Corrections, \$80,000; Director,
18 Division of Natural Resources, \$75,000; Superintendent,
19 State Police, \$85,000; Commissioner, Division of Banking,
20 \$75,000; Commissioner, Division of Culture and History,
21 \$65,000; Commissioner, Alcohol Beverage Control
22 Commission, \$75,000; Commissioner, Division of Motor
23 Vehicles, \$75,000; Director, Human Rights Commission,
24 \$55,000; Commissioner, Division of Labor, \$70,000; prior
25 to July 1, 2011, Director, Division of Veterans Affairs,
26 \$65,000; Chairperson, Board of Parole, \$55,000; members,
27 Board of Parole, \$50,000; members, Employment Security
28 Review Board, \$17,000; and Commissioner, Workforce
29 West Virginia, \$75,000. Secretaries of the departments shall
30 be paid an annual salary as follows: Health and Human
31 Resources, \$95,000: *Provided*, That effective July 1, 2013,
32 the Secretary of the Department of Health and Human
33 Resources shall be paid an annual salary not to exceed
34 \$175,000; Transportation, \$95,000: *Provided, however*,
35 That if the same person is serving as both the Secretary of
36 Transportation and the Commissioner of Highways, he or
37 she shall be paid \$120,000; Revenue, \$95,000; Military
38 Affairs and Public Safety, \$95,000; Administration,
39 \$95,000; Education and the Arts, \$95,000; Commerce,
40 \$95,000; Veterans' Assistance, \$95,000; and
41 Environmental Protection, \$95,000: *Provided further*, That
42 any officer specified in this subsection whose salary is
43 increased by more than \$5,000 as a result of the amendment
44 and reenactment of this section during the 2011 regular
45 session of the Legislature shall be paid the salary increase

46 in increments of \$5,000 per fiscal year beginning July 1,
47 2011, up to the maximum salary provided in this subsection.

48 (b) Each of the state officers named in this subsection
49 shall continue to be appointed in the manner prescribed in
50 this code and shall be paid an annual salary as follows:

51 Director, Board of Risk and Insurance Management,
52 \$80,000; Director, Division of Rehabilitation Services,
53 \$70,000; Director, Division of Personnel, \$70,000;
54 Executive Director, Educational Broadcasting Authority,
55 \$75,000; Secretary, Library Commission, \$72,000;
56 Director, Geological and Economic Survey, \$75,000;
57 Executive Director, Prosecuting Attorneys Institute,
58 \$80,000; Executive Director, Public Defender Services,
59 \$70,000; Commissioner, Bureau of Senior Services,
60 \$75,000; Executive Director, Women's Commission,
61 \$45,000; Director, Hospital Finance Authority, \$35,000;
62 member, Racing Commission, \$12,000; Chairman, Public
63 Service Commission, \$85,000; members, Public Service
64 Commission, \$85,000; Director, Division of Forestry,
65 \$75,000; Director, Division of Juvenile Services, \$80,000;
66 Executive Director, Regional Jail and Correctional Facility
67 Authority, \$80,000 and Executive Director of the Health
68 Care Authority, \$80,000.

69 (c) Each of the following appointive state officers
70 named in this subsection shall be appointed by the
71 Governor, by and with the advice and consent of the Senate.
72 Each of the appointive state officers serves at the will and
73 pleasure of the Governor for the term for which the
74 Governor was elected and until the respective state officers'
75 successors have been appointed and qualified. Each of the
76 appointive state officers are subject to the existing
77 qualifications for holding each respective office and each
78 has and is hereby granted all of the powers and authority and
79 shall perform all of the functions and services heretofore
80 vested in and performed by virtue of existing law respecting
81 each office.

82 The annual salary of each named appointive state officer
83 shall be as follows:

84 Commissioner, State Tax Division, \$92,500; Insurance
85 Commissioner, \$92,500; Director, Lottery Commission,
86 \$92,500; Director, Division of Homeland Security and
87 Emergency Management, \$65,000; and Adjutant General,
88 \$125,000.

89 (d) No increase in the salary of any appointive state
90 officer pursuant to this section may be paid until and unless
91 the appointive state officer has first filed with the State
92 Auditor and the Legislative Auditor a sworn statement, on a
93 form to be prescribed by the Attorney General, certifying
94 that his or her spending unit is in compliance with any
95 general law providing for a salary increase for his or her
96 employees. The Attorney General shall prepare and
97 distribute the form to the affected spending units.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4C-7. Powers and duties.

1 (a) Each board created pursuant to this article shall:

2 (1) Develop, recommend and review reimbursement
3 methodology where applicable, and develop and
4 recommend a reasonable provider fee schedule, in relation
5 to its respective provider groups, so that the schedule
6 conforms with federal Medicaid laws and remains within
7 the limits of annual funding available to the single state
8 agency for the Medicaid program. In developing the fee
9 schedule the board may refer to a nationally published
10 regional specific fee schedule, if available, as selected by
11 the secretary in accordance with section eight of this article.
12 The board may consider identified health care priorities in
13 developing its fee schedule to the extent permitted by
14 applicable federal Medicaid laws, and may recommend

15 higher reimbursement rates for basic primary and
16 preventative health care services than for other services. In
17 identifying basic primary and preventative health care
18 services, the board may consider factors, including, but not
19 limited to, services defined and prioritized by the basic
20 services task force of the health care planning commission
21 in its report issued in December of the year 1992; and
22 minimum benefits and coverages for policies of insurance
23 as set forth in section fifteen, article fifteen, chapter thirty-
24 three of this code and section four, article sixteen-c of said
25 chapter and rules of the Insurance Commissioner
26 promulgated thereunder. If the single state agency approves
27 the adjustments to the fee schedule, it shall implement the
28 provider fee schedule;

29 (2) Review its respective provider fee schedule on a
30 quarterly basis and recommend to the single state agency
31 any adjustments it considers necessary. If the single state
32 agency approves any of the board's recommendations, it
33 shall immediately implement those adjustments and shall
34 report the same to the Joint Committee on Government and
35 Finance on a quarterly basis;

36 (3) Assist and enhance communications between
37 participating providers and the Department of Health and
38 Human Resources;

39 (4) Meet and confer with representatives from each
40 specialty area within its respective provider group so that
41 equity in reimbursement increases or decreases may be
42 achieved to the greatest extent possible and when
43 appropriate to meet and confer with other provider boards;
44 and

45 (5) Appoint a chairperson to preside over all official
46 transactions of the board.

47 (b) Each board may carry out any other powers and
48 duties as prescribed to it by the secretary.

49 (c) Nothing in this section gives any board the authority
50 to interfere with the discretion and judgment given to the
51 single state agency that administers the state's Medicaid
52 program. If the single state agency disapproves the
53 recommendations or adjustments to the fee schedule, it is
54 expressly authorized to make any modifications to fee
55 schedules as are necessary to ensure that total financial
56 requirements of the agency for the current fiscal year with
57 respect to the state's Medicaid plan are met and shall report
58 such modifications to the Joint Committee on Government
59 and Finance on a quarterly basis. The purpose of each board
60 is to assist and enhance the role of the single state agency in
61 carrying out its mandate by acting as a means of
62 communication between the health care provider
63 community and the agency.

64 (d) In addition to the duties specified in subsection (a)
65 of this section, the ambulance service provider Medicaid
66 board shall develop a method for regulating rates charged
67 by ambulance services.

68 (e) On a quarterly basis, the single state agency and the
69 board shall report the status of the fund, any adjustments to
70 the fee schedule and the fee schedule for each health care
71 provider identified in section two of this article to the Joint
72 Committee on Government and Finance.

**§9-4C-8. Duties of secretary of Department of Health and
Human Resources.**

1 (a) The secretary, or his or her designee, shall serve on
2 each board created pursuant to this article as an ex officio,
3 nonvoting member and shall keep and maintain records for
4 each board.

5 (b) In relation to outpatient hospital services, the
6 secretary shall furnish information needed for reporting
7 purposes. This information includes, but is not limited to,
8 the following:

9 (1) For each hospital, the amount of payments and
10 related billed charges for hospital outpatient services each
11 month;

12 (2) The percentage of the state's share of Medicaid
13 program financial obligation from time to time as necessary;
14 and

15 (3) Any other financial and statistical information
16 necessary to determine the net effect of any cost shift.

17 (c) The secretary shall determine an appropriate
18 resolution for conflicts arising between the various boards.

19 (d) The secretary shall purchase nationally published fee
20 schedules to be used, if available, as a reference by the
21 Medicaid enhancement boards in developing fee schedules.

CHAPTER 11. TAXATION.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-9. Imposition of tax on providers of inpatient hospital services.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of providing
3 inpatient hospital services, there is hereby levied and shall
4 be collected from every person rendering such service an
5 annual broad-based health care related tax.

6 (b) *Rate and measure of tax.* — The tax imposed in
7 subsection (a) of this section shall be two and one-half
8 percent of the gross receipts derived by the taxpayer from
9 furnishing inpatient hospital services in this state.

10 (c) *Definitions.* —

11 (1) “Gross receipts” means the amount received or
12 receivable, whether in cash or in kind, from patients, third-
13 party payors and others for inpatient hospital services
14 furnished by the provider, including retroactive adjustments

15 under reimbursement agreements with third-party payors,
16 without any deduction for any expenses of any kind:
17 *Provided*, That accrual basis providers shall be allowed to
18 reduce gross receipts by their contractual allowances, to the
19 extent such allowances are included therein, and by bad
20 debts, to the extent the amount of such bad debts was
21 previously included in gross receipts upon which the tax
22 imposed by this section was paid.

23 (2) “Contractual allowances” means the difference
24 between revenue (gross receipts) at established rates and
25 amounts realizable from third-party payors under
26 contractual agreements.

27 (3) “Inpatient hospital services” means those services
28 that are inpatient hospital services for purposes of Section
29 1903(w) of the Social Security Act.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for individuals with an intellectual disability.

1 (a) *Imposition of tax.* — For the privilege of engaging
2 or continuing within this state in the business of providing
3 nursing facility services, other than those services of
4 intermediate care facilities for individuals with an
5 intellectual disability, there is levied and shall be collected
6 from every person rendering such service an annual broad-
7 based health care-related tax.

8 (b) *Rate and measure of tax.* — The tax imposed in
9 subsection (a) of this section is five and one-half percent of
10 the gross receipts derived by the taxpayer from furnishing
11 nursing facility services in this state, other than services of
12 intermediate care facilities for individuals with an
13 intellectual disability.

14 (c) *Definitions.* —

15 (1) “Gross receipts” means the amount received or
16 receivable, whether in cash or in kind, from patients, third-

17 party payors and others for nursing facility services
18 furnished by the provider, including retroactive adjustments
19 under reimbursement agreements with third-party payors,
20 without any deduction for any expenses of any kind:
21 *Provided*, That accrual basis providers are allowed to reduce
22 gross receipts by their bad debts, to the extent the amount of
23 those bad debts was previously included in gross receipts
24 upon which the tax imposed by this section was paid.

25 (2) "Nursing facility services" means those services that
26 are nursing facility services for purposes of §1903(w) of the
27 Social Security Act.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

1 As used in this article:

2 (1) "Affected person" means:

3 (A) The applicant;

4 (B) An agency or organization representing consumers;

5 (C) An individual residing within the geographic area
6 but within this state served or to be served by the applicant;

7 (D) An individual who regularly uses the health care
8 facilities within that geographic area;

9 (E) A health care facility located within this state which
10 provide services similar to the services of the facility under
11 review and which will be significantly affected by the
12 proposed project;

13 (F) A health care facility located within this state which,
14 before receipt by the authority of the proposal being
15 reviewed, has formally indicated an intention to provide
16 similar services within this state in the future;

17 (G) Third-party payors who reimburse health care
18 facilities within this state; or

19 (H) An organization representing health care providers;

20 (2) “Ambulatory health care facility” means a facility
21 that provides health services to noninstitutionalized and
22 nonhomebound persons on an outpatient basis;

23 (3) “Ambulatory surgical facility” means a facility not
24 physically attached to a health care facility that provides
25 surgical treatment to patients not requiring hospitalization;

26 (4) “Applicant” means a person applying for a
27 certificate of need, exemption or determination of review;

28 (5) “Authority” means the West Virginia Health Care
29 Authority as provided in article twenty-nine-b of this
30 chapter;

31 (6) “Bed capacity” means the number of beds licensed
32 to a health care facility or the number of adult and pediatric
33 beds permanently staffed and maintained for immediate use
34 by inpatients in patient rooms or wards in an unlicensed
35 facility;

36 (7) “Behavioral health services” means services
37 provided for the care and treatment of persons with mental
38 illness or developmental disabilities;

39 (8) “Birthing center” means a short-stay ambulatory
40 health care facility designed for low-risk births following
41 normal uncomplicated pregnancy;

42 (9) “Campus” means the adjacent grounds and
43 buildings, or grounds and buildings not separated by more
44 than a public right-of-way, of a health care facility;

45 (10) “Capital expenditure” means:

46 (A) (i) An expenditure made by or on behalf of a health
47 care facility, which:

48 (I) Under generally accepted accounting principles is
49 not properly chargeable as an expense of operation and
50 maintenance; or

51 (II) Is made to obtain either by lease or comparable
52 arrangement any facility or part thereof or any equipment
53 for a facility or part; and

54 (ii) (I) Exceeds the expenditure minimum;

55 (II) Is a substantial change to the bed capacity of the
56 facility with respect to which the expenditure is made; or

57 (III) Is a substantial change to the services of such
58 facility;

59 (B) The transfer of equipment or facilities for less than
60 fair market value if the transfer of the equipment or facilities
61 at fair market value would be subject to review; or

62 (C) A series of expenditures, if the sum total exceeds the
63 expenditure minimum and if determined by the authority to
64 be a single capital expenditure subject to review. In making
65 this determination, the authority shall consider: Whether the
66 expenditures are for components of a system which is
67 required to accomplish a single purpose; or whether the
68 expenditures are to be made within a two-year period within
69 a single department such that they will constitute a
70 significant modernization of the department.

71 (11) "Charges" means the economic value established
72 for accounting purposes of the goods and services a hospital
73 provides for all classes of purchasers;

74 (12) "Community mental health and intellectual
75 disability facility" means a facility which provides
76 comprehensive services and continuity of care as
77 emergency, outpatient, partial hospitalization, inpatient or
78 consultation and education for individuals with mental
79 illness, intellectual disability;

80 (13) “Diagnostic imaging” means the use of radiology,
81 ultrasound, mammography;

82 (14) “Drug and Alcohol Rehabilitation Services” means
83 a medically or psychotherapeutically supervised process for
84 assisting individuals through the processes of withdrawal
85 from dependency on psychoactive substances;

86 (15) “Expenditure minimum” means the cost of
87 acquisition, improvement, expansion of any facility,
88 equipment, or services including the cost of any studies,
89 surveys, designs, plans, working drawings, specifications
90 and other activities, including staff effort and consulting at
91 and above \$5 million;

92 (16) “Health care facility” means a publicly or privately
93 owned facility, agency or entity that offers or provides
94 health services, whether a for-profit or nonprofit entity and
95 whether or not licensed, or required to be licensed, in whole
96 or in part;

97 (17) “Health care provider” means a person authorized
98 by law to provide professional health services in this state
99 to an individual;

100 (18) “Health services” means clinically related
101 preventive, diagnostic, treatment or rehabilitative services;

102 (19) “Home health agency” means an organization
103 primarily engaged in providing professional nursing
104 services either directly or through contract arrangements
105 and at least one of the following services:

106 (A) Home health aide services;

107 (B) Physical therapy;

108 (C) Speech therapy;

109 (D) Occupational therapy;

110 (E) Nutritional services; or

111 (F) Medical social services to persons in their place of
112 residence on a part-time or intermittent basis.

113 (20) "Hospice" means a coordinated program of home
114 and inpatient care provided directly or through an
115 agreement under the direction of a licensed hospice program
116 which provides palliative and supportive medical and other
117 health services to terminally ill individuals and their
118 families.

119 (21) "Hospital" means a facility licensed pursuant to the
120 provisions of article five-b of this chapter and any acute care
121 facility operated by the state government, that primarily
122 provides inpatient diagnostic, treatment or rehabilitative
123 services to injured, disabled or sick persons under the
124 supervision of physicians.

125 (22) "Intermediate care facility" means an institution
126 that provides health-related services to individuals with
127 conditions that require services above the level of room and
128 board, but do not require the degree of services provided in
129 a hospital or skilled-nursing facility.

130 (23) "Like equipment" means medical equipment in
131 which functional and technological capabilities are similar
132 to the equipment being replaced; and the replacement
133 equipment is to be used for the same or similar diagnostic,
134 therapeutic, or treatment purposes as currently in use; and it
135 does not constitute a substantial change in health service or
136 a proposed health service.

137 (24) "Major medical equipment" means a single unit of
138 medical equipment or a single system of components with
139 related functions which is used for the provision of medical
140 and other health services and costs in excess of the
141 expenditure minimum. This term does not include medical
142 equipment acquired by or on behalf of a clinical laboratory
143 to provide clinical laboratory services if the clinical
144 laboratory is independent of a physician's office and a
145 hospital and it has been determined under Title XVIII of the

146 Social Security Act to meet the requirements of paragraphs
147 ten and eleven, Section 1861(s) of such act, Title 42 U.S.C.
148 §1395x. In determining whether medical equipment is
149 major medical equipment, the cost of studies, surveys,
150 designs, plans, working drawings, specifications and other
151 activities essential to the acquisition of such equipment shall
152 be included. If the equipment is acquired for less than fair
153 market value, the term “cost” includes the fair market value.

154 (25) “Medically underserved population” means the
155 population of an area designated by the authority as having
156 a shortage of a specific health service.

157 (26) “Nonhealth-related project” means a capital
158 expenditure for the benefit of patients, visitors, staff or
159 employees of a health care facility and not directly related
160 to health services offered by the health care facility.

161 (27) “Offer” means the health care facility holds itself
162 out as capable of providing, or as having the means to
163 provide, specified health services.

164 (28) “Opioid treatment program” means as that term is
165 defined in article five-y of chapter sixteen.

166 (29) “Person” means an individual, trust, estate,
167 partnership, limited liability corporation, committee,
168 corporation, governing body, association and other
169 organizations such as joint-stock companies and insurance
170 companies, a state or a political subdivision or
171 instrumentality thereof or any legal entity recognized by the
172 state.

173 (30) “Personal care agency” means an entity that
174 provides personal care services approved by the Bureau of
175 Medical Services.

176 (31) “Personal care services” means personal hygiene;
177 dressing; feeding; nutrition; environmental support and
178 health-related tasks provided by a personal care agency.

179 (32) “Physician” means an individual who is licensed to
180 practice allopathic medicine by the board of Medicine or
181 licensed to practice osteopathic medicine by the board of
182 Osteopathic Medicine.

183 (33) “Proposed health service” means any service as
184 described in section eight of this article.

185 (34) “Purchaser” means an individual who is directly or
186 indirectly responsible for payment of patient care services
187 rendered by a health care provider, but does not include
188 third-party payers.

189 (35) “Rates” means charges imposed by a health care
190 facility for health services.

191 (36) “Records” means accounts, books and other data
192 related to health service costs at health care facilities subject
193 to the provisions of this article which do not include
194 privileged medical information, individual personal data,
195 confidential information, the disclosure of which is
196 prohibited by other provisions of this code and the laws
197 enacted by the federal government, and information, the
198 disclosure of which would be an invasion of privacy.

199 (37) “Rehabilitation facility” means an inpatient facility
200 licensed in West Virginia operated for the primary purpose
201 of assisting in the rehabilitation of disabled persons through
202 an integrated program of medical and other services.

203 (38) “Related organization” means an organization,
204 whether publicly owned, nonprofit, tax-exempt or for profit,
205 related to a health care facility through common
206 membership, governing bodies, trustees, officers, stock
207 ownership, family members, partners or limited partners,
208 including, but not limited to, subsidiaries, foundations,
209 related corporations and joint ventures. For the purposes of
210 this subdivision “family members” means parents, children,
211 brothers and sisters whether by the whole or half blood,
212 spouse, ancestors and lineal descendants.

213 (39) “Secretary” means the Secretary of the West
214 Virginia Department of Health and Human Resources;

215 (40) “Skilled nursing facility” means an institution, or a
216 distinct part of an institution, that primarily provides
217 inpatient skilled nursing care and related services, or
218 rehabilitation services, to injured, disabled or sick persons.

219 (41) “Standard” means a health service guideline
220 developed by the authority and instituted under section six.

221 (42) “State health plan” means a document prepared by
222 the authority that sets forth a strategy for future health
223 service needs in this state.

224 (43) “Substantial change to the bed capacity” of a health
225 care facility means any change, associated with a capital
226 expenditure, that increases or decreases the bed capacity or
227 relocates beds from one physical facility or site to another,
228 but does not include a change by which a health care facility
229 reassigns existing beds.

230 (44) “Substantial change to the health services” means:

231 (A) The addition of a health service offered by or on
232 behalf of the health care facility which was not offered by
233 or on behalf of the facility within the twelve-month period
234 before the month in which the service was first offered; or

235 (B) The termination of a health service offered by or on
236 behalf of the facility but does not include the termination of
237 ambulance service, wellness centers or programs, adult day
238 care or respite care by acute care facilities.

239 (45) “Telehealth” means the use of electronic
240 information and telecommunications technologies to
241 support long-distance clinical health care, patient and
242 professional health-related education, public health and
243 health administration.

244 (46) “Third-party payor” means an individual, person,
245 corporation or government entity responsible for payment
246 for patient care services rendered by health care providers.

247 (47) “To develop” means to undertake those activities
248 which upon their completion will result in the offer of a
249 proposed health service or the incurring of a financial
250 obligation in relation to the offering of such a service.

§16-2D-3. Powers and duties of the authority.

1 (a) The authority shall:

2 (1) Administer the certificate of need program;

3 (2) Review the state health plan, the certificate of need
4 standards, and the cost effectiveness of the certificate of
5 need program and make any amendments and modifications
6 to each that it may deem necessary, no later than September
7 1, 2017, and biennially thereafter.

8 (3) Shall adjust the expenditure minimum annually and
9 publish to its website the updated amount on or before
10 December 31, of each year. The expenditure minimum
11 adjustment shall be based on the DRI inflation index.

12 (4) Create a standing advisory committee to advise and
13 assist in amending the state health plan, the certificate of
14 need standards, and performing the state agencies’
15 responsibilities.

16 (b) The authority may:

17 (1) (A) Order a moratorium upon the offering or
18 development of a health service when criteria and
19 guidelines for evaluating the need for the health service
20 have not yet been adopted or are obsolete or when it
21 determines that the proliferation of the health service may
22 cause an adverse impact on the cost of health services or the
23 health status of the public.

24 (B) A moratorium shall be declared by a written order
25 which shall detail the circumstances requiring the
26 moratorium. Upon the adoption of criteria for evaluating the
27 need for the health service affected by the moratorium, or
28 one hundred eighty days from the declaration of a
29 moratorium, whichever is less, the moratorium shall be
30 declared to be over and applications for certificates of need
31 are processed pursuant to section eight.

32 (2) Approve an emerging health service or technology
33 for one year.

34 (3) Exempt from certificate of need or annual
35 assessment requirements to financially vulnerable health
36 care facilities located in underserved areas that the state
37 agency and the Office of Community and Rural Health
38 Services determine are collaborating with other providers in
39 the service area to provide cost effective health services.

§16-2D-4. Rulemaking.

1 (a) The authority shall propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, to implement the
4 following:

5 (1) Information a person shall provide when applying
6 for a certificate of need;

7 (2) Information a person shall provide when applying
8 for an exemption;

9 (3) Process for the issuance of grants and loans to
10 financially vulnerable health care facilities located in
11 underserved areas;

12 (4) Information a person shall provide in a letter of
13 intent;

14 (5) Process for an expedited certificate of need;

15 (6) Determine medically underserved population. The
16 authority may consider unusual local conditions that are a
17 barrier to accessibility or availability of health services. The
18 authority may consider when making its determination of a
19 medically underserved population designated by the federal
20 Secretary of Health and Human Services under Section
21 330(b)(3) of the Public Health Service Act, as amended,
22 Title 42 U.S.C. §254;

23 (7) Process to review an approved certificate of need;
24 and

25 (8) Process to review approved proposed health services
26 for which the expenditure maximum is exceeded or is
27 expected to be exceeded.

28 (b) All of the authority's rules in effect and not in
29 conflict with the provisions of this article, shall remain in
30 effect until they are amended or rescinded.

§16-2D-5. Fee; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative
2 fines, received by the authority shall be deposited in a
3 separate special revenue fund in the State Treasury which is
4 continued and shall be known as the "Certificate of Need
5 Program Fund". Expenditures from this fund shall be for the
6 purposes set forth in this article and are not authorized from
7 collections but are to be made only in accordance with
8 appropriation by the Legislature and in accordance with the
9 provisions of article three, chapter twelve of this code and
10 upon fulfillment of the provisions of article two, chapter
11 eleven-b of this code: *Provided*, That for the fiscal year
12 ending June 30, 2017, expenditures are authorized from
13 collections rather than pursuant to appropriation by the
14 Legislature.

15 (b) Any amounts received as administrative fines
16 imposed pursuant to this article shall be deposited into the
17 General Revenue Fund of the State Treasury.

§16-2D-8. Proposed health services that require a certificate of need.

1 (a) Except as provided in sections nine, ten and eleven
2 of this article, the following proposed health services may
3 not be acquired, offered or developed within this state
4 except upon approval of and receipt of a certificate of need
5 as provided by this article:

6 (1) The construction, development, acquisition or other
7 establishment of a health care facility;

8 (2) The partial or total closure of a health care facility
9 with which a capital expenditure is associated;

10 (3) (A) An obligation for a capital expenditure incurred
11 by or on behalf of a health care facility, in excess of the
12 expenditure minimum; or

13 (B) An obligation for a capital expenditure incurred by
14 a person to acquire a health care facility.

15 (4) An obligation for a capital expenditure is considered
16 to be incurred by or on behalf of a health care facility:

17 (A) When a valid contract is entered into by or on behalf
18 of the health care facility for the construction, acquisition,
19 lease or financing of a capital asset;

20 (B) When the health care facility takes formal action to
21 commit its own funds for a construction project undertaken
22 by the health care facility as its own contractor; or

23 (C) In the case of donated property, on the date on which
24 the gift is completed under state law.

25 (5) A substantial change to the bed capacity of a health
26 care facility with which a capital expenditure is associated;

27 (6) The addition of ventilator services by a hospital;

28 (7) The elimination of health services previously offered
29 on a regular basis by or on behalf of a health care facility
30 which is associated with a capital expenditure;

31 (8) (A) A substantial change to the bed capacity or
32 health services offered by or on behalf of a health care
33 facility, whether or not the change is associated with a
34 proposed capital expenditure;

35 (B) If the change is associated with a previous capital
36 expenditure for which a certificate of need was issued; and

37 (C) If the change will occur within two years after the
38 date the activity which was associated with the previously
39 approved capital expenditure was undertaken.

40 (9) The acquisition of major medical equipment;

41 (10) A substantial change in an approved health service
42 for which a certificate of need is in effect;

43 (11) An expansion of the service area for hospice or
44 home health agency regardless of the time period in which
45 the expansion is contemplated or made; and

46 (12) The addition of health services offered by or on
47 behalf of a health care facility which were not offered on a
48 regular basis by or on behalf of the health care facility
49 within the twelve- month period prior to the time the
50 services would be offered.

51 (b) The following health services are required to obtain
52 a certificate of need regardless of the minimum expenditure:

53 (1) Constructing, developing, acquiring or establishing
54 of a birthing center;

55 (2) Providing radiation therapy;

56 (3) Providing computed tomography;

57 (4) Providing positron emission tomography;

- 58 (5) Providing cardiac surgery;
 - 59 (6) Providing fixed magnetic resonance imaging;
 - 60 (7) Providing comprehensive medical rehabilitation;
 - 61 (8) Establishing an ambulatory care center;
 - 62 (9) Establishing an ambulatory surgical center;
 - 63 (10) Providing diagnostic imaging;
 - 64 (11) Providing cardiac catheterization services;
 - 65 (12) Constructing, developing, acquiring or establishing
66 of kidney disease treatment centers, including freestanding
67 hemodialysis units;
 - 68 (13) Providing megavoltage radiation therapy;
 - 69 (14) Providing surgical services;
 - 70 (15) Establishing operating rooms;
 - 71 (16) Adding acute care beds;
 - 72 (17) Providing intellectual developmental disabilities
73 services;
 - 74 (18) Providing organ and tissue transplants;
 - 75 (19) Establishing an intermediate care facility for
76 individuals with intellectual disabilities;
 - 77 (20) Providing inpatient services;
 - 78 (21) Providing hospice services;
 - 79 (22) Establishing a home health agency; and
 - 80 (23) Providing personal care services.
- 81 (c) A certificate of need previously approved under this
82 article remains in effect unless revoked by the authority.

§16-2D-9. Health services that cannot be developed.

1 Notwithstanding section eight and eleven, these health
2 services require a certificate of need but the authority may
3 not issue a certificate of need to:

4 (1) A health care facility adding intermediate care or
5 skilled nursing beds to its current licensed bed complement,
6 except as provided in subdivision twenty-three, subsection
7 (c), section eleven;

8 (2) A person developing, constructing or replacing a
9 skilled nursing facility except in the case of facilities
10 designed to replace existing beds in existing facilities that
11 may soon be deemed unsafe or facilities utilizing existing
12 licensed beds from existing facilities which are designed to
13 meet the changing health care delivery system;

14 (3) Add beds in an intermediate care facility for
15 individuals with an intellectual disability, except that
16 prohibition does not apply to an intermediate care facility
17 for individuals with intellectual disabilities beds approved
18 under the Kanawha County circuit court order of August 3,
19 1989, civil action number MISC-81-585 issued in the case
20 of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981);
21 and

22 (4) An opioid treatment program.

§16-2D-10. Exemptions from certificate of need.

1 Notwithstanding section eight, a person may provide the
2 following health services without obtaining a certificate of
3 need or applying to the authority for approval:

4 (1) The creation of a private office of one or more
5 licensed health professionals to practice in this state
6 pursuant to chapter thirty of this code;

7 (2) Dispensaries and first-aid stations located within
8 business or industrial establishments maintained solely for

9 the use of employees that does not contain inpatient or
10 resident beds for patients or employees who generally
11 remain in the facility for more than twenty-four hours;

12 (3) A place that provides remedial care or treatment of
13 residents or patients conducted only for those who rely
14 solely upon treatment by prayer or spiritual means in
15 accordance with the creed or tenets of any recognized
16 church or religious denomination;

17 (4) Telehealth;

18 (5) A facility owned or operated by one or more health
19 professionals authorized or organized pursuant to chapter
20 thirty or ambulatory health care facility which offers
21 laboratory services or diagnostic imaging to patients
22 regardless of the cost associated with the proposal. To
23 qualify for this exemption seventy-five percent of the
24 laboratory services are for the patients of the practice or
25 ambulatory health care facility of the total laboratory
26 services performed and seventy-five percent of diagnostic
27 imaging services are for the patients of the practice or
28 ambulatory health care facility of the total imaging services
29 performed. The authority may, at any time, request from the
30 entity information concerning the number of patients who
31 have been provided laboratory services or diagnostic
32 imaging;

33 (6) (A) Notwithstanding the provisions of section
34 seventeen of this article, any hospital that holds a valid
35 certificate of need issued pursuant to this article, may
36 transfer that certificate of need to a person purchasing that
37 hospital, or all or substantially all of its assets, if the hospital
38 is financially distressed. A hospital is financially distressed
39 if, at the time of its purchase:

40 (i) It has filed a petition for voluntary bankruptcy;

41 (ii) It has been the subject of an involuntary petition for
42 bankruptcy;

- 43 (iii) It is in receivership;
- 44 (iv) It is operating under a forbearance agreement with
45 one or more of its major creditors;
- 46 (v) It is in default of its obligations to pay one or more
47 of its major creditors and is in violation of the material,
48 substantive terms of its debt instruments with one or more
49 of its major creditors; or
- 50 (vi) It is insolvent: evidenced by balance sheet
51 insolvency and/or the inability to pay its debts as they come
52 due in the ordinary course of business.
- 53 (B) A financially distressed hospital which is being
54 purchased pursuant to the provisions of this subsection shall
55 give notice to the authority of the sale thirty days prior to
56 the closing of the transaction and shall file simultaneous
57 with that notice evidence of its financial status. The
58 financial status or distressed condition of a hospital shall be
59 evidenced by the filing of any of the following:
- 60 (i) A copy of a forbearance agreement;
- 61 (ii) A copy of a petition for voluntary or involuntary
62 bankruptcy;
- 63 (iii) Written evidence of receivership, or
- 64 (iv) Documentation establishing the requirements of
65 subparagraph (v) or (vi), paragraph (A) of this subdivision.
66 The names of creditors may be redacted by the filing party.
- 67 (C) Any substantial change to the capacity of services
68 offered in that hospital made subsequent to that transaction
69 would remain subject to the requirements for the issuance
70 of a certificate of need as otherwise set forth in this article.
- 71 (D) Any person purchasing a financially distressed
72 hospital, or all or substantially all of its assets, that has

73 applied for a certificate of need after January 1, 2017, shall
74 qualify for an exemption from certificate of need;

75 (7) The acquisition by a qualified hospital which is party
76 to an approved cooperative agreement as provided in
77 section twenty-eight, article twenty-nine-b, chapter sixteen
78 of this code, of a hospital located within a distance of twenty
79 highway miles of the main campus of the qualified hospital;
80 and

81 (8) The acquisition by a hospital of a physician practice
82 group which owns an ambulatory surgical center as defined
83 in this article.

§16-2D-11. Exemptions from certificate of need which require approval from the authority.

1 (a) To obtain an exemption under this section a person
2 shall:

3 (1) File an exemption application;

4 (2) Pay the \$1,000 application fee; and

5 (3) Provide a statement detailing which exemption
6 applies and the circumstances justifying the approval of the
7 exemption.

8 (b) The authority has forty-five days to review the
9 exemption request. The authority may not hold an
10 administrative hearing to review the application. A person
11 may not file an objection to the request for an exemption.
12 The applicant may request or agree with the authority to a
13 fifteen day extension of the timeframe. If the authority does
14 not approve or deny the application within forty-five days,
15 then the exemption is immediately approved. If the
16 authority denies the approval of the exemption, only the
17 applicant may appeal the authority's decision to the Office
18 of Judges or refile the application with the authority.

19 (c) Notwithstanding section eight and ten and except as
20 provided in section nine of this article, the Legislature finds
21 that a need exists and these health services are exempt from
22 the certificate of need process:

23 (1) The acquisition and utilization of one computed
24 tomography scanner with a purchase price up to \$750,000
25 that is installed in a private office practice where at
26 minimum seventy-five percent of the scans are performed
27 on the patients of the practice. The private office practice
28 shall obtain and maintain accreditation from the American
29 College of Radiology prior to, and at all times during, the
30 offering of this service. The authority may at any time
31 request from the private office practice information relating
32 to the number of patients who have been provided scans and
33 proof of active and continuous accreditation from the
34 American College of Radiology. If a physician owns or
35 operates a private office practice in more than one location,
36 this exemption shall only apply to the physician's primary
37 place of business and if a physician wants to expand the
38 offering of this service to include more than one computed
39 topography scanner, he or she shall be required to obtain a
40 certificate of need prior to expanding this service. All
41 current certificates of need issued for computed tomography
42 services, with a required percentage threshold of scans to be
43 performed on patients of the practice in excess of seventy-
44 five percent, shall be reduced to seventy-five percent:
45 *Provided*, That these limitations on the exemption for a
46 private office practice with more than one location shall not
47 apply to a private office practice with more than twenty
48 locations in the state at the time of the changes made to this
49 article during the 2017 Regular Session of the Legislature.

50 (2) (A) A birthing center established by a nonprofit
51 primary care center that has a community board and
52 provides primary care services to people in their community
53 without regard to ability to pay; or

54 (B) A birthing center established by a nonprofit hospital
55 with less than one hundred licensed acute care beds.

56 (i) To qualify for this exemption, an applicant shall be
57 located in an area that is underserved with respect to low-
58 risk obstetrical services; and

59 (ii) Provide a proposed health service area.

60 (3) (A) A health care facility acquiring major medical
61 equipment, adding health services or obligating a capital
62 expenditure to be used solely for research;

63 (B) To qualify for this exemption, the health care
64 facility shall show that the acquisition, offering or
65 obligation will not:

66 (i) Affect the charges of the facility for the provision of
67 medical or other patient care services other than the services
68 which are included in the research;

69 (ii) Result in a substantial change to the bed capacity of
70 the facility; or

71 (iii) Result in a substantial change to the health services
72 of the facility.

73 (C) For purposes of this subdivision, the term “solely
74 for research” includes patient care provided on an
75 occasional and irregular basis and not as part of a research
76 program;

77 (4) The obligation of a capital expenditure to acquire,
78 either by purchase, lease or comparable arrangement, the
79 real property, equipment or operations of a skilled nursing
80 facility: *Provided*, That a skilled nursing facility developed
81 pursuant to subdivision (17) of this section and
82 subsequently acquired pursuant to this subdivision may not
83 transfer or sell any of the skilled nursing home beds of the
84 acquired skilled nursing facility until the skilled nursing
85 facility has been in operation for at least ten years.

86 (5) Shared health services between two or more
87 hospitals licensed in West Virginia providing health

88 services made available through existing technology that
89 can reasonably be mobile. This exemption does not include
90 providing mobile cardiac catheterization;

91 (6) The acquisition, development or establishment of a
92 certified interoperable electronic health record or electronic
93 medical record system;

94 (7) The addition of forensic beds in a health care
95 facility;

96 (8) A behavioral health service selected by the
97 Department of Health and Human Resources in response to
98 its request for application for services intended to return
99 children currently placed in out-of-state facilities to the state
100 or to prevent placement of children in out-of-state facilities
101 is not subject to a certificate of need;

102 (9) The replacement of major medical equipment with
103 like equipment, only if the replacement major medical
104 equipment cost is more than the expenditure minimum;

105 (10) Renovations within a hospital, only if the
106 renovation cost is more than the expenditure minimum. The
107 renovations may not expand the health care facility's
108 current square footage, incur a substantial change to the
109 health services, or a substantial change to the bed capacity;

110 (11) Renovations to a skilled nursing facility;

111 (12) The construction, development, acquisition or
112 other establishment by a hospital of an ambulatory health
113 care facility in the county in which it is located;

114 (13) The donation of major medical equipment to
115 replace like equipment for which a certificate of need has
116 been issued and the replacement does not result in a
117 substantial change to health services. This exemption does
118 not include the donation of major medical equipment made
119 to a health care facility by a related organization;

120 (14) A person providing specialized foster care personal
121 care services to one individual and those services are
122 delivered in the provider's home;

123 (15) A hospital converting the use of beds except a
124 hospital may not convert a bed to a skilled nursing home bed
125 and conversion of beds may not result in a substantial
126 change to health services provided by the hospital;

127 (16) The construction, renovation, maintenance or
128 operation of a state owned veterans skilled nursing facilities
129 established pursuant to the provisions of article one-b of this
130 chapter;

131 (17) To develop and operate a skilled nursing facility
132 with no more than thirty-six beds in a county that currently
133 is without a skilled nursing facility;

134 (18) A critical access hospital, designated by the state as
135 a critical access hospital, after meeting all federal eligibility
136 criteria, previously licensed as a hospital and subsequently
137 closed, if it reopens within ten years of its closure;

138 (19) The establishing of a health care facility or offering
139 of health services for children under one year of age
140 suffering from Neonatal Abstinence Syndrome;

141 (20) The construction, development, acquisition or
142 other establishment of community mental health and
143 intellectual disability facility;

144 (21) Providing behavioral health facilities and services;

145 (22) The construction, development, acquisition or
146 other establishment of kidney disease treatment centers,
147 including freestanding hemodialysis units but only to a
148 medically underserved population;

149 (23) The transfer, purchase or sale of intermediate care
150 or skilled nursing beds from a skilled nursing facility or a
151 skilled nursing unit of an acute care hospital to a skilled

152 nursing facility providing intermediate care and skilled
153 nursing services. No state agency may deny payment to an
154 acquiring nursing home or place any restrictions on the beds
155 transferred under this subsection. The transferred beds shall
156 retain the same certification status that existed at the nursing
157 home or hospital skilled nursing unit from which they were
158 acquired. If construction is required to place the transferred
159 beds into the acquiring nursing home, the acquiring nursing
160 home has one year from the date of purchase to commence
161 construction;

162 (24) The construction, development, acquisition or
163 other establishment by a health care facility of a nonhealth
164 related project, only if the nonhealth related project cost is
165 more than the expenditure minimum;

166 (25) The construction, development, acquisition or
167 other establishment of an alcohol or drug treatment facility
168 and drug and alcohol treatment services unless the
169 construction, development, acquisition or other
170 establishment is an opioid treatment facility or programs as
171 set forth in subdivision (4) of section nine of this article;

172 (26) Assisted living facilities and services; and

173 (27) The creation, construction, acquisition or
174 expansion of a community-based nonprofit organization
175 with a community board that provides or will provide
176 primary care services to people without regard to ability to
177 pay and receives approval from the Health Resources and
178 Services Administration.

§16-2D-13. Procedures for certificate of need reviews.

1 (a) An application for a certificate of need shall be
2 submitted to the authority prior to the offering or developing
3 of a proposed health service.

4 (b) A person proposing a proposed health service shall:

5 (1) Submit a letter of intent ten days prior to submitting
6 the certificate of need application. If the tenth day falls on a
7 weekend or holiday, the certificate of need application shall
8 be filed on the next business day. The information required
9 within the letter of intent shall be detailed by the authority
10 in legislative rule;

11 (2) Submit the appropriate application fee;

12 (A) Up to \$1,500,000 a fee of \$1,500.00;

13 (B) From \$1,500,001 to \$5,000,000 a fee of \$5,000.00;

14 (C) From \$5,000,001 to \$25,000,000 a fee of
15 \$25,000.00; and

16 (D) From \$25,000,001 and above a fee of \$35,000.00.

17 (3) Submit to the Director of the Office of Insurance
18 Consumer Advocacy a copy of the application;

19 (c) The authority shall determine if the submitted
20 application is complete within ten days of receipt of the
21 application. The authority shall provide written notification
22 to the applicant of this determination. If the authority
23 determines an application to be incomplete, the authority
24 may request additional information from the applicant.

25 (d) Within five days of receipt of a letter of intent, the
26 authority shall provide notification to the public through a
27 newspaper of general circulation in the area where the
28 health service is being proposed and by placing of copy of
29 the letter of intent on its website. The newspaper notice
30 shall contain a statement that, further information regarding
31 the application is on the authority's web site.

32 (e) The authority may batch completed applications for
33 review on the fifteenth day of the month or the last day of
34 month in which the application is deemed complete.

35 (f) When the application is submitted, ten days after
36 filing the letter of intent, the application shall be placed on
37 the authority's website.

38 (g) An affected party has thirty days starting from the
39 date the application is batched to request the authority hold
40 an administrative hearing.

41 (1) A hearing order shall be approved by the authority
42 within fifteen days from the last day an affected person may
43 requests an administrative hearing on a certificate of need
44 application.

45 (2) A hearing shall take place no later than three months
46 from that date the hearing order was approved by the
47 authority.

48 (3) The authority shall conduct the administrative
49 hearing in accordance with administrative hearing
50 requirements in section twelve, article twenty-nine-b of this
51 chapter and article five, chapter twenty-nine-a of this code.

52 (4) In the administrative hearing an affected person has
53 the right to be represented by counsel and to present oral or
54 written arguments and evidence relevant to the matter which
55 is the subject of the public hearing. An affected person may
56 conduct reasonable questioning of persons who make
57 factual allegations relevant to its certificate of need
58 application.

59 (5) The authority shall maintain a verbatim record of the
60 administrative hearing.

61 (6) After the commencement of the administrative
62 hearing on the application and before a decision is made
63 with respect to it, there may be no ex parte contacts between:

64 (A) The applicant for the certificate of need, any person
65 acting on behalf of the applicant or holder of a certificate of
66 need or any person opposed to the issuance of a certificate
67 for the applicant; and

68 (B) Any person in the authority who exercises any
69 responsibility respecting the application.

70 (7) The authority may not impose fees to hold the
71 administrative hearing.

72 (8) The authority shall render a decision within forty-
73 five days of the conclusion of the administrative hearing.

74 (h) If an administrative hearing is not conducted during
75 the review of an application, the authority shall provide a
76 file closing date five days after an affected party may no
77 longer request an administrative hearing, after which date
78 no other factual information or evidence may be considered
79 in the determination of the application for the certificate of
80 need. A detailed itemization of documents in the authority's
81 file on a proposed health service shall, on request, be made
82 available by the authority at any time before the file closing
83 date.

84 (i) The extent of additional information received by the
85 authority from the applicant for a certificate of need after a
86 review has begun on the applicant's proposed health
87 service, with respect to the impact on the proposed health
88 service and additional information which is received by the
89 authority from the applicant, may be cause for the authority
90 to determine the application to be a new proposal, subject to
91 a new review cycle.

92 (j) The authority shall have five days to provide the
93 written status update upon written request by the applicant
94 or an affected person. The status update shall include the
95 findings made in the course of the review and any other
96 appropriate information relating to the review.

97 (k) (1) The authority shall annually prepare and publish
98 to its website, a status report of each ongoing and completed
99 certificate of need application reviews.

100 (2) For a status report of an ongoing review, the
101 authority shall include in its report all findings made during

102 the course of the review and any other appropriate
103 information relating to the review.

104 (3) For a status report of a completed review, the
105 authority shall include in its report all the findings made
106 during the course of the review and its detailed reasoning
107 for its final decision.

108 (1) The authority shall provide for access by the public
109 to all applications reviewed by the authority and to all other
110 pertinent written materials essential to agency review.

**§16-2D-15. Authority to render final decision; issue certificate
of need; write findings; specify capital expenditure
maximum.**

1 (a) The authority shall render a final decision on an
2 application for a certificate of need in the form of an
3 approval, a denial or an approval with conditions. The final
4 decision with respect to a certificate of need shall be based
5 solely on:

6 (1) The authority's review conducted in accordance
7 with procedures and criteria in this article and the certificate
8 of need standards; and

9 (2) The record established in the administrative hearing
10 held with respect to the certificate of need.

11 (b) Approval with conditions does not give the
12 authority the ability to mandate a health service not
13 proposed by the health care facility. Issuance of a certificate
14 of need or exemption may not be made subject to any
15 condition unless the condition directly relates to criteria in
16 this article, or in the certificate of need standards.
17 Conditions may be imposed upon the operations of the
18 health care facility for not longer than a three-year period.

19 (c) The authority shall send its decision along with
20 written findings to the person proposing the proposed health

21 service or exemption and shall make it available to others
22 upon request.

23 (d) In the case of a final decision to approve or approve
24 with conditions a proposal for a proposed health service, the
25 authority shall issue a certificate of need to the person
26 proposing the proposed health service.

27 (e) The authority shall specify in the certificate of need
28 the maximum amount of capital expenditures which may be
29 obligated. The authority shall adopt legislative rules
30 pursuant to section four to prescribe the method used to
31 determine capital expenditure maximums and a process to
32 review the implementation of an approved certificate of
33 need for a proposed health service for which the capital
34 expenditure maximum is exceeded or is expected to be
35 exceeded.

§16-2D-16. Appeal of certificate of need a decision.

1 (a) An applicant or an affected person may appeal the
2 authority's final decision in a certificate of need review to
3 the Office of Judges. The request shall be received within
4 thirty days after the date of the authority's decision. The
5 appeal hearing shall commence within thirty days of receipt
6 of the request.

7 (b) The Office of Judges shall conduct its proceedings
8 in conformance with the West Virginia Rules of Civil
9 Procedure for trial courts of record and the local rules for
10 use in the civil courts of Kanawha County and shall review
11 appeals in accordance with the provisions governing the
12 judicial review of contested administrative cases in article
13 five, chapter twenty-nine-a of this code.

14 (c) The decision of the Office of Judges shall be made
15 in writing within forty-five days after the conclusion of the
16 hearing.

17 (d) The written findings of the Office of Judges shall be
18 sent to the person who requested the appeal, to the person

19 proposing the proposed health service and to the authority,
20 and shall be made available by the authority to others upon
21 request.

22 (e) The decision of the Office of Judges shall be
23 considered the final decision of the authority; however, the
24 Office of Judges may remand the matter to the authority for
25 further action or consideration.

26 (f) Upon the entry of a final decision by the Office of
27 Judges, an affected person may within thirty days after the
28 date of the decision of the Office of Judges make an appeal
29 in the circuit court of Kanawha County. The decision of the
30 Office of Judges shall be reviewed by the circuit court in
31 accordance with the provisions for the judicial review of
32 administrative decisions contained in article five, chapter
33 twenty-nine-a of this code.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-17. Healthcare-associated infection reporting.

1 (a) As used in this section, the following words mean:

2 (1) “Centers for Disease Control and Prevention” or
3 “CDC” means the United States Department of Health and
4 Human Services Centers for Disease Control and
5 Prevention;

6 (2) “National Healthcare Safety Network” or “NHSN”
7 means the secure Internet-based data collection surveillance
8 system managed by the Division of Healthcare Quality
9 Promotion at the CDC, created by the CDC for
10 accumulating, exchanging and integrating relevant
11 information on infectious adverse events associated with
12 healthcare delivery.

13 (3) “Hospital” means hospital as that term is defined in
14 subsection-e, section three, article twenty-nine-b, chapter
15 sixteen.

16 (4) “Healthcare-associated infection” means a localized
17 or systemic condition that results from an adverse reaction
18 to the presence of an infectious agent or a toxin of an
19 infectious agent that was not present or incubating at the
20 time of admission to a hospital.

21 (5) “Physician” means a person licensed to practice
22 medicine by either the board of Medicine or the board of
23 osteopathy.

24 (6) “Nurse” means a person licensed in West Virginia
25 as a registered professional nurse in accordance with article
26 seven, chapter thirty.

27 (b) The Secretary of the Department of Health and
28 Human Resources is hereby directed to create an Infection
29 Control Advisory Panel whose duty is to provide guidance
30 and oversight in implementing this section. The advisory
31 panel shall consist of the following members:

32 (1) Two board-certified or board-eligible physicians,
33 affiliated with a West Virginia hospital or medical school,
34 who are active members of the Society for Health Care
35 Epidemiology of America and who have demonstrated an
36 interest in infection control;

37 (2) One physician who maintains active privileges to
38 practice in at least one West Virginia hospital;

39 (3) Three infection control practitioners, two of whom
40 are nurses, each certified by the Certification Board of
41 Infection Control and Epidemiology, and each working in
42 the area of infection control. Rural and urban practice must
43 be represented;

44 (4) A statistician with an advanced degree in medical
45 statistics;

46 (5) A microbiologist with an advanced degree in clinical
47 microbiology;

48 (6) The Director of the Division of Disease Surveillance
49 and Disease Control in the Bureau for Public Health or a
50 designee; and

51 (7) The director of the hospital program in the office of
52 health facilities, licensure and certification in the Bureau for
53 Public Health.

54 (c) The advisory panel shall:

55 (1) Provide guidance to hospitals in their collection of
56 healthcare-associated infections;

57 (2) Provide evidence-based practices in the control and
58 prevention of healthcare associated infections;

59 (3) Establish reasonable goals to reduce the number of
60 healthcare-associated infections;

61 (4) Develop plans for analyzing infection-related data
62 from hospitals;

63 (5) Develop healthcare-associated advisories for
64 hospital distribution;

65 (6) Review and recommend to the Secretary of the
66 Department of Health and Human Resources the manner in
67 which the reporting is made available to the public to assure
68 that the public understands the meaning of the report; and

69 (7) Other duties as identified by the Secretary of the
70 Department of Health and Human Resources.

71 (d) Hospitals shall report information on healthcare-
72 associated infections in the manner prescribed by the CDC
73 National Healthcare Safety Network(NHSN). The reporting
74 standard prescribed by the CDC National Healthcare Safety
75 Network(NHSN) shall be the reporting system of the
76 hospitals in West Virginia.

77 (e) Hospitals who fail to report information on
78 healthcare associated infections in the manner and time

79 frame required by the Secretary of the Department of Health
80 and Human Resources shall be fined the sum of \$5,000 for
81 each such failure.

82 (f) The Infection Control Advisory Panel shall provide
83 the results of the collection and analysis of all hospital data
84 to the Secretary of the Department of Health and Human
85 Resources for public availability and the Bureau for Public
86 Health for consideration in their hospital oversight and
87 epidemiology and disease surveillance responsibilities in
88 West Virginia.

89 (g) Data collected and reported pursuant to this act may
90 not be considered to establish standards of care for any
91 purposes of civil litigation in West Virginia.

92 (h) The Secretary of the Department of Health and
93 Human Resources shall require that all hospitals implement
94 and initiate this reporting requirement.

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-2. Effective Date.

1 Effective the first day of July, 2017, all powers, duties
2 and functions of the West Virginia Health Care Authority
3 shall be transferred to the West Virginia Department of
4 Health and Human Resources.

§16-29B-3. Definitions.

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

4 As used in this article, unless a different meaning clearly
5 appears from the context:

6 (a) “Authority” means the Health Care Authority
7 created pursuant to the provisions of this article;

8 (b) “Board” means the five-member board of directors
9 of the West Virginia Health Care Authority;

10 (c) “Charges” means the economic value established for
11 accounting purposes of the goods and services a hospital
12 provides for all classes of purchasers;

13 (d) “Class of purchaser” means a group of potential
14 hospital patients with common characteristics affecting the
15 way in which their hospital care is financed. Examples of
16 classes of purchasers are Medicare beneficiaries, welfare
17 recipients, subscribers of corporations established and
18 operated pursuant to article twenty-four, chapter thirty-
19 three of this code, members of health maintenance
20 organizations and other groups as defined by the authority;

21 (e) “Executive Director” or “Director” means the
22 administrative head of the Health Care Authority as set forth
23 in section five-a of this article;

24 (f) “Health care provider” means a person, partnership,
25 corporation, facility, hospital or institution licensed,
26 certified or authorized by law to provide professional health
27 care service in this state to an individual during this
28 individual’s medical, remedial, or behavioral health care,
29 treatment or confinement. For purposes of this article,
30 “health care provider” shall not include the private office
31 practice of one or more health care professionals licensed to
32 practice in this state pursuant to the provisions of chapter
33 thirty of this code;

34 (g) “Hospital” means a facility subject to licensure as
35 such under the provisions of article five-b of this chapter,
36 and any acute care facility operated by the state government
37 which is primarily engaged in providing to inpatients, by or
38 under the supervision of physicians, diagnostic and
39 therapeutic services for medical diagnosis, treatment and
40 care of injured, disabled or sick persons, and does not
41 include state mental health facilities or state long-term care
42 facilities;

43 (h) "Person" means an individual, trust, estate,
44 partnership, committee, corporation, association or other
45 organization such as a joint stock company, a state or
46 political subdivision or instrumentality thereof or any legal
47 entity recognized by the state;

48 (i) "Purchaser" means a consumer of patient care
49 services, a natural person who is directly or indirectly
50 responsible for payment for such patient care services
51 rendered by a health care provider, but does not include
52 third-party payers;

53 (j) "Rates" means all value given or money payable to
54 health care providers for health care services, including
55 fees, charges and cost reimbursements;

56 (k) "Records" means accounts, books and other data
57 related to health care costs at health care facilities subject to
58 the provisions of this article which do not include privileged
59 medical information, individual personal data, confidential
60 information, the disclosure of which is prohibited by other
61 provisions of this code and the laws enacted by the federal
62 government, and information, the disclosure of which
63 would be an invasion of privacy;

64 (l) "Related organization" means an organization,
65 whether publicly owned, nonprofit, tax-exempt or for profit,
66 related to a health care provider through common
67 membership, governing bodies, trustees, officers, stock
68 ownership, family members, partners or limited partners
69 including, but not limited to, subsidiaries, foundations,
70 related corporations and joint ventures. For the purposes of
71 this subsection family members means brothers and sisters,
72 whether by the whole or half blood, spouse, ancestors and
73 lineal descendants;

74 (m) "Secretary" means the Secretary of the Department
75 of Health and Human Resources; and

76 (n) “Third-party payor” means any natural person,
77 person, corporation or government entity responsible for
78 payment for patient care services rendered by health care
79 providers.

**§16-29B-5. West Virginia Health Care Authority;
composition of the board; qualifications; terms; oath;
expenses of members; vacancies; appointment of
chairman, and meetings of the board.**

1 (a) The “West Virginia Health Care Authority” is
2 continued as a division of the Department of Health and
3 Human Resources. Any references in this code to the West
4 Virginia Health Care Cost Review Authority means the
5 West Virginia Health Care Authority.

6 (b) There is created a board of review to serve as the
7 adjudicatory body of the authority and shall conduct all
8 hearings as required in this article, article two-d of this
9 chapter.

10 (1) The board shall consist of five members, appointed
11 by the Governor, with the advice and consent of the
12 Senate. The board members are not permitted to hold
13 political office in the government of the state either by
14 election or appointment while serving as a member of the
15 board. The board members are not eligible for civil service
16 coverage as provided in section four, article six, chapter
17 twenty-nine of this code. The board members shall be
18 citizens and residents of this state.

19 (2) No more than three of the board members may be
20 members of the same political party. One board member
21 shall have a background in health care finance or
22 economics, one board member shall have previous
23 employment experience in human services, business
24 administration or substantially related fields, one board
25 member shall have previous experience in the
26 administration of a health care facility, one board member
27 shall have previous experience as a provider of health care

28 services, and one board member shall be a consumer of
29 health services with a demonstrated interest in health care
30 issues.

31 (3) Each member appointed by the Governor shall serve
32 staggered terms of six years. Any member whose term has
33 expired shall serve until his or her successor has been
34 appointed. Any person appointed to fill a vacancy shall
35 serve only for the unexpired term. Any member shall be
36 eligible for reappointment. In cases of vacancy in the office
37 of member, such vacancy shall be filled by the Governor in
38 the same manner as the original appointment.

39 (4) Each board member shall, before entering upon the
40 duties of his or her office, take and subscribe to the oath
41 provided by section five, article IV of the Constitution of
42 the State of West Virginia, which oath shall be filed in the
43 office of the Secretary of State.

44 (5) The Governor shall designate one of the board
45 members to serve as chairman at the Governor's will and
46 pleasure.

47 (6) The Governor may remove any board member only
48 for incompetency, neglect of duty, gross immorality,
49 malfeasance in office or violation of the provisions of this
50 article.

51 (7) No person while in the employ of, or holding any
52 official relation to, any hospital or health care provider
53 subject to the provisions of this article, or who has any
54 pecuniary interest in any hospital or health care provider,
55 may serve as a member of the board. Nor may any board
56 member be a candidate for or hold public office or be a
57 member of any political committee while acting as a board
58 member; nor may any board member or employee of the
59 board receive anything of value, either directly or indirectly,
60 from any third-party payor or health care provider. If any of
61 the board members become a candidate for any public office
62 or for membership on any political committee, the Governor

63 shall remove the board member from the board and shall
64 appoint a new board member to fill the vacancy created. No
65 board member or former board member may accept
66 employment with any hospital or health care provider
67 subject to the jurisdiction of the board in violation of the
68 West Virginia governmental ethics act, chapter six-b of this
69 code: *Provided*, That the act may not apply to employment
70 accepted after termination of the board.

71 (8) The concurrent judgment of three of the board
72 members shall be considered the action of the board. A
73 vacancy in the board does not affect the right or duty of the
74 remaining board members to function as a board.

75 (9) Each member of the board shall serve without
76 compensation, but shall receive expense reimbursement for all
77 reasonable and necessary expenses actually incurred in the
78 performance of the duties of the office, in the same amount
79 paid to members of the Legislature for their interim duties as
80 recommended by the citizens legislative compensation
81 commission and authorized by law. No member may be
82 reimbursed for expenses paid by a third party.

§16-29B-5a. Executive Director of the authority; powers and duties.

1 (a) The Secretary shall appoint an executive director of
2 the authority to supervise and direct the fiscal and
3 administrative matters of the authority. This person shall be
4 qualified by training and experience to direct the operations
5 of the authority. The executive director is ineligible for civil
6 service coverage as provided in section four, article six,
7 chapter twenty-nine of this code and serves at the will and
8 pleasure of the Secretary.

9 (b) The executive director shall:

10 (1) Serve on a full-time basis and may not be engaged
11 in any other profession or occupation;

12 (2) Not hold political office in the government of the
13 state either by election or appointment while serving as
14 executive director;

15 (3) Shall be a citizen of the United States and shall
16 become a citizen of the state within ninety days of
17 appointment; and

18 (4) Report to the Secretary.

19 (c) The executive director has other powers and duties
20 as set forth in this article.

§16-29B-8. Powers generally; budget expenses of the authority.

1 In addition to the powers granted to the authority
2 elsewhere in this article, the authority may:

3 (1) Adopt, amend and repeal necessary, appropriate and
4 lawful policy guidelines, and in cooperation with the
5 Secretary, propose rules in accordance with article three,
6 chapter twenty-nine-a of this code;

7 (2) Hold public hearings, conduct investigations and
8 require the filing of information relating to matters affecting
9 the costs of health care services subject to the provisions of
10 this article and may subpoena witnesses, papers, records,
11 documents and all other data in connection therewith. The
12 board may administer oaths or affirmations in any hearing
13 or investigation; and

14 (3) Exercise, subject to limitations or restrictions herein
15 imposed, all other powers which are reasonably necessary
16 or essential to effect the express objectives and purposes of
17 this article.

§16-29B-12. Certificate of need hearings; administrative procedures act applicable; hearings examiner; subpoenas.

1 (a) The board shall conduct such hearings as it deems
2 necessary for the performance of its functions and shall hold
3 hearings when required by the provisions of this chapter or
4 upon a written demand by a person aggrieved by any act or
5 failure to act by the board regulation or order of the board.
6 All hearings of the board pursuant to this section shall be
7 announced in a timely manner and shall be open to the
8 public. In making decisions in the certificate of need
9 process, the board shall be guided by the state health plan
10 approved by the Governor.

11 (b) All pertinent provisions of article five, chapter
12 twenty-nine-a of this code shall apply to and govern the
13 hearing and administrative procedures in connection with
14 and following the hearing except as specifically stated to the
15 contrary in this article. General counsel for Department of
16 Health and Human Resources or general counsel for the
17 authority shall represent the interest of the authority at all
18 hearings.

19 (c) Any hearing may be conducted by members of the
20 board or by a hearing examiner appointed by the board for
21 such purpose. The chairperson of the board may issue
22 subpoenas and subpoenas duces tecum which shall be
23 issued and served pursuant to the time, fee and enforcement
24 specifications in section one, article five, chapter twenty-
25 nine-a of this code.

26 (d) Notwithstanding any other provision of state law,
27 when a hospital alleges that a factual determination made by
28 the board is incorrect, the burden of proof shall be on the
29 hospital to demonstrate that such determination is, in light
30 of the total record, not supported by substantial evidence.
31 The burden of proof remains with the hospital in all cases.

32 (e) After any hearing, after due deliberation, and in
33 consideration of all the testimony, the evidence and the total
34 record made, the board shall render a decision in writing.
35 The written decision shall be accompanied by findings of
36 fact and conclusions of law as specified in section three,

37 article five, chapter twenty-nine-a of this code, and the copy
38 of the decision and accompanying findings and conclusions
39 shall be served by certified mail, return receipt requested,
40 upon the party demanding the hearing, and upon its attorney
41 of record, if any.

42 (f) Any interested individual, group or organization
43 shall be recognized as affected parties upon written request
44 from the individual, group or organization. Affected parties
45 shall have the right to bring relevant evidence before the
46 board and testify thereon. Affected parties shall have equal
47 access to records, testimony and evidence before the board
48 and shall have equal access to the expertise of the
49 authority's staff. The authority, with the approval of the
50 secretary, shall have authority to propose rules to administer
51 provisions of this section.

52 (g) A decision of the board is final unless reversed,
53 vacated or modified upon judicial review thereof, in
54 accordance with the provisions of section thirteen of this
55 article.

§16-29B-26. Exemptions from state antitrust laws.

1 (a) Actions of the authority shall be exempt from
2 antitrust action under state and federal antitrust laws. Any
3 actions of hospitals and health care providers under the
4 authority's jurisdiction, when made in compliance with
5 orders, directives, rules, approvals or regulations issued or
6 promulgated by the authority, shall likewise be exempt.

7 (b) It is the intention of the Legislature that this chapter
8 shall also immunize cooperative agreements approved and
9 subject to supervision by the authority and activities
10 conducted pursuant thereto from challenge or scrutiny under
11 both state and federal antitrust law: *Provided*, That a
12 cooperative agreement that is not approved and subject to
13 supervision by the authority shall not have such immunity.

§16-29B-28. Review of Cooperative agreements.

1 (a) *Definitions.* — As used in this section the following
2 terms have the following meanings:

3 (1) “Academic medical center” means an accredited
4 medical school, one or more faculty practice plans affiliated
5 with the medical school or one or more affiliated hospitals
6 which meet the requirements set forth in 42 C. F. R.
7 411.355(e).

8 (2) “Accredited academic hospital” means a hospital or
9 health system that sponsor four or more approved medical
10 education programs.

11 (3) “Cooperative agreement” means an agreement
12 between a qualified hospital which is a member of an
13 academic medical center and one or more other hospitals or
14 other health care providers. The agreement shall provide for
15 the sharing, allocation, consolidation by merger or other
16 combination of assets, or referral of patients, personnel,
17 instructional programs, support services and facilities or
18 medical, diagnostic, or laboratory facilities or procedures or
19 other services traditionally offered by hospitals or other
20 health care providers.

21 (4) “Commercial health plan” means a plan offered by
22 any third party payor that negotiates with a party to a
23 cooperative agreement with respect to patient care services
24 rendered by health care providers.

25 (5) “Health care provider” means the same as that term
26 is defined in section three of this article.

27 (6) “Teaching hospital” means a hospital or medical
28 center that provides clinical education and training to future
29 and current health professionals whose main building or
30 campus is located in the same county as the main campus of
31 a medical school operated by a state university.

32 (7) “Qualified hospital” means an academic medical
33 center or teaching accredited academic hospital, which has
34 entered into a cooperative agreement with one or more

35 hospitals or other health care providers but is not a critical
36 access hospital for purposes of this section.

37 (b) *Findings.* —

38 (1) The Legislature finds that the state's schools of
39 medicine, affiliated universities and teaching hospitals are
40 critically important in the training of physicians and other
41 healthcare providers who practice health care in this state.
42 They provide access to healthcare and enhance quality
43 healthcare for the citizens of this state.

44 (2) A medical education is enhanced when medical
45 students, residents and fellows have access to modern
46 facilities, state of the art equipment and a full range of
47 clinical services and that, in many instances, the
48 accessibility to facilities, equipment and clinical services
49 can be achieved more economically and efficiently through
50 a cooperative agreement among a qualified hospital and one
51 or more hospitals or other health care providers.

52 (c) *Legislative purpose.* — The Legislature encourages
53 cooperative agreements if the likely benefits of such
54 agreements outweigh any disadvantages attributable to a
55 reduction in competition. When a cooperative agreement,
56 and the planning and negotiations of cooperative
57 agreements, might be anticompetitive within the meaning
58 and intent of state and federal antitrust laws the Legislature
59 believes it is in the state's best interest to supplant such laws
60 with regulatory approval and oversight by the Health Care
61 Authority as set out in this article. The authority has the
62 power to review, approve or deny cooperative agreements,
63 ascertain that they are beneficial to citizens of the state and
64 to medical education, to ensure compliance with the
65 provisions of the cooperative agreements relative to the
66 commitments made by the qualified hospital and conditions
67 imposed by the Health Care Authority.

68 (d) *Cooperative Agreements.* —

69 (1) A qualified hospital may negotiate and enter into a
70 cooperative agreement with other hospitals or health care
71 providers in the state:

72 (A) In order to enhance or preserve medical education
73 opportunities through collaborative efforts and to ensure
74 and maintain the economic viability of medical education in
75 this state and to achieve the goals hereinafter set forth; and

76 (B) When the likely benefits outweigh any
77 disadvantages attributable to a reduction in competition that
78 may result from the proposed cooperative agreement.

79 (2) The goal of any cooperative agreement would be to:

80 (A) Improve access to care;

81 (B) Advance health status;

82 (C) Target regional health issues;

83 (D) Promote technological advancement;

84 (E) Ensure accountability of the cost of care;

85 (F) Enhance academic engagement in regional health;

86 (G) Preserve and improve medical education
87 opportunities;

88 (H) Strengthen the workforce for health-related careers;
89 and

90 (I) Improve health entity collaboration and regional
91 integration, where appropriate.

92 (3) A qualified hospital located in this state may submit
93 an application for approval of a proposed cooperative
94 agreement to the authority. The application shall state in
95 detail the nature of the proposed arrangement including the
96 goals and methods for achieving:

- 97 (A) Population health improvement;
- 98 (B) Improved access to health care services;
- 99 (C) Improved quality;
- 100 (D) Cost efficiencies;
- 101 (E) Ensuring affordability of care;
- 102 (F) Enhancing and preserving medical education
103 programs; and
- 104 (G) Supporting the authority's goals and strategic
105 mission, as applicable.

106 (4) (A) An application for review of a cooperative
107 agreement as provided in this section shall be submitted and
108 approved prior to the finalization of the cooperative
109 agreement, if the cooperative agreement involves the
110 merger, consolidation or acquisition of a hospital located
111 within a distance of twenty highway miles of the main
112 campus of the qualified hospital.

113 (B) In reviewing an application for cooperative
114 agreement, the authority shall give deference to the policy
115 statements of the Federal Trade Commission.

116 (C) If an application for a review of a cooperative
117 agreement is not required the qualified hospital may apply
118 to the authority for approval of the cooperative agreement
119 either before or after the finalization of the cooperative
120 agreement.

121 (e) *Procedure for review of cooperative agreements.* —

122 (1) Upon receipt of an application, the authority shall
123 determine whether the application is complete. If the
124 authority determines the application is incomplete, it shall
125 notify the applicant in writing of additional items required
126 to complete the application. A copy of the complete
127 application shall be provided by the parties to the Office of

128 the Attorney General simultaneous with the submission to
129 the authority. If an applicant believes the materials
130 submitted contain proprietary information that is required to
131 remain confidential, such information must be clearly
132 identified and the applicant shall submit duplicate
133 applications, one with full information for the authority's
134 use and one redacted application available for release to the
135 public.

136 (2) The authority shall upon receipt of a completed
137 application, publish notification of the application on its
138 website as well as provide notice of such application placed
139 in the State Register. The public may submit written
140 comments regarding the application within ten days
141 following publication. Following the close of the written
142 comment period, the authority shall review the application
143 as set forth in this section. Within thirty days of the receipt
144 of a complete application the authority may:

145 (i) Issue a certificate of approval which shall contain any
146 conditions the authority finds necessary for the approval;

147 (ii) Deny the application; or

148 (iii) Order a public hearing if the authority finds it
149 necessary to make an informed decision on the application.

150 (3) The authority shall issue a written decision within
151 seventy-five days from receipt of the completed application.
152 The authority may request additional information in which
153 case they shall have an additional fifteen days following
154 receipt of the supplemental information to approve or deny
155 the proposed cooperative agreement.

156 (4) Notice of any hearing shall be sent by certified mail
157 to the applicants and all persons, groups or organizations
158 who have submitted written comments on the proposed
159 cooperative agreement. Any individual, group or
160 organization who submitted written comments regarding
161 the application and wishes to present evidence at the public

162 hearing shall request to be recognized as an affected party
163 as set forth in article two-d of this chapter. The hearing shall
164 be held no later than forty-five days after receipt of the
165 application. The authority shall publish notice of the hearing
166 on the authority's website fifteen days prior to the hearing.
167 The authority shall additionally provide timely notice of
168 such hearing in the State Register.

169 (5) Parties may file a motion for an expedited decision.

170 (f) *Standards for review of cooperative agreements.* —

171 (1) In its review of an application for approval of a
172 cooperative agreement submitted pursuant to this section,
173 the authority may consider the proposed cooperative
174 agreement and any supporting documents submitted by the
175 applicant, any written comments submitted by any person
176 and any written or oral comments submitted, or evidence
177 presented, at any public hearing.

178 (2) The authority shall consult with the Attorney
179 General of this state regarding his or her assessment of
180 whether or not to approve the proposed cooperative
181 agreement.

182 (3) The authority shall approve a proposed cooperative
183 agreement and issue a certificate of approval if it
184 determines, with the written concurrence of the Attorney
185 General, that the benefits likely to result from the proposed
186 cooperative agreement outweigh the disadvantages likely to
187 result from a reduction in competition from the proposed
188 cooperative agreement.

189 (4) In evaluating the potential benefits of a proposed
190 cooperative agreement, the authority shall consider whether
191 one or more of the following benefits may result from the
192 proposed cooperative agreement:

193 (A) Enhancement and preservation of existing academic
194 and clinical educational programs;

195 (B) Enhancement of the quality of hospital and hospital-
196 related care, including mental health services and treatment
197 of substance abuse provided to citizens served by the
198 authority;

199 (C) Enhancement of population health status consistent
200 with the health goals established by the authority;

201 (D) Preservation of hospital facilities in geographical
202 proximity to the communities traditionally served by those
203 facilities to ensure access to care;

204 (E) Gains in the cost-efficiency of services provided by
205 the hospitals involved;

206 (F) Improvements in the utilization of hospital resources
207 and equipment;

208 (G) Avoidance of duplication of hospital resources;

209 (H) Participation in the state Medicaid program; and

210 (I) Constraints on increases in the total cost of care.

211 (5) The authority's evaluation of any disadvantages
212 attributable to any reduction in competition likely to result
213 from the proposed cooperative agreement shall include, but
214 need not be limited to, the following factors:

215 (A) The extent of any likely adverse impact of the
216 proposed cooperative agreement on the ability of health
217 maintenance organizations, preferred provider organizations,
218 managed health care organizations or other health care payors
219 to negotiate reasonable payment and service arrangements
220 with hospitals, physicians, allied health care professionals or
221 other health care providers;

222 (B) The extent of any reduction in competition among
223 physicians, allied health professionals, other health care
224 providers or other persons furnishing goods or services to,
225 or in competition with, hospitals that is likely to result

226 directly or indirectly from the proposed cooperative
227 agreement;

228 (C) The extent of any likely adverse impact on patients
229 in the quality, availability and price of health care services;
230 and

231 (D) The availability of arrangements that are less
232 restrictive to competition and achieve the same benefits or
233 a more favorable balance of benefits over disadvantages
234 attributable to any reduction in competition likely to result
235 from the proposed cooperative agreement.

236 (6) (A) After a complete review of the record, including,
237 but not limited to, the factors set out in subsection (e) of this
238 section, any commitments made by the applicant or
239 applicants and any conditions imposed by the authority, if
240 the authority determines that the benefits likely to result
241 from the proposed cooperative agreement outweigh the
242 disadvantages likely to result from a reduction in
243 competition from the proposed cooperative agreement, the
244 authority shall approve the proposed cooperative
245 agreement.

246 (B) The authority may reasonably condition approval
247 upon the parties' commitments to:

248 (i) Achieving improvements in population health;

249 (ii) Access to health care services;

250 (iii) Quality and cost efficiencies identified by the
251 parties in support of their application for approval of the
252 proposed cooperative agreement; and

253 (iv) Any additional commitments made by the parties
254 to the cooperative agreement.

255 Any conditions set by the authority shall be fully
256 enforceable by the authority. No condition imposed by the
257 authority, however, shall limit or interfere with the right of

258 a hospital to adhere to religious or ethical directives
259 established by its governing board.

260 (7) The authority's decision to approve or deny an
261 application shall constitute a final order or decision pursuant
262 to the West Virginia Administrative Procedure Act (§ 29A-
263 1-1, *et seq.*). The authority may enforce commitments and
264 conditions imposed by the authority in the circuit court of
265 Kanawha County or the circuit court where the principal
266 place of business of a party to the cooperative agreement is
267 located.

268 (g) *Enforcement and supervision of cooperative*
269 *agreements.* — The authority shall enforce and supervise
270 any approved cooperative agreement for compliance.

271 (1) The authority is authorized to promulgate legislative
272 rules in furtherance of this section. Additionally, the
273 authority shall promulgate emergency rules pursuant to the
274 provisions of section fifteen, article three, chapter twenty-
275 nine-a of this code to accomplish the goals of this section.
276 These rules shall include, at a minimum:

277 (A) An annual report by the parties to a cooperative
278 agreement. This report is required to include:

279 (i) Information about the extent of the benefits realized
280 and compliance with other terms and conditions of the
281 approval;

282 (ii) A description of the activities conducted pursuant to
283 the cooperative agreement, including any actions taken in
284 furtherance of commitments made by the parties or terms
285 imposed by the authority as a condition for approval of the
286 cooperative agreement;

287 (iii) Information relating to price, cost, quality, access
288 to care and population health improvement;

289 (iv) Disclosure of any reimbursement contract between
290 a party to a cooperative agreement approved pursuant to this

291 section and a commercial health plan or insurer entered into
292 subsequent to the finalization of the cooperative agreement.
293 This shall include the amount, if any, by which an increase
294 in the average rate of reimbursement exceeds, with respect
295 to inpatient services for such year, the increase in the
296 Consumer Price Index for all Urban Consumers for hospital
297 inpatient services as published by the Bureau of Labor
298 Statistics for such year and, with respect to outpatient
299 services, the increase in the Consumer Price Index for all
300 Urban Consumers for hospital outpatient services for such
301 year; and

302 (v) Any additional information required by the authority
303 to ensure compliance with the cooperative agreement.

304 (B) If an approved application involves the combination
305 of hospitals, disclosure of the performance of each hospital
306 with respect to a representative sample of quality metrics
307 selected annually by the authority from the most recent
308 quality metrics published by the Centers for Medicare and
309 Medicaid Services. The representative sample shall be
310 published by the authority on its website.

311 (C) A procedure for a corrective action plan where the
312 average performance score of the parties to the cooperative
313 agreement in any calendar year is below the fiftieth
314 percentile for all United States hospitals with respect to the
315 quality metrics as set forth in (B) of this subsection. The
316 corrective action plan is required to:

317 (i) Be submitted one hundred twenty days from the
318 commencement of the next calendar year; and

319 (ii) Provide for a rebate to each commercial health plan
320 or insurer with which they have contracted an amount not in
321 excess of one percent of the amount paid to them by such
322 commercial health plan or insurer for hospital services
323 during such two-year period if in any two consecutive-year
324 period the average performance score is below the fiftieth
325 percentile for all United States hospitals. The amount to be

326 rebated shall be reduced by the amount of any reduction in
327 reimbursement which may be imposed by a commercial
328 health plan or insurer under a quality incentive or awards
329 program in which the hospital is a participant.

330 (D) A procedure where if the excess above the increase
331 in the Consumer Price Index for all Urban Consumers for
332 hospital inpatient services or hospital outpatient services is
333 two percent or greater the authority may order the rebate of
334 the amount which exceeds the respective indices by two
335 percent or more to all health plans or insurers which paid
336 such excess unless the party provides written justification of
337 such increase satisfactory to the authority taking into
338 account case mix index, outliers and extraordinarily high
339 cost outpatient procedure utilizations.

340 (E) The ability of the authority to investigate, as needed,
341 to ensure compliance with the cooperative agreement.

342 (F) The ability of the authority to take appropriate
343 action, including revocation of a certificate of approval, if it
344 determines that:

345 (i) The parties to the agreement are not complying with
346 the terms of the agreement or the terms and conditions of
347 approval;

348 (ii) The authority's approval was obtained as a result of
349 an intentional material misrepresentation;

350 (iii) The parties to the agreement have failed to pay any
351 required fee; or

352 (iv) The benefits resulting from the approved agreement
353 no longer outweigh the disadvantages attributable to the
354 reduction in competition resulting from the agreement.

355 (G) If the authority determines the parties to an
356 approved cooperative agreement have engaged in conduct
357 that is contrary to state policy or the public interest,
358 including the failure to take action required by state policy

359 or the public interest, the authority may initiate a proceeding
360 to determine whether to require the parties to refrain from
361 taking such action or requiring the parties to take such
362 action, regardless of whether or not the benefits of the
363 cooperative agreement continue to outweigh its
364 disadvantages. Any determination by the authority shall be
365 final. The authority is specifically authorized to enforce its
366 determination in the circuit court of Kanawha County or the
367 circuit court where the principal place of business of a party
368 to the cooperative agreement is located.

369 (H) Fees as set forth in subsection (h).

370 (2) Until the promulgation of the emergency rules, the
371 authority shall monitor and regulate cooperative agreements
372 to ensure that their conduct is in the public interest and shall
373 have the powers set forth in subdivision (1) of this
374 subsection, including the power of enforcement set forth in
375 paragraph (G), subdivision (1) of this subsection.

376 (h) *Fees.* — The authority may set fees for the approval
377 of a cooperative agreement. These fees shall be for all
378 reasonable and actual costs incurred by the authority in its
379 review and approval of any cooperative agreement pursuant
380 to this section. These fees shall not exceed \$75,000.
381 Additionally, the authority may assess an annual fee not to
382 exceed \$75,000 for the supervision of any cooperative
383 agreement approved pursuant to this section and to support
384 the implementation and administration of the provisions of
385 this section.

386 (i) *Miscellaneous provisions.* —

387 (1) (A) An agreement entered into by a hospital party to
388 a cooperative agreement and any state official or state
389 agency imposing certain restrictions on rate increases shall
390 be enforceable in accordance with its terms and may be
391 considered by the authority in determining whether to
392 approve or deny the application. Nothing in this chapter
393 shall undermine the validity of any such agreement between

394 a hospital party and the Attorney General entered before the
395 effective date of this legislation.

396 (B) At least ninety days prior to the implementation of
397 any increase in rates for inpatient and outpatient hospital
398 services and at least sixty days prior to the execution of any
399 reimbursement agreement with a third party payor, a
400 hospital party to a cooperative agreement involving the
401 combination of two or more hospitals through merger,
402 consolidation or acquisition which has been approved by the
403 authority shall submit any proposed increase in rates for
404 inpatient and outpatient hospital services and any such
405 reimbursement agreement to the Office of the West Virginia
406 Attorney General together with such information
407 concerning costs, patient volume, acuity, payor mix and
408 other data as the Attorney General may request. Should the
409 Attorney General determine that the proposed rates may
410 inappropriately exceed competitive rates for comparable
411 services in the hospital's market area which would result in
412 unwarranted consumer harm or impair consumer access to
413 health care, the Attorney General may request the authority
414 to evaluate the proposed rate increase and to provide its
415 recommendations to the Office of the Attorney General.
416 The Attorney General may approve, reject or modify the
417 proposed rate increase and shall communicate his or her
418 decision to the hospital no later than 30 days prior to the
419 proposed implementation date. The hospital may then only
420 implement the increase approved by the Attorney General.
421 Should the Attorney General determine that a
422 reimbursement agreement with a third party payor includes
423 pricing terms at anti-competitive levels, the Attorney
424 General may reject the reimbursement agreement and
425 communicate such rejection to the parties thereto together
426 with the rationale therefor in a timely manner.

427 (2) The authority shall maintain on file all cooperative
428 agreements the authority has approved, including any
429 conditions imposed by the authority.

430 (3) Any party to a cooperative agreement that terminates
431 its participation in such cooperative agreement shall file a
432 notice of termination with the authority thirty days after
433 termination.

434 (4) No hospital which is a party to a cooperative
435 agreement for which approval is required pursuant to this
436 section may knowingly bill or charge for health services
437 resulting from, or associated with, such cooperative
438 agreement until approved by the authority. Additionally, no
439 hospital which is a party to a cooperative agreement may
440 knowingly bill or charge for health services resulting from,
441 or associated with, such cooperative agreement for which
442 approval has been revoked or terminated.

443 (5) By submitting an application for review of a
444 cooperative agreement pursuant to this section, the hospitals
445 or health care providers shall be deemed to have agreed to
446 submit to the regulation and supervision of the authority as
447 provided in this section.

§16-29B-30. Applicability; transition plan.

1 (a) Notwithstanding any provision of this code to the
2 contrary, effective July 1, 2017, the Health Care Authority
3 shall transfer to the Department of Health and Human and
4 Resources. Any and all remaining functions of the Health
5 Care Authority shall transfer at that time to the Department
6 of Health and Human Resources.

7 (b) The Health Care Authority shall develop and
8 implement a transition plan to transfer all their remaining
9 functions to the Department of Health and Human
10 Resources. The plan shall be submitted in writing to the
11 Joint Committee on Government and Finance, the Governor
12 and the Secretary of the Department of Health and Human
13 Resources, the Secretary of the Department of
14 Administration and the Division of Personnel. This plan
15 shall be submitted no later than June 1, 2017. The plan shall
16 include proposals for the following:

17 (1) Transition to appropriate entities or destruction of
18 hard and electronic copies of files;

19 (2) Transfer of all certificate of need matters pending
20 as of July 1, 2017, to the Department of Health and Human
21 Resources.

22 (3) In consultation with the Department of
23 Administration, discontinuation of use of the current
24 building including termination of any lease or rental
25 agreements, if necessary;

26 (4) In consultation with the Department of
27 Administration, disposition of all state owned or leased
28 office furniture and equipment, including any state owned
29 vehicles, if necessary;

30 (5) Closing out and transferring existing budget
31 allocations;

32 (6) A transition plan developed in conjunction with the
33 Division of Personnel for remaining employees not
34 transferred to other offices within state government;

35 (7) A plan to repeal all existing legislative rules made
36 unnecessary by the transfer of the Health Care Authority;
37 and

38 (8) Any other matters which would effectively terminate
39 all functions not transferred to the Department of Health and
40 Human Resources.

41 (9) Upon the effective date of the changes to this article
42 made during the course of the 2017 Regular Session of the
43 Legislature, any function of the Health Care Authority not
44 otherwise eliminated or transferred shall become a function
45 of the Department of Health and Human Resources.

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

§16-29G-1a. Transfer of West Virginia Health Information Network.

1 (a) As used in this article, the following mean:

2 (1) "Agreement" means a document that may be
3 entered into between the network board and the corporation;

4 (2) "Assets" means the tangible and intangible
5 personal property of the network on the transfer date,
6 including all assignable grants, all obligated funds on
7 deposit in the network account, agreements and contracts;

8 (3) "Corporation" means any nonstock, nonprofit
9 corporation to be established under the chapter thirty-one;

10 (4) "Network" means the West Virginia Health
11 Information Network; and

12 (5) "Network account" means the West Virginia
13 Health Information Network Account.

14 (b) By December 31, 2017, the network board of
15 directors shall transfer the existing network, the associated
16 assets and liabilities to a private nonprofit corporation
17 organized under chapter thirty-one e of this code.

18 (c) The network board of directors may enter into
19 agreements as they determine are appropriate to implement
20 the transfer. The agreements are exempt from the bidding
21 and public sale requirements, from the approval of
22 contractual agreements by the Department of
23 Administration or the Attorney General and from the
24 requirements of chapter five-a of this code.

25 (d) The initial corporation board of directors may
26 consist of any current members of the network board of
27 directors. The current appointed network directors shall
28 continue to serve until the transfer is complete.
29 Notwithstanding any other provisions of this code to the
30 contrary, officers and employees of the network may be

31 transferred considered for employment with to the
32 corporation, and any such employment shall be deemed
33 exempt from the requirements and limitations imposed by
34 section five, article two, chapter six-B and any legislative
35 rules promulgated thereunder.

36 (e) The corporation shall have all powers afforded to
37 a nonprofit corporation by law and is limited to those
38 powers enumerated in this article.

39 (f) The corporation shall not be a department, unit,
40 agency or instrumentality of the state.

41 (g) The corporation is not subject to the provisions of
42 article nine-a, chapter six of this code, Open Government
43 Proceeding; the provisions of article two, chapter six-c of
44 this code, the West Virginia Public Employees Grievance
45 Procedure; the provisions of article six, chapter twenty-nine
46 of this code, Civil Service System; or the provisions of
47 chapter twenty-nine-b of this code, Freedom of Information;
48 article twelve, chapter twenty-nine of this code, State
49 Insurance; article ten, chapter five, of this code, West
50 Virginia Public Employees Retirement Act, or the
51 provisions of article sixteen, chapter five, of this code, West
52 Virginia Public Employees Insurance Act.

53 (h) The Secretary of the Department of Health and
54 Human Resources may designate the corporation as the
55 state's health information exchange, and shall have the
56 authority to make sole source grants or enter into sole source
57 contracts with the corporation pursuant to section ten-c,
58 article three, chapter five-a of this code.

59 (i) The Secretary of the Department of Health and
60 Human Resources shall have access to the data free of
61 charge subject to the provisions of applicable state and
62 federal law.

§16-29G-4. Creation of the West Virginia Health Information Network account; authorization of Health Care Authority to expend funds to support the network.

1 (a) All moneys collected shall be deposited in a special
2 revenue account in the state Treasury known as the West
3 Virginia Health Information Network Account.
4 Expenditures from the fund shall be for the purposes set
5 forth in this article and are not authorized from collections
6 but are to be made only in accordance with appropriation by
7 the Legislature and in accordance with the provisions of
8 article three, chapter twelve of this code and upon
9 fulfillment of the provisions of article two, chapter eleven-
10 b of this code: *Provided*, That for the fiscal year ending June
11 30, 2007, expenditures are authorized from collections
12 rather than pursuant to appropriations by the Legislature.

13 (b) Consistent with section eight, article twenty-nine-b
14 of this chapter, the Health Care Authority's provision of
15 administrative, personnel, technical and other forms of
16 support to the network is necessary to support the activities
17 of the Health Care Authority board and constitutes a
18 legitimate, lawful purpose of the Health Care Authority
19 board. Therefore, the Health Care Authority is hereby
20 authorized to expend funds from its Health Care Cost
21 Review Fund, established under section eight, article
22 twenty-nine-b of this chapter, to support the network's
23 administrative, personnel and technical needs and any other
24 network activities the Health Care Authority deems
25 necessary.

26 (c) Notwithstanding section ten, article three, chapter
27 twelve of this code, on the transfer date, the encumbered
28 amounts on deposit in the West Virginia Health Information
29 Network Account shall be paid over to the corporation, the
30 account shall be closed and subsection (a) of this section
31 shall be of no further effect.

CHAPTER 21. LABOR.

ARTICLE 5. NURSE OVERTIME AND PATIENT SAFETY ACT.**§21-5F-4. Enforcement; offenses and penalties.**

1 (a) Pursuant to the powers set forth in article one of this
2 chapter, the Commissioner of Labor is charged with the
3 enforcement of this article. The commissioner shall propose
4 legislative and procedural rules in accordance with the
5 provisions of article three, chapter twenty-nine-a of this
6 code to establish procedures for enforcement of this article.
7 These rules shall include, but are not limited to, provisions
8 to protect due process requirements, a hearings procedure,
9 an appeals procedure, and a notification procedure,
10 including any signs that must be posted by the facility.

11 (b) Any complaint must be filed with the commissioner
12 regarding an alleged violation of the provisions of this
13 article must be made within thirty days following the
14 occurrence of the incident giving rise to the alleged
15 violation. The commissioner shall keep each complaint
16 anonymous until the commissioner finds that the complaint
17 has merit. The commissioner shall establish a process for
18 notifying a hospital of a complaint.

19 (c) The administrative penalty for the first violation of
20 this article is a reprimand.

21 (d) The administrative penalty for the second offense of
22 this article is a reprimand and a fine not to exceed \$500.

23 (e) The administrative penalty for the third and
24 subsequent offenses is a fine of not less than \$2,500 and not
25 more than \$5,000 for each violation.

26 (f) To be eligible to be charged of a second offense or
27 third offense under this section, the subsequent offense must
28 occur within twelve months of the prior offense.

29 (g) All moneys paid as administrative penalties pursuant
30 to this section shall be deposited into the General Revenue
31 Fund.

CHAPTER 33. INSURANCE.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-4A-1. Definitions.

1 (a) “All-payer claims database” or “APCD” means the
2 program authorized by this article that collects, retains, uses
3 and discloses information concerning the claims and
4 administrative expenses of health care payers.

5 (b) “Commissioner” means the West Virginia Insurance
6 Commissioner.

7 (c) “Data” means the data elements from enrollment and
8 eligibility files, specified types of claims, and reference files
9 for data elements not maintained in formats consistent with
10 national coding standards.

11 (d) “Executive Director” means the executive director
12 of the West Virginia Health Care Authority.

13 (e) “Health care payer” means any entity that pays or
14 administers the payment of health insurance claims or
15 medical claims under workers’ compensation insurance to
16 providers in this state, including workers’ compensation
17 insurers; accident and sickness insurers; nonprofit hospital
18 service corporations, medical service corporations and
19 dental service organizations; nonprofit health service
20 corporations; prepaid limited health service organizations;
21 health maintenance organizations; and government payers,
22 including but not limited to Medicaid, Medicare and the
23 public employees insurance agency; the term also includes
24 any third-party administrator including any pharmacy

25 benefit manager, that administers a fully-funded or self-
26 funded plan:

27 A “health insurance claim” does not include:

28 (1) Any claim paid under an individual or group policy
29 providing coverage only for accident, or disability income
30 insurance or any combination thereof; coverage issued as a
31 supplement to liability insurance; liability insurance,
32 including general liability insurance and automobile
33 liability; credit-only insurance; coverage for on-site medical
34 clinics; other similar insurance coverage, which may be
35 specified by rule, under which benefits for medical care are
36 secondary or incidental to other insurance benefits; or

37 (2) Any of the following if provided under a separate
38 policy, certificate, or contract of insurance: Limited scope
39 dental or vision benefits; benefits for long-term care,
40 nursing home care, home health care, community-based
41 care, or any combination thereof; coverage for only a
42 specified disease or illness; or hospital indemnity or other
43 fixed indemnity insurance.

44 “Health insurance claims” shall only include
45 information from Medicare supplemental policies if the
46 same information is obtained with respect to Medicare.

47 (f) “Personal identifiers” means information relating to
48 an individual member or insured that identifies, or can be
49 used to identify, locate or contact a particular individual
50 member or insured, including but not limited to the
51 individual’s name, street address, social security number, e-
52 mail address and telephone number.

53 (g) “Secretary” means the Secretary of the West
54 Virginia Department of Health and Human Services.

55 (h) “Third-party administrator” has the same meaning
56 ascribed to it in section two, article forty-six of this chapter.

§33-4A-2. Establishment and development of an all-payer claims database.

1 (a) The secretary, commissioner and the executive
2 director, collectively referred to herein as the “MOU
3 parties”, shall enter into a memorandum of understanding to
4 develop an all-payer claims database program.

5 (b) The memorandum of understanding shall, at a
6 minimum:

7 (1) Provide that the commissioner will have primary
8 responsibility for the collection of the data in order to
9 facilitate the efficient administration of state oversight, the
10 secretary will have primary responsibility for the retention
11 of data supplied to the state under its health care oversight
12 function, and the executive director will have primary
13 responsibility for the dissemination of the data;

14 (2) Delineate the MOU parties’ roles, describe the
15 process to develop legislative rules required by this article,
16 establish communication processes and a coordination plan,
17 and address vendor relationship management;

18 (3) Provide for the development of a plan for the
19 financial stability of the APCD, including provision for
20 funding by the MOU parties’ agencies; and

21 (4) Provide for the use of the hospital discharge data
22 collected by the West Virginia Health Care Authority as a
23 tool in the validation of APCD reports.

§33-4A-3. Powers of the commissioner, secretary and executive director; exemption from purchasing rules.

1 (a) The MOU parties may:

2 (1) Accept gifts, bequests, grants or other funds
3 dedicated to the furtherance of the goals of the APCD;

4 (2) Select a vendor to handle data collection and
5 processing and such other tasks as deemed appropriate;

6 (3) Enter into agreements with other states to perform
7 joint administrative operations, share information and assist
8 in the development of multistate efforts to further the goals
9 of this article: *Provided*, That any such agreements must
10 include adequate protections with respect to the
11 confidentiality of the information to be shared and comply
12 with all state and federal laws and regulations;

13 (4) Enter into memoranda of understanding with other
14 governmental agencies to carry out any of its functions,
15 including contracts with other states to perform joint
16 administrative functions;

17 (5) Attempt to ensure that the requirements with respect
18 to the reporting of data be standardized so as to minimize
19 the expense to parties subject to similar requirements in
20 other jurisdictions;

21 (6) Enter into voluntary agreements to obtain data from
22 payers not subject to mandatory reporting under this article;
23 and

24 (7) Exempt a payer or class of payers from the
25 requirements of this article for cause.

26 (b) Contracts for professional services for the
27 development and operation of the APCD are not subject to
28 the provisions of article three, chapter five-a of this code
29 relating to the Purchasing Division of the Department of
30 Administration. The award of such contracts shall be subject
31 to a competitive process established by the MOU parties.

32 (c) The MOU parties shall make an annual report to the
33 Governor, which shall also be filed with the Joint
34 Committee on Government and Finance, summarizing the
35 activities of the APCD in the preceding calendar year.

§33-4A-5. User fees; waiver.

1 Reasonable user fees may be set in the manner
2 established in legislative rule, for the right to access and use
3 the data available from the APCD. The executive director
4 may reduce or waive the fee if he or she determines that the
5 user is unable to pay the scheduled fees and that the user has
6 a viable plan to use the data or information in research of
7 general value to the public health.

§33-4A-6. Enforcement; injunctive relief.

1 In the event of any violation of this article or any rule
2 adopted thereunder, the commissioner, secretary or
3 executive director may seek to enjoin a further violation in
4 the circuit court of Kanawha County. Injunctive relief
5 ordered pursuant to this section may be in addition to any
6 other remedies and enforcement actions available to the
7 commissioner under this chapter.

§33-4A-7. Special revenue account created.

1 (a) There is hereby created a special revenue account in
2 the State Treasury, designated the West Virginia All-Payer
3 Claims Database Fund, which shall be an interest-bearing
4 account and may be invested in the manner permitted by
5 article six, chapter twelve of this code, with the interest
6 income a proper credit to the fund and which shall not revert
7 to the general revenue, unless otherwise designated in law.
8 The fund shall be overseen by the commissioner, secretary
9 and executive director, shall be administered by the
10 commissioner, and shall be used to pay all proper costs
11 incurred in implementing the provisions of this article.

12 (b) The following funds shall be paid into this account:

13 (1) Penalties imposed on health care payers pursuant to
14 this article and rules promulgated hereunder;

15 (2) Funds received from the federal government;

16 (3) Appropriations from the Legislature; and

17 (4) All other payments, gifts, grants, bequests or income
18 from any source.

**ARTICLE 16D. MARKETING AND RATE PRACTICES
FOR SMALL EMPLOYER ACCIDENT AND SICKNESS
INSURANCE POLICIES.**

**§33-16D-16. Authorization of uninsured small group health
benefit plans.**

1 (a) Upon filing with and approval by the commissioner,
2 any carrier licensed pursuant to this chapter which accesses
3 a health care provider network to deliver services may offer
4 a health benefit plan and rates associated with the plan to a
5 small employer subject to the conditions of this section and
6 subject to the provisions of this article. The health benefit
7 plan is subject to the following conditions:

8 (1) The health benefit plan may be offered by the carrier
9 only to small employers which have not had a health benefit
10 plan covering their employees for at least six consecutive
11 months before the effective date of this section. After the
12 passage of six months from the effective date of this section,
13 the health benefit plan under this section may be offered by
14 carriers only to small employers which have not had a health
15 benefit plan covering their employees for twelve
16 consecutive months;

17 (2) If a small employer covered by a health benefit plan
18 offered pursuant to this section no longer meets the
19 definition of a small employer as a result of an increase in
20 eligible employees, that employer shall remain covered by
21 the health benefit plan until the next annual renewal date;

22 (3) The small employer shall pay at least fifty percent of
23 its employees' premium amount for individual employee
24 coverage;

25 (4) The commissioner shall promulgate emergency
26 rules under the provisions of article three, chapter twenty-
27 nine-a of this code on or before September 1, 2004, to place

28 additional restrictions upon the eligibility requirements for
29 health benefit plans authorized by this section in order to
30 prevent manipulation of eligibility criteria by small
31 employers and otherwise implement the provisions of this
32 section;

33 (5) Carriers must offer the health benefit plans issued
34 pursuant to this section through one of their existing
35 networks of health care providers;

36 (A) The Insurance Commission shall, on or before May
37 1, 2004, and each year thereafter, by regular mail, provide a
38 written notice to all known in-state health care providers
39 that:

40 (i) Informs the health care provider regarding the
41 provisions of this section; and

42 (ii) Notifies the health care provider that if the health
43 care provider does not give written refusal to the Insurance
44 Commission within thirty days from receipt of the notice or
45 the health care provider has not previously filed a written
46 notice of refusal to participate, the health care provider must
47 participate with and accept the products and provider
48 reimbursements authorized pursuant to this section;

49 (B) The carrier's network of health care providers, as
50 well as any health care provider which provides health care
51 goods or services to beneficiaries of any departments or
52 divisions of the state, as identified in article twenty-nine-d,
53 chapter sixteen of this code, shall accept the health care
54 provider reimbursement rates set pursuant to this section
55 unless the health care provider gives written refusal to the
56 Insurance Commission between May 1 and June 1 that the
57 provider will not participate in this program for the next
58 calendar year. Notwithstanding any provision of this code
59 to the contrary, health care providers may not be mandated
60 to participate in this program except under the opt-out
61 provisions of subdivision (5), subsection (a) of this section
62 and therefore the health care provider shall annually have

63 the ability to file with the Insurance Commission written
64 notice that the health care provider will not participate with
65 products issued pursuant to this section. Once a health care
66 provider has filed a notice of refusal with the Insurance
67 Commission, the notice shall remain effective until
68 rescinded by the provider and the provider shall not be
69 required to renew the notice each year;

70 (C) Insurance Commission is responsible for receiving
71 the responses, if any, from the health care providers that
72 have elected not to participate and for providing a list to the
73 commissioner of those health care providers that have
74 elected not to participate;

75 (D) Those health care providers that do not file a notice
76 of refusal shall be considered to have accepted participation
77 in this program and to accept Public Employees Insurance
78 Agency health care provider reimbursement rates for their
79 services as set by this section;

80 (E) Health care provider reimbursement rates used by
81 the carrier for a health benefit plan offered pursuant to this
82 section shall have no effect on provider rates for other
83 products offered by the carrier and most-favored-nation
84 clauses do not apply to the rates;

85 (6) With respect to the health benefit plans authorized
86 by this section, the carrier shall reimburse network health
87 care providers at the same health care provider
88 reimbursement rates in effect for the managed care and
89 health maintenance organization plans offered by the West
90 Virginia Public Employees Insurance Agency. Beginning in
91 the year 2004, and in each year thereafter, the health care
92 provider reimbursement rates set under this section may not
93 be lowered from the level of the rates in effect on July 1 of
94 that year for the managed care and health maintenance plans
95 offered by the Public Employees Insurance Agency. While
96 it is the intent of this paragraph to govern rates for plans
97 offered pursuant to this section for annual periods, this
98 subdivision in no way prevents the Public Employees

99 Insurance Agency from making provider reimbursement
100 rate adjustments to Public Employees Insurance Agency
101 plans during the course of each year. If there is a dispute
102 regarding the determination of appropriate rates pursuant to
103 this section, the Director of the Public Employees Insurance
104 Agency shall, in his or her sole discretion, specify the
105 appropriate rate to be applied;

106 (A) The health care provider reimbursement rates as
107 authorized by this section shall be accepted by the health
108 care provider as payment in full for services or products
109 provided to a person covered by a product authorized by this
110 section;

111 (B) Except for the health care provider rates authorized
112 under this section, a carrier's payment methodology,
113 including copayments and deductibles and other conditions
114 of coverage, remains unaffected by this section;

115 (C) The provisions of this section do not require the
116 Public Employees Insurance Agency to give carriers access
117 to the purchasing networks of the Public Employees
118 Insurance Agency. The Public Employees Insurance
119 Agency may enter into agreements with carriers offering
120 health benefit plans under this section to permit the carrier,
121 at its election, to participate in drug purchasing
122 arrangements pursuant to article sixteen-c, chapter five of
123 this code, including the multistate drug purchasing program.
124 This paragraph provides authorization of the agreements
125 pursuant to section four of said article;

126 (7) Carriers may not underwrite products authorized by
127 this section more strictly than other small group policies
128 governed by this article;

129 (8) With respect to health benefit plans authorized by
130 this section, a carrier shall have a minimum anticipated loss
131 ratio of seventy-seven percent to be eligible to make a rate
132 increase request after the first year of providing a health
133 benefit plan under this section;

134 (9) Products authorized under this section are exempt
135 from the premium taxes assessed under sections fourteen
136 and fourteen-a, article three of this chapter;

137 (10) A carrier may elect to nonrenew any health benefit
138 plan to an eligible employer if, at any time, the carrier
139 determines, by applying the same network criteria which it
140 applies to other small employer health benefit plans, that it
141 no longer has an adequate network of health care providers
142 accessible for that eligible small employer. If the carrier
143 makes a determination that an adequate network does not
144 exist, the carrier has no obligation to obtain additional
145 health care providers to establish an adequate network;

146 (11) Upon thirty days' advance notice to the
147 commissioner, a carrier may, at any time, elect to nonrenew
148 all health benefit plans issued pursuant to this section. If a
149 carrier nonrenews all its business issued pursuant to this
150 section for any reason other than the adequacy of the
151 provider network, the carrier may not offer this health
152 benefit plan to any eligible small employer for a period of
153 at least two years after the last eligible small employer is
154 nonrenewed; and

155 (12) The Insurance Commissioner may not approve any
156 health benefit plan issued pursuant to this section until it has
157 obtained any necessary federal governmental authorizations
158 or waivers. The Insurance Commissioner shall apply for and
159 obtain all necessary federal authorizations or waivers.

160 (b) Health benefit plans authorized by this section are
161 not intended to violate the prohibition set out in subsection
162 (a), section four of this article.

163 (c) Carriers offering health benefit plans pursuant to this
164 section shall annually or before December 1 of each year
165 report in a form acceptable to the commissioner the number
166 of health benefit plans written by the carrier and the number
167 of individuals covered under the health benefit plans.

168 (d) To the extent that provisions of this section differ
169 from those contained elsewhere in this chapter, the
170 provisions of this section control.

CHAPTER 186

**(Com. Sub. for H. B. 2002 - By Delegates Kessinger,
Fast, A. Evans, R. Romine, Frich, Arvon, Butler,
Rowan, Wilson, Paynter and Lane)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §16-2F-1, §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6 and §16-2F-8 of the Code of West Virginia, 1931, as amended, all relating to parental notification of abortions performed on unemancipated minors; setting out legislative findings; defining terms; clarifying parental notification requirements prior to performing an abortion on an unemancipated minor; modifying waiver language; providing exceptions; providing a judicial process to not permit parental notification; requiring parental notice following abortion due to medical emergency; requiring reporting; providing for disciplinary actions; and modifying penalties.

Be it enacted by the Legislature of West Virginia:

That §16-2F-1, §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6 and §16-2F-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; all to read as follows:

ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§16-2F-1. Legislative findings and intent.

1 (a) The Legislature finds that immature minors often
2 lack the ability to make fully informed choices that take into
3 account both immediate and long-range consequences of
4 their actions; that the medical, emotional and psychological
5 consequences of abortion are serious and of indeterminate
6 duration, particularly when the patient is immature; that in
7 its current abortion policy as expressed in *Bellotti v. Baird*,
8 443 U.S. 622 (1979), *H. L. v. Matheson*, 450 U.S. 398
9 (1981), and *Hodgson v. Minnesota*, 497 U.S. 417, (1990),
10 the United States Supreme Court held that notification of a
11 parent with a judicial waiver procedure is Constitutional;
12 that parents ordinarily possess information essential to a
13 physician's exercise of his or her best medical judgment
14 concerning their child; and that parents who are aware that
15 their minor daughter has had an abortion may better ensure
16 that the minor receives adequate medical attention after her
17 abortion.

18 (b) The Legislature further finds that parental
19 consultation regarding abortion is usually desirable and in
20 the best interests of the minor.

21 (c) The Legislature further finds there exists important
22 and compelling state interests:

23 (1) In protecting minors against their own immaturity,

24 (2) In fostering the family structure and preserving it as
25 a viable social unit, and

26 (3) In protecting the rights of parents to rear their own
27 children in their own household.

28 (d) It is, therefore, the intent of the Legislature to further
29 these important and compelling state interests by enacting
30 this parental notice provision.

§16-2F-2. Definitions.

1 For purposes of this article, unless the context in which
2 used clearly requires otherwise:

3 As used in this article:

4 (1) "Abortion" means the use of any instrument,
5 medicine, drug or any other substance or device with intent
6 to terminate the pregnancy of a female known to be pregnant
7 and with intent to cause the expulsion of a fetus other than
8 by live birth. This article does not prevent the prescription,
9 sale or transfer of intrauterine contraceptive devices, other
10 contraceptive devices or other generally medically accepted
11 contraceptive devices, instruments, medicines or drugs for
12 a female who is not known to be pregnant and for whom the
13 contraceptive devices, instruments, medicines or drugs were
14 prescribed by a physician solely for contraceptive purposes
15 and not for the purpose of inducing or causing the
16 termination of a known pregnancy.

17 (2) "Medical emergency" means the same as that term
18 is defined in section two, article two-m of this chapter.

19 (3) "Secretary" means the Secretary of the West
20 Virginia Department of Health and Human Resources.

21 (4) "Unemancipated minor" means any person less than
22 eighteen years of age who is not, or has not been, married,
23 who is under the care, custody and control of the person's
24 parent or parents, guardian or court of competent
25 jurisdiction pursuant to applicable federal law or as
26 provided in section twenty-seven, article seven, chapter
27 forty-nine of this code.

**§16-2F-3. Parental notification required for abortions
performed on unemancipated minors.**

1 (a) A physician may not perform an abortion upon an
2 unemancipated minor until notice of the pending abortion
3 as required by this section is complete.

4 (b) A physician or his or her agent may personally give
5 notice directly, in person, by telephone or by letter to the
6 parent, the guardian or conservator of the unemancipated
7 minor at their usual place of residence and shall be delivered

8 personally by the physician or his or her agent. Upon
9 delivery of the notice, forty-eight hours shall pass until the
10 abortion may be performed.

11 (c) A physician or his or her agent may provide notice
12 by certified mail addressed to the parent, the guardian or
13 conservator of the unemancipated minor at their usual place
14 of residence, return receipt requested. The delivery shall be
15 sent restricted delivery assuring that the letter is delivered
16 only to the addressee. Time of delivery shall be deemed to
17 occur at twelve o'clock noon on the next day on which
18 regular mail delivery takes place unless. Upon delivery of
19 the notice, forty-eight hours shall pass until the abortion
20 may be performed.

21 (d) Notice may be waived if the person entitled to notice
22 certifies in writing that he or she has been notified.

§16-2F-4. Process to obtain waiver of notification.

1 (a) An unemancipated minor who objects to the notice
2 being given to her parent or legal guardian may petition for
3 a waiver of the notice to the circuit court of the county in
4 which the unemancipated minor resides or in which the
5 abortion is to be performed, or to the judge of either of such
6 courts.

7 (b) The petition need not be made in any specific form
8 and shall be sufficient if it fairly sets forth the facts and
9 circumstances of the matter, but shall contain the following
10 information:

11 (i) The age of the unemancipated minor and her
12 educational level;

13 (ii) The county and state in which she resides; and

14 (iii) A brief statement of unemancipated minor's reason
15 or reasons for the desired waiver of notification of the parent
16 or guardian of such unemancipated minor.

17 No such petition shall be dismissed nor shall any
18 hearing thereon be refused because of any defect in the form
19 of the petition.

20 (c) The Attorney General shall prepare suggested form
21 petitions and accompanying instructions and shall make the
22 same available to the clerks of the circuit courts. The clerks
23 shall make the form petitions and instructions available in
24 the clerks office.

25 (d) The proceedings held pursuant to this article shall be
26 confidential and the court shall conduct the proceedings in
27 camera. The court shall inform the unemancipated minor of
28 her right to be represented by counsel. If the unemancipated
29 minor is without the requisite funds to retain the services of
30 an attorney, the court will appoint an attorney to represent
31 the unemancipated minor's interest in the matter. If the
32 unemancipated minor desires the services of an attorney, an
33 attorney shall be appointed to represent the unemancipated
34 minor, if the unemancipated minor advises the court under
35 oath or affidavit that the unemancipated minor is financially
36 unable to retain counsel. An attorney appointed to represent
37 the unemancipated minor shall be appointed and paid for his
38 services pursuant to the provisions of article twenty-one,
39 chapter twenty-nine of this code. The pay shall not exceed
40 the sum of \$100.

41 (e) The court shall conduct a hearing upon the petition
42 without delay, but may not exceed the next succeeding
43 judicial day. The court shall render its decision immediately
44 upon its submission and, its written order not later than
45 twenty-four hours and entered in the record by the clerk of
46 the court. All testimony, documents, evidence, petition,
47 orders entered thereon and all records relating to the matter
48 shall be sealed by the clerk and shall not be opened to any
49 person except upon order of the court upon a showing of
50 good cause. A separate order book for the purposes of this
51 article shall be maintained by the clerk and shall be sealed
52 and not open to inspection by any person save upon order of
53 the court for good cause shown.

54 (f) Notice as required by section three of this article
55 shall be ordered waived by the court if the court finds either:

56 (1) That the unemancipated minor is mature and well
57 informed sufficiently to make the decision to proceed with
58 the abortion independently and without the notification or
59 involvement of her parent or legal guardian; or

60 (2) That notification to the person or persons to whom
61 notification would otherwise be required would not be in the
62 best interest of the unemancipated minor.

63 (g) A confidential appeal shall be available to any
64 unemancipated minor to whom a court denies an order
65 authorizing an abortion without notification. An order
66 authorizing an abortion without notification may not be
67 appealed. Access to the trial court and the Supreme Court of
68 Appeals shall be given to an unemancipated minor.

69 (h) Filing fees are not required of any unemancipated
70 minor who avails herself of any of the procedures provided
71 by this section.

§16-2F-5. Emergency exception from notification requirements.

1 (a) The notification requirements of section three of this
2 article do not apply where the attending physician certifies
3 that there is a need for an abortion to be performed due to a
4 medical emergency. A description of the medical
5 emergency shall be maintained with the unemancipated
6 minor's medical records.

7 (b) If the physician who is to perform the abortion
8 concludes under subsection (a) of this section that a medical
9 emergency exists and that there is insufficient time to
10 provide the notice required by section three of this article,
11 the physician shall make a reasonable effort to inform, in
12 person or by telephone, the parent, managing conservator,
13 or guardian of the unemancipated minor within 24 hours

14 after the time a medical emergency abortion is performed
15 on the minor of:

16 (1) The performance of the abortion; and

17 (2) The basis for the physician's determination that a
18 medical emergency existed that required the performance of
19 a medical emergency abortion without fulfilling the
20 requirements of section three.

21 (c) A physician who performs an abortion under the
22 circumstances described in subsection (a) of this section
23 shall, not later than 48 hours after the abortion is performed,
24 send a written notice that a medical emergency occurred and
25 that the parent, managing conservator, or guardian may
26 contact the physician for more information and medical
27 records, to the last known address of the parent, managing
28 conservator, or guardian by certified mail, restricted
29 delivery, return receipt requested. The physician may rely
30 on last known address information if a reasonable and
31 prudent person, under similar circumstances, would rely on
32 the information as sufficient evidence that the parent,
33 managing conservator, or guardian resides at that address.
34 The physician shall keep in the minor's medical record:

35 (1) The return receipt from the written notice; or

36 (2) If the notice was returned as undeliverable, the
37 notice.

38 (d) A physician who performs an abortion on an
39 unemancipated minor during a medical emergency as
40 described in subsection (a) of this section shall execute for
41 inclusion in the medical record of the minor an affidavit that
42 explains the specific medical emergency that necessitated the
43 immediate abortion.

§16-2F-6. Reporting requirements for physicians.

1 (a) A physician performing an abortion upon an
2 unemancipated minor shall provide the secretary a written

3 report of the procedure within thirty days after having
4 performed the abortion. The following information, in addition
5 to any other information which may be required by the
6 secretary, regarding an unemancipated minor receiving the
7 abortion shall be included in the reporting form:

8 (1) Age;

9 (2) Educational level;

10 (3) Previous pregnancies;

11 (4) Previous live births;

12 (5) Previous abortions;

13 (6) Complications, if any, of the abortion being reported;

14 (7) Reason for waiver of notification, if such notice was
15 waived; and

16 (8) The city and county in which the abortion was
17 performed.

18 (b) The report shall not contain the name, address or other
19 information by which the unemancipated minor receiving the
20 abortion may be identified.

§16-2F-8. Penalties.

1 (a) Any physician or other licensed medical practitioner
2 who intentionally or recklessly performs or induces an
3 abortion in violation of this article is considered to have
4 acted outside the scope of practice permitted by law or
5 otherwise in breach of the standard of care owed to patients,
6 and is subject to discipline from the applicable licensure
7 board for that conduct, including, but not limited to, loss of
8 professional license to practice.

9 (b) A person, not subject to subsection (a) of this
10 section, who intentionally or recklessly performs or induces
11 an abortion in violation of this article is considered to have
12 engaged in the unauthorized practice of medicine in
13 violation of section thirteen, article three, chapter thirty of

14 this code, and upon conviction, subject to the penalties
15 contained in that section.

16 (c) In addition to the penalties set forth in subsections
17 (a) and (b) of this section, a patient may seek any remedy
18 otherwise available to such patient by applicable law.

19 (d) No penalty may be assessed against any patient upon
20 whom an abortion is performed or induced or attempted to
21 be performed or induced.



CHAPTER 187

(H. B. 2431 - By Delegates Ellington and Rohrbach)

[Passed March 15, 2017; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-3-4a, relating to offering influenza immunizations to patients upon discharge from licensed hospitals; providing that the immunizations are voluntary; and providing for exceptions based upon availability and in cases where immunizations are contraindicated.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-3-4a, to read as follows:

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-4a. Influenza Immunizations.

1 (a) A hospital licensed pursuant to the provisions of
2 article five-b of this chapter shall offer to an inpatient who

3 is sixty-five years of age or older an influenza immunization
4 prior to discharge from October 1 of every year and
5 continuing through March 1 of the following year.

6 (b) The immunizations may not be offered in cases
7 where the immunization is contraindicated.

8 (c) The requirements of this section are subject to the
9 availability for sufficient influenza immunizations.

10 (d) Nothing in this section may be construed to require
11 an influenza immunization as a condition of receiving any
12 type of service or as a condition of discharge.



CHAPTER 188

**(Com. Sub. for H. B. 2620 - By Delegates Frich,
Ellington, Shott, Howell, Householder, Storch,
Hanshaw, Kessinger, Hollen, Sobonya and Mr.
Speaker (Mr. Armstead))**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5T-1, §16-5T-2, §16-5T-3, §16-5T-4 and §16-5T-5, all relating to the West Virginia Drug Control Policy Act; creating the Office of Drug Control Policy within the Department of Health and Human Resources; requiring the office to develop a state drug control policy and a strategic plan; requiring the office to coordinate with other entities; setting forth duties of the office; requiring the coordination of funding; requiring data sharing; requiring the office to develop a plan to add treatment beds; required reporting; requiring the office to create a central repository of drug overdose information in West Virginia; establishing the program and purpose; establishing the reporting system

requirements; establishing responsibility of entities to report information; setting forth information required to be reported and the agencies which are affected; providing for data collection and reporting; and providing for rule-making authority and emergency rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-5T-1, §16-5T-2, §16-5T-3, §16-5T-4 and §16-5T-5, all to read as follows:

ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.

§16-5T-1. Short title.

1 This article shall be referred to as the West Virginia
2 Drug Control Policy Act.

§16-5T-2. Office of Drug Control Policy.

1 (a) The Office of Drug Control Policy is created within
2 the Department of Health and Human Resources under the
3 direction of the Secretary and supervision of the State
4 Health Officer.

5 (b) The Office of Drug Control Policy shall create a
6 state drug control policy in coordination with the bureaus of
7 the Department and other state agencies. This policy shall
8 include all programs which are related to the prevention,
9 treatment and reduction of substance abuse use disorder.

10 (c) The Office of Drug Control Policy shall:

11 (1) Develop a strategic plan to reduce the prevalence of
12 drug and alcohol abuse and smoking by at least ten percent
13 by July 1, 2018;

14 (2) Monitor, coordinate and oversee the collection of
15 data and issues related to drug, alcohol and tobacco access,

16 substance use disorder policies and smoking cessation and
17 prevention and their impact on state and local programs;

18 (3) Make policy recommendations to executive branch
19 agencies that work with alcohol and substance use disorder
20 issues, and smoking cessation and prevention to ensure the
21 greatest efficiency and consistency in practices will be
22 applied to all efforts undertaken by the administration;

23 (4) Identify existing resources and prevention activities
24 in each community that advocate or implement emerging
25 best practice and evidence-based programs for the full
26 substance use disorder continuum of drug and alcohol abuse
27 education and prevention, including smoking cessation or
28 prevention, early intervention, treatment and recovery;

29 (5) Encourage coordination among public and private,
30 state and local, agencies, organizations and service
31 providers and monitor related programs;

32 (6) Act as the referral source of information, using
33 existing information clearinghouse resources within the
34 Department of Health and Human Resources, relating to
35 emerging best practice and evidence-based substance use
36 disorder prevention, cessation, treatment and recovery
37 programs, and youth tobacco access, smoking cessation and
38 prevention. The Office of Drug Control Policy will identify
39 gaps in information referral sources;

40 (7) Apply for grant opportunities for existing programs;

41 (8) Observe programs in other states;

42 (9) Make recommendations and provide training,
43 technical assistance and consultation to local service
44 providers;

45 (10) Review existing research on programs related to
46 substance use disorder prevention and treatment and
47 smoking cessation and prevention and provide for an
48 examination of the prescribing and treatment history,

49 including court-ordered treatment or treatment within the
50 criminal justice system, of persons in the state who suffered
51 fatal or nonfatal opiate overdoses;

52 (11) Establish a mechanism to coordinate the
53 distribution of funds to support any local prevention,
54 treatment and education program based on the strategic plan
55 that could encourage smoking cessation and prevention
56 through efficient, effective and research-based strategies;

57 (12) Establish a mechanism to coordinate the
58 distribution of funds to support a local program based on the
59 strategic plan that could encourage substance use
60 prevention, early intervention, treatment and recovery
61 through efficient, effective and research-based strategies;

62 (13) Oversee a school-based initiative that links schools
63 with community-based agencies and health departments to
64 implement school-based antidrug and anti-tobacco
65 programs;

66 (14) Coordinate media campaigns designed to
67 demonstrate the negative impact of substance use disorder,
68 smoking and the increased risk of tobacco addiction and the
69 development of other diseases;

70 (15) Review Drug Enforcement Agency and the West
71 Virginia scheduling of controlled substances and
72 recommend changes that should be made based on data
73 analysis;

74 (16) Develop recommendations to improve
75 communication between health care providers and their
76 patients about the risks and benefits of opioid therapy for acute
77 pain, improve the safety and effectiveness of pain treatment
78 and reduce the risks associated with long-term opioid therapy,
79 including opioid use disorder and overdose;

80 (17) Develop and implement a program, in accordance
81 with the provisions of section three of this article, to collect
82 data on fatal and nonfatal drug overdoses, caused by abuse and

83 misuse of prescription and illicit drugs from law enforcement
84 agencies, emergency medical services, health care facilities
85 and the Office of the Chief Medical Examiner;

86 (18) Develop and implement a program that requires the
87 collection of data on the dispensing and use of an opioid
88 antagonist from law enforcement agencies, emergency
89 medical services, health care facilities, the Office of the Chief
90 Medical Examiner and other entities as required by the office;

91 (19) Develop a program that provides assessment of
92 persons who have been administered an opioid antagonist; and

93 (20) Report semi-annually to the Joint Committee on
94 Health on the status of the Office of Drug Control Policy.

95 (d) Notwithstanding any other provision of this code to the
96 contrary, and to facilitate the collection of data and issues, the
97 Office of Drug Control Policy may exchange necessary data
98 and information with the bureaus within the Department, the
99 Department of Military Affairs and Public Safety, the
100 Department of Administration, the Administrator of Courts,
101 the Poison Control Center, and the Board of Pharmacy. The
102 data and information may include: data from the Controlled
103 Substance Monitoring Program; the all-payer claims database;
104 the criminal offender record information database; and the
105 court activity record information;

106 (e) Prior to July 1, 2018, the office shall develop a plan to
107 expand the number of treatment beds in locations throughout
108 the state which the office determines to be the highest priority
109 for serving the needs of the citizens of the state.

**§16-5T-3. Reporting system requirements; implementation;
central repository requirement.**

1 (a) The Office of Drug Control Policy shall implement a
2 program in which a central repository is established and
3 maintained that shall contain information required by this
4 article. In implementing this program, the office shall consult
5 with all affected entities, including law-enforcement agencies,

6 health care providers, emergency response providers,
7 pharmacies and medical examiners.

8 (b) The program authorized by subsection (a) of this
9 section shall be designed to minimize inconvenience to all
10 entities maintaining possession of the relevant information
11 while effectuating the collection and storage of the required
12 information. The Office of Drug Control Policy shall allow
13 reporting of the required information by electronic data
14 transfer where feasible, and where not feasible, on reporting
15 forms promulgated by the Office of Drug Control Policy. The
16 information required to be submitted by the provisions of this
17 article shall be required to be filed no more frequently than on
18 a quarterly basis.

§16-5T-4. Entities required to report; required information.

1 (a) To fulfill the purposes of this article, the following
2 information shall be reported to the Office of Drug Control
3 Policy:

4 (1) An emergency medical or law-enforcement response
5 to a suspected or reported overdose, or a response in which an
6 overdose is identified by the responders;

7 (2) Medical treatment for an overdose;

8 (3) The dispensation or provision of an opioid antagonist;
9 and

10 (4) Death attributed to overdose or “drug poisoning”.

11 (b) The following entities shall be required to report
12 information contained in subsection (a) of this section:

13 (1) Pharmacies operating in the state;

14 (2) Health care providers;

15 (3) Medical examiners;

- 16 (4) Law-enforcement agencies, including prosecuting
17 attorneys, state, county and local police departments; and
- 18 (5) Emergency response providers.

§16-5T-5. Promulgation of rules.

1 The Secretary of the Department of Health and Human
2 Resources may propose rules for promulgation in accordance
3 with article three, chapter twenty-nine-a of this code to
4 implement the provisions of this section. The Legislature finds
5 that for the purposes of section fifteen, article three, chapter
6 twenty-nine-a of this code, an emergency exists requiring the
7 promulgation of emergency rules to preserve the public peace,
8 health, safety or welfare and to prevent substantial harm to the
9 public interest.

CHAPTER 189

(S. B. 188 - By Senator Takubo)

[Passed March 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2017.]

AN ACT to amend and reenact §16-5Y-2 of the Code of West Virginia, 1931, as amended, relating to clarifying the definition of “telehealth” for purposes of medication-assisted treatment programs.

Be it enacted by the Legislature of West Virginia:

That §16-5Y-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-2. Definitions.

1 (a) “Addiction” means a primary, chronic disease of brain
2 reward, motivation, memory and related circuitry.
3 Dysfunction in these circuits leads to characteristic biological,
4 psychological, social and spiritual manifestations, which is
5 reflected in an individual pathologically pursuing reward or
6 relief by substance use, or both, and other behaviors.
7 Addiction is characterized by inability to consistently abstain;
8 impairment in behavioral control; craving; diminished
9 recognition of significant problems with one’s behaviors;
10 interpersonal problems with one’s behaviors and interpersonal
11 relationships; a dysfunctional emotional response; and as
12 addiction is currently defined by the American Society of
13 Addiction Medicine.

14 (b) “Administrator” means an individual designated by
15 the governing body to be responsible for the day-to-day
16 operation of the opioid treatment programs.

17 (c) “Advanced alcohol and drug abuse counselor”
18 means an alcohol and drug abuse counselor who is certified
19 by the West Virginia Certification Board for Addiction and
20 Prevention Professionals who demonstrates a high degree of
21 competence in the addiction counseling field.

22 (d) “Alcohol and drug abuse counselor” means a
23 counselor certified by the West Virginia Certification Board
24 for Addiction and Prevention Professionals for specialized
25 work with patients who have substance use problems.

26 (e) “Biopsychosocial” means of, relating to or
27 concerned with, biological, psychological and social aspects
28 in contrast to the strictly biomedical aspects of disease.

29 (f) “Center for Substance Abuse Treatment” means the
30 center under the Substance Abuse and Mental Health
31 Services Administration that promotes community-based
32 substance abuse treatment and recovery services for
33 individuals and families in the community and provides
34 national leadership to improve access, reduce barriers and

35 promote high quality, effective treatment and recovery
36 services.

37 (g) “Controlled Substances Monitoring Program
38 database” means the database maintained by the West
39 Virginia Board of Pharmacy pursuant to section three,
40 article nine, chapter sixty-a of this code that monitors and
41 tracks certain prescriptions written or dispensed by
42 dispensers and prescribers in West Virginia.

43 (h) “Director” means the Director of the Office of
44 Health Facility Licensure and Certification.

45 (i) “Dispense” means the preparation and delivery of a
46 medication-assisted treatment medication in an
47 appropriately labeled and suitable container to a patient by
48 a medication-assisted treatment program or pharmacist.

49 (j) “Governing body” means the person or persons
50 identified as being legally responsible for the operation of
51 the opioid treatment program. A governing body may be a
52 board, a single entity or owner, or a partnership. The
53 governing body must comply with the requirements
54 prescribed in rules promulgated pursuant to this article.

55 (k) “Medical director” means a physician licensed
56 within the State of West Virginia who assumes
57 responsibility for administering all medical services
58 performed by the medication-assisted treatment program,
59 either by performing them directly or by delegating specific
60 responsibility to authorized program physicians and health
61 care professionals functioning under the medical director’s
62 direct supervision and functioning within their scope of
63 practice.

64 (l) “Medication-assisted treatment” means the use of
65 medications and drug screens, in combination with
66 counseling and behavioral therapies, to provide a holistic
67 approach to the treatment of substance use disorders.

68 (m) “Medication-assisted treatment program” means all
69 publicly and privately owned opioid treatment programs
70 and office based medication-assisted treatment programs,
71 which prescribe medication-assisted treatment medications
72 and treat substance use disorders, as those terms are defined
73 in this article.

74 (n) “Medication-assisted treatment medication” means
75 any medication that is approved by the United States Food
76 and Drug Administration under Section 505 of the Federal
77 Food, Drug and Cosmetic Act, 21 U. S. C. § 355, for use in
78 the treatment of substance use disorders that is an opioid
79 agonist and is listed on the schedule of controlled substances
80 in article two, chapter sixty-a of this code.

81 (o) “Office based medication-assisted treatment” means
82 all publicly or privately owned medication-assisted
83 treatment programs in clinics, facilities, offices or programs
84 that treat individuals with substance use disorders through
85 the prescription, administration or dispensing of a
86 medication-assisted treatment medication in the form of a
87 partial opioid agonist or other medication-assisted
88 medication approved for use in office-based, medication-
89 assisted treatment setting.

90 (p) “Opioid agonist” means substances that bind to and
91 activate the opiate receptors resulting in analgesia and pain
92 regulation, respiratory depression and a wide variety of
93 behavioral changes. As used in this article, the term “opioid
94 agonist” does not include partial agonist medications used
95 as an alternative to opioid agonists in the treatment of opioid
96 addiction.

97 (q) “Opioid treatment program” means all publicly or
98 privately owned medication-assisted treatment programs in
99 clinics, facilities, offices or programs that treat individuals
100 with substance use disorders through on-site administration
101 or dispensing of a medication-assisted treatment medication
102 in the form of an opioid agonist or partial opioid agonist.

103 (r) “Owner” means any person, partnership, association
104 or corporation listed as the owner of a medication-assisted
105 treatment program on the licensing or registration forms
106 required by this article.

107 (s) “Partial opioid agonist” means a Federal Drug
108 Administration approved medication that is used as an
109 alternative to opioid agonists for the treatment of substance
110 use disorders and that binds to and activates opiate
111 receptors, but not to the same degree as full agonists.

112 (t) “Physician” means an individual licensed in this state
113 to practice allopathic medicine or surgery by the West
114 Virginia Board of Medicine or osteopathic medicine or
115 surgery by the West Virginia Board of Osteopathic
116 Medicine and that meets the requirements of this article.

117 (u) “Prescriber” means a person authorized in this state,
118 working within their scope of practice, to give direction,
119 either orally or in writing, for the preparation and
120 administration of a remedy to be used in the treatment of
121 substance use disorders.

122 (v) “Program sponsor” means the person named in the
123 application for the certification and licensure of an opioid
124 treatment program who is responsible for the administrative
125 operation of the opioid treatment program and who assumes
126 responsibility for all of its employees, including any
127 practitioners, agents or other persons providing medical,
128 rehabilitative or counseling services at the program.

129 (w) “Secretary” means the Secretary of the West
130 Virginia Department of Health and Human Resources or his
131 or her designee.

132 (x) “State opioid treatment authority” means the agency
133 or individual designated by the Governor to exercise the
134 responsibility and authority of the state for governing the
135 treatment of substance use disorders, including, but not

136 limited to, the treatment of opiate addiction with opioid
137 drugs.

138 (y) “State oversight agency” means the agency or office
139 of state government identified by the secretary to provide
140 regulatory oversight of medication-assisted treatment
141 programs on behalf of the State of West Virginia.

142 (z) “Substance” means the following:

143 (1) Alcohol;

144 (2) Controlled substances defined by sections two
145 hundred four, two hundred six, two hundred eight, and two
146 hundred ten, article two, chapter sixty-a of this code; or

147 (3) Any chemical, gas, drug or medication consumed
148 which causes clinically and functionally significant
149 impairment, such as health problems, disability and failure
150 to meet major responsibilities at work, school or home.

151 (aa) “Substance Abuse and Mental Health Services
152 Administration” means the agency under the United States
153 Department of Health and Human Services responsible for
154 the accreditation and certification of medication-assisted
155 treatment programs and that provides leadership, resources,
156 programs, policies, information, data, contracts and grants
157 for the purpose of reducing the impact of substance abuse
158 and mental or behavioral illness.

159 (bb) “Substance use disorder” means patterns of
160 symptoms resulting from use of a substance that the individual
161 continues to take, despite experiencing problems as a result; or
162 as defined in the most recent edition of the American
163 Psychiatric Association’s Diagnostic and Statistical Manual of
164 Mental Disorders.

165 (cc) “Telehealth” means the mode of delivering health care
166 services and public health via information and communication
167 technologies to facilitate the diagnosis, consultation, treatment
168 education, care management and self-management of a

169 patient's health care while the patient is at the originating site
170 and the health care provider is at a distant site.

171 (dd) "Variance" means written permission granted by the
172 secretary to a medication-assisted treatment program that a
173 requirement of this article or rules promulgated pursuant to this
174 article may be accomplished in a manner different from the
175 manner set forth in this article or associated rules.

176 (ee) "Waiver" means a formal, time-limited agreement
177 between the designated oversight agency and the medication-
178 assisted treatment program that suspends a rule, policy or
179 standard for a specific situation so long as the health and safety
180 of patients is better served in the situation by suspension of the
181 rule, policy or standard than by enforcement.



CHAPTER 190

**(Com. Sub. for S. B. 360 - By Senators Takubo,
Stollings, Maroney, Plymale and Miller)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5Z-1, §16-5Z-2, §16-5Z-3, §16-5Z-4 and §16-5Z-5, all relating to creating the Legislative Coalition on Diabetes Management; setting forth findings and purpose; providing for administrative functions of the coalition to be performed by legislative staff; setting forth membership of the coalition; providing for appointments to be made by the President of the Senate and the Speaker of the House of Delegates; setting forth powers and duties of the coalition; setting forth required reporting; setting forth reporting data elements; requiring state entities to

cooperate with the coalition in its duties; and providing a sunset date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-5Z-1, §16-5Z-2, §16-5Z-3, §16-5Z-4 and §16-5Z-5, all to read as follows:

ARTICLE 5Z. COALITION FOR DIABETES MANAGEMENT.

§16-5Z-1. Creation of the Coalition for Diabetes Management.

1 There is created the Coalition for Diabetes
2 Management. The administrative functions of the coalition
3 shall be the responsibility of staff assigned to the Joint
4 Committee on Health to be in the best interest of the state
5 and its citizens.

§16-5Z-2. Members of the Coalition for Diabetes Management.

1 The Coalition for Diabetes Management shall consist of
2 the following members:

3 (1) The Dean of the School of Public Health at West
4 Virginia University, or his or her designee, who shall serve
5 as chair of the coalition.

6 (2) Four physicians licensed to practice in this state
7 pursuant to article three or fourteen, chapter thirty of this
8 code who shall be appointed by the President of the Senate
9 and the Speaker of the House of Delegates in consultation
10 with the cochairs of the Joint Committee on Health. These
11 physicians shall be board-certified endocrinologists.

12 (3) A primary care physician licensed to practice in this
13 state pursuant to article three or fourteen, chapter thirty of
14 this code who shall be appointed by the President of the
15 Senate and the Speaker of the House of Delegates in
16 consultation with the cochairs of the Joint Committee on
17 Health.

18 (4) A pediatric physician licensed to practice in this state
19 pursuant to article three or fourteen, chapter thirty of this
20 code who shall be appointed by the President of the Senate
21 and the Speaker of the House of Delegates in consultation
22 with the cochairs of the Joint Committee on Health.

23 (5) A pharmacist licensed to practice in this state
24 pursuant to article five, chapter thirty of this code.
25 Preference shall be given to a pharmacist who is certified as
26 a diabetes educator.

27 (6) A dietitian licensed or registered to practice in this
28 state pursuant to article thirty-five, chapter thirty of this
29 code who is also a diabetic educator who shall be appointed
30 by the President of the Senate and the Speaker of the House
31 of Delegates in consultation with the cochairs of the Joint
32 Committee on Health.

33 (7) There shall be equal distribution of the membership
34 of the coalition among the congressional districts of this
35 state and each congressional district shall be represented in
36 the membership of the coalition.

37 (8) The cochairs of the Joint Committee on Health serve
38 as nonvoting members, ex-officio.

§16-5Z-3. Powers and duties of the coalition.

1 (a) The Coalition for Diabetes Management shall:

2 (1) Meet at least quarterly or at the call of the chairman.
3 A quorum is a simple majority of the coalition;

4 (2) Keep accurate records of the actions of the coalition;
5 and

6 (3) Make recommendations to the Legislature as
7 required by this article.

8 (b) At a minimum, the coalition shall:

9 (1) Provide guidance to the Legislature on potential
10 statutory solutions relative to regulation of diabetes;

11 (2) Consult with a quality improvement organization;

12 (3) Establish workgroups and clinical advisory
13 committees as the coalition deems necessary to address
14 pertinent issues related to diabetes management and to
15 provide consistency in the development of further
16 regulation;

17 (4) Consult with entities and persons with a particular
18 expertise as the coalition deems necessary in the fulfillment
19 of their duties. This can include public and private sector
20 partnerships; and

21 (5) Offer any additional guidance to the Legislature
22 which the coalition sees is within its scope which would
23 further enhance the provider patient relationship in the
24 effective treatment and management of diabetes.

25 (c) The coalition shall report its findings to the Joint
26 Committee on Health by December 31, 2017, and annually
27 after that until the coalition terminates pursuant to the
28 provisions of this article. The report shall include, at a
29 minimum, the following:

30 (1) Conclusions and recommendations to promote a
31 better means for management of diabetes;

32 (2) Recommendations for statutory and regulatory
33 modifications;

34 (3) Identification of any action which may be taken by
35 the Legislature to better foster awareness of the plight of
36 diabetes in this state;

37 (4) A means to raise diabetes awareness; and

38 (5) Any other ancillary issues relative to diabetes
39 management.

§16-5Z-4. Cooperation with the coalition.

1 (a) The Department of Health and Human Resources,
2 the West Virginia Insurance Commission, the Health Care
3 Authority, the Public Employees Insurance Agency and any
4 other entity of state government shall cooperate with the
5 coalition in the exchange of data, information and expertise
6 if so requested by the coalition, including, but not limited
7 to:

8 (1) Providing the entity's plans to improve diabetes care
9 and control complications associated with diabetes in West
10 Virginia;

11 (2) The financial impact of diabetes on the State of West
12 Virginia;

13 (3) The number of lives impacted with diabetes;

14 (4) The number of lives with diabetes and family
15 members impacted by prevention and diabetes control
16 programs implemented by the entity;

17 (5) An assessment of the benefits of implemented
18 programs and activities aimed at controlling diabetes and
19 preventing the disease;

20 (6) The development or revision of detailed action plans
21 to reduce the impact of diabetes, pre-diabetes and related
22 diabetes complications, including a budget identifying
23 needs and costs; and

24 (7) Resources required to implement the plan.

25 (b) No entity of state government is required to produce
26 or prepare any plan or document at the request of the
27 coalition which they do not currently maintain or which is
28 not readily available from their existing resources.

§16-5Z-5. Sunset.

- 1 The coalition terminates on December 31, 2020, unless
- 2 continued by act of the Legislature.

CHAPTER 191

(S. B. 578 - By Senators Trump and Blair)

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §16-29-1 and §16-29-2 of the Code of West Virginia, 1931, as amended, all relating generally to copies of health care records; providing that health care records must be furnished no more than thirty days from the receipt of the request from a patient, his or her representative, authorized agent or authorized representative; stating that electronic copies of health records may be provided in a downloadable format through a secure web portal; permitting a personal representative to act in lieu of a patient in certain circumstances; clarifying that fees shall apply to subpoenaed records; establishing fees for providing copies of health care records; and providing that the per page fee shall be adjusted annually according to the consumer price index.

Be it enacted by the Legislature of West Virginia:

That §16-29-1 and §16-29-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 29. HEALTH CARE RECORDS.

§16-29-1. Copies of health care records to be furnished to patients.

1 (a) Any licensed, certified or registered health care
2 provider so licensed, certified or registered under the laws
3 of this state shall, upon the written request of a patient, his
4 or her personal representative, as defined by the Health
5 Insurance Portability and Accountability Act of 1996
6 (HIPAA), as amended, and any rules promulgated pursuant
7 to the act, and his or her authorized agent or authorized
8 representative, within no more than thirty days from the
9 receipt of the request, furnish a copy, in the form of a paper
10 copy or, if requested and if the provider routinely stores
11 records electronically and has the ability to so provide, a
12 copy in an electronic format including, but not limited to, a
13 downloadable format through a secure web portal, a copy
14 saved upon a computer disc, an electronically mailed copy
15 or a copy saved upon a portable memory device of all or a
16 portion of the patient's record to the patient, his or her
17 personal representative, or authorized agent or authorized
18 representative subject to the following exceptions:

19 (1) In the case of a patient receiving treatment for
20 psychiatric or psychological problems, a summary of the
21 record shall be made available to the patient, personal
22 representative, or his or her authorized agent or authorized
23 representative following termination of the treatment
24 program.

25 (2) The furnishing of a copy, as requested, of the reports
26 of x-ray examinations, electrocardiograms and other
27 diagnostic procedures shall be deemed to comply with the
28 provisions of this article.

29 (b) Nothing in this article shall be construed to require a
30 health care provider responsible for diagnosis, treatment or
31 administering health care services in the case of minors for
32 birth control, prenatal care, drug rehabilitation or related
33 services or venereal disease according to any provision of
34 this code, to release patient records of such diagnosis,
35 treatment or provision of health care as aforesaid to a parent
36 or guardian, without prior written consent therefor from the
37 patient, nor shall anything in this article be construed to

38 apply to persons regulated under the provisions of chapter
39 eighteen of this code or the rules and regulations established
40 thereunder.

41 (c) This article does not apply to records subpoenaed or
42 otherwise requested through court process, except for the
43 fee provisions in section two of this article, which do apply
44 to subpoenaed records.

45 (d) The provisions of this article may be enforced by a
46 patient, personal representative, authorized agent or
47 authorized representative and any health care provider
48 found to be in violation of this article shall pay any attorney
49 fees and costs, including court costs incurred in the course
50 of such enforcement.

51 (e) Nothing in this article shall be construed to apply to
52 health care records maintained by health care providers
53 governed by the AIDS-related Medical Testing and Records
54 Confidentiality Act under the provisions of article three-c of
55 this chapter.

§16-29-2. Reasonable expenses to be reimbursed.

1 (a) A provider may charge a patient or the patient's
2 personal representative a fee consistent with HIPAA, as
3 amended, and any rules promulgated pursuant to HIPAA,
4 plus any applicable taxes.

5 (b) A person other than a patient or patient's personal
6 representative requesting records from a health care
7 provider shall submit the request and HIPAA compliant
8 authorization in writing and pay a fee at the time of delivery.
9 Notwithstanding any other section of the code or rule, the
10 fees shall not exceed: (1) A search and handling fee of \$20;
11 (2) a per page fee of 40 cents for paper copies; and (3)
12 postage, if the person requested that the records be mailed,
13 plus any applicable taxes.

14 (c) If the requested record is stored by the health care
15 provider in an electronic form, unless the person requesting

16 the record specifically requests a paper copy, the records
17 will be delivered in electronic or digital form and the per
18 page fee for providing an electronic copy shall not exceed
19 20 cents per page but shall in no event exceed \$150
20 inclusive of all fees, including a search and handling fee,
21 except for applicable taxes.

22 (d) Any person requesting a record be certified by
23 affidavit pursuant to section four-e, article five, chapter
24 fifty-seven of this code shall pay a fee of \$10 for such
25 certification.

26 (e) If a person requests or agrees to an explanation or
27 summary of the records, the provider may charge a
28 reasonable cost-based fee for the labor cost if preparing the
29 explanation or the summary; for the supplies for creating the
30 explanation or summary; and for the cost of postage, if the
31 person requested that the records be mailed, plus any
32 applicable taxes. If the records are stored with a third party
33 or a third party responds to the request for records in paper
34 or electronic media, the provider may charge additionally
35 for the actual charges incurred from the third party.

36 (f) The per page fee for copying under this section shall
37 be adjusted to reflect the consumer price index for medical
38 care services such that the base amount shall be increased
39 or decreased by the proportional consumer price index as
40 published every October 1 starting October 1, 2017.

41 (g) Notwithstanding the provisions of subsection (a) of
42 this section, a provider shall not impose a charge on an
43 indigent person or his or her authorized representative if the
44 medical records are necessary for the purpose of supporting
45 a claim or appeal under any provisions of the Social Security
46 Act, 42 U. S. C. §301, *et seq.*

47 For purposes of this section, a person is considered
48 indigent if he or she:

49 (1) Is represented by an organization or affiliated pro
50 bono program that provides legal assistance to indigents; or

51 (2) Verifies on a medical records request and release
52 form that the records are requested for purposes of
53 supporting a Social Security claim or appeal and submits
54 with the release form reasonable proof that the person is
55 financially unable to pay full copying charges by reason of
56 unemployment, disability, income below the federal
57 poverty level or receipt of state or federal income assistance.

58 (h) Any person requesting free copies of written medical
59 records pursuant to the provisions of subsection (g) of this
60 section is limited to one set of copies per provider. Any
61 additional requests for the same records from the same
62 provider shall be subject to the fee provisions of subsections
63 (a), (b) and (c).

CHAPTER 192

**(Com. Sub. for H. B. 2520 - By Delegates Summers,
Rohrbach, Criss, Atkinson, Higginbotham, Byrd,
Lovejoy, Fleischauer and Rowan)**

[Passed April 8, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §16-45-3 and §16-45-5 of the Code of West Virginia, 1931, as amended, relating to prohibiting the use of a tanning device by a person under the age of eighteen.

Be it enacted by the Legislature of West Virginia:

That §16-45-3 and §16-45-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 45. TANNING FACILITIES.**§16-45-3. Operation standards.**

1 (a) A tanning facility shall provide to any patron who
2 wishes to use a tanning device located within its tanning
3 facility a disclosure and consent form relating to use of a
4 tanning device that contains the current United States Food
5 and Drug Administration warning as follows: “Danger.
6 Ultraviolet Radiation. Follow instructions. Avoid
7 overexposure. As with natural sunlight, overexposure can
8 cause eye and skin injury and allergic reactions.
9 REPEATED EXPOSURE MAY CAUSE PREMATURE
10 AGING OF THE SKIN AND SKIN CANCER. WEAR
11 PROTECTIVE EYEWEAR; FAILURE TO DO SO MAY
12 RESULT IN SEVERE BURNS OR LONG-TERM
13 INJURY TO THE EYES. Medications or cosmetics may
14 increase your sensitivity to the ultraviolet radiation. Consult
15 physician before using tanning device if you are using
16 medications or have a history of skin problems or believe
17 yourself especially sensitive to sunlight. If you do not tan in
18 the sun, you are unlikely to tan from use of this product.”

19 The disclosure and consent form must have a place for
20 the patron’s signature and the date. A signed and dated copy
21 of the disclosure and consent form shall be maintained by
22 the tanning facility and remains valid for one year from the
23 date it was signed.

24 (b) All patrons are required to present proof of age prior
25 to use of a tanning device. Proof of age shall be satisfied
26 with a driver’s license or other government-issued
27 identification containing the date of birth and a photograph
28 of the individual. Persons under the age of eighteen may not
29 be permitted to use a tanning device.

§16-45-5. Violations and penalties.

1 (a) Any owner of a tanning facility who violates the
2 requirements of this article is guilty of a misdemeanor and,

3 upon conviction thereof, for a first offense, shall be fined
4 \$100.

5 (b) For a second offense, the owner is guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined
7 not less than \$250 nor more than \$500.

8 (c) For a third offense or subsequent offense, the owner
9 is guilty of a misdemeanor and, upon conviction thereof,
10 shall be fined not less than \$500 nor more than \$1,000.

CHAPTER 193

**(Com. Sub. for S. B. 339 - By Senators Takubo, Cline
and Maroney)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-52-1, §16-52-2, §16-52-3, §16-52-4 and §16-52-5, all relating to creating a legislative coalition on chronic pain management; setting forth findings; setting forth a purpose; providing for administrative functions of the coalition; setting forth membership of the coalition; providing for appointments to be made by the President of the Senate; providing for appointments to be made by the Speaker of the House of Delegates; setting forth powers of the coalition; setting forth duties of the coalition; setting forth required reporting; setting forth reporting data elements; and providing a sunset date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-52-1,

§16-52-2, §16-52-3, §16-52-4 and §16-52-5, all to read as follows:

ARTICLE 52. COALITION FOR RESPONSIBLE PAIN MANAGEMENT.

§16-52-1. Findings and purpose.

1 The Legislature finds that treatment for pain is an
2 important element in health care. Unlike diseases such as
3 hypertension and diabetes, pain is a subjective experience.
4 There is no objective measure of pain intensity.
5 Consequently, the clinical and medical judgement of a
6 prescriber is more essential in rendering effective treatment
7 of a person's level of pain.

8 The treatment of chronic pain has a significant impact
9 on the individual and society as a whole. Most chronic pain
10 problems start with an acute nociceptive pain episode.
11 Effective early care is paramount in managing chronic pain.
12 To that end, prescribers should have the flexibility to
13 effectively treat patients who present with chronic pain.
14 However, there must be a balance between proper treatment
15 for chronic pain and the abuse of the opioids found most
16 effective in its treatment.

17 The abuse of pain medication in this state continues to
18 be a nearly insurmountable plague. Substance abuse
19 continues to contribute to unnecessary deaths, causes
20 countless societal breakdowns and causes a strain on our
21 state and its citizens both financially and emotionally. In an
22 effort to address this crisis the state has created a regulatory
23 framework with the intended goal of curbing
24 overprescribing and overuse of prescription pain
25 medication. This regulation, however, has resulted in
26 unforeseen outcomes often causing patients seeking pain
27 treatment to suffer from a lack of treatment options.

28 Accordingly, the Legislature finds that a comprehensive
29 review of the regulatory structure in place to provide
30 oversight to prescribers whose practice has a significant

31 focus on pain management needs to be undertaken. In order
32 to gain the necessary insight into effective treatment for
33 chronic pain and to maintain the state's interest in protecting
34 its citizens from the proliferation of prescription pain
35 medication, the Legislature hereby creates the Coalition for
36 Responsible Chronic Pain Management.

§16-52-2. Creation of the Coalition for Responsible Chronic Pain Management.

1 There is created the Coalition for Responsible Chronic
2 Pain Management. The administrative functions of the
3 coalition shall be the responsibility of staff assigned to the
4 Joint Committee on Health to be in the best interest of the
5 state and its citizens.

§16-52-3. Members of the Coalition for Responsible Chronic Pain Management.

1 The Coalition for Responsible Chronic Pain
2 Management shall consist of the following members:

3 (1) The Dean of the School of Public Health at West
4 Virginia University, or his or her designee, who shall serve
5 as chair of the coalition.

6 (2) A physician who is a board-certified pain specialist.

7 (3) Three physicians licensed to practice in this state
8 pursuant to article three or article fourteen, chapter thirty of
9 this code who shall be appointed by the President of the
10 Senate and the Speaker of the House of Delegates in
11 consultation with the cochairs of the Joint Committee on
12 Health. Two of these physicians' practices shall have been
13 classified as a pain clinic pursuant to the regulations
14 promulgated under article five-h of this chapter. The third
15 physician shall be a primary care physician who is not
16 classified as a pain clinic.

17 (4) A pharmacist licensed to practice in this state
18 pursuant to article five, chapter thirty of this code who shall

19 be appointed by the President of the Senate and the Speaker
20 of the House of Delegates in consultation with the cochairs
21 of the Joint Committee on Health.

22 (5) A consumer of health care services directly impacted
23 by the regulation of pain clinics who is appointed by the
24 President of the Senate and the Speaker of the House of
25 Delegates in consultation with the cochairs of the Joint
26 Committee on Health.

27 (6) A chiropractor licensed pursuant to the provisions
28 of article sixteen, chapter thirty of this code who is
29 appointed by the President of the Senate and the Speaker of
30 the House of Delegates in consultation with the cochairs of
31 the Joint Committee on Health.

32 (7) A Physical Therapist, licensed under chapter thirty
33 of this code, experienced in the area management of chronic
34 pain by physical, behavioral and other nonpharmacological
35 means who is appointed by the President of the Senate and
36 the Speaker of the House of Delegates in consultation with
37 the cochairs of the Joint Committee on Health.

38 (8) Membership on the coalition shall be equally
39 distributed among the congressional districts of this state
40 and each congressional district shall be represented in the
41 membership of the coalition.

42 (9) The cochairs of the Joint Committee on Health shall
43 serve as nonvoting members, ex-officio.

**§16-52-4. Powers and duties of the Coalition for Responsible
Chronic Pain Management.**

1 (a) The Coalition for Responsible Chronic Pain
2 Management shall:

3 (1) Meet at least quarterly, or at the call of the chairman.
4 A quorum shall be a simple majority of the coalition.

5 (2) Keep accurate records of the actions of the coalition.

6 (3) Make recommendations to the Legislature as
7 required by this article.

8 (b) At a minimum, the coalition shall:

9 (1) Undertake a review of chronic pain regulations
10 contained in article five-h of this chapter and any legislative
11 rules promulgated pursuant to said article to ascertain if a
12 less cumbersome, but equally or more effective manner
13 exists to provide necessary regulation of prescriber practices
14 characterized as pain clinics.

15 (2) Review the statutory provisions of the Controlled
16 Substance Monitoring Database provided for in article nine,
17 chapter sixty-a of this code. The purpose of this review is to
18 ascertain if there is a more effective manner for prescribers
19 to access the database which would provide sufficient
20 regulation over the prescription of chronic pain medication
21 while still allowing access to patients with established
22 chronic pain conditions.

23 (3) Provide guidance to the Legislature on potential
24 statutory solutions relative to regulation of chronic pain
25 medications.

26 (4) Consult with a quality improvement organization.

27 (5) Establish workgroups and clinical advisory
28 committees as the coalition deems necessary to address
29 pertinent issues related to chronic pain management and to
30 provide consistency in the development of further
31 regulation.

32 (6) Consult with entities and persons with a particular
33 expertise as the coalition deems necessary in the fulfillment
34 of their duties. This can include public and private sector
35 partnerships.

36 (7) Offer any additional guidance to the Legislature
37 which the coalition sees is within its scope which would

38 further enhance the provider patient relationship in the
39 effective treatment and management of chronic pain.

40 (8) Make recommendations regarding regulations of
41 wholesalers of controlled substances or terminal distributors
42 of dangerous drugs.

43 (9) Provide insight into whether “take back” programs
44 or limitations on prescriber furnished controlled substances
45 would be effective in this state.

46 (10) The coalition shall report its findings to the Joint
47 Committee on Health by December 31, 2017, and annually
48 thereafter until the coalition terminates pursuant to the
49 provisions of this article. The report shall include, at a
50 minimum, the following:

51 (A) Conclusions and recommendations to promote a
52 better means for regulation of chronic pain clinics while
53 protecting the rights and needs of chronic pain patients.

54 (B) Recommendations for statutory and regulatory
55 modifications.

56 (C) Identification of any action which may be taken by
57 the Legislature to better foster a balance between the clinical
58 judgment of prescribers and the needs of chronic pain
59 patients and the state interest in maintaining an effective
60 regulatory structure.

61 (D) Any other ancillary issues relative to chronic pain
62 management.

§16-52-5. Sunset.

1 The coalition shall terminate on December 31, 2020,
2 unless continued by act of the Legislature.

●

CHAPTER 194

**(Com. Sub. for H. B. 2428 - By Delegates Kelly,
Anderson, Criss, Higginbotham, Ambler, Hollen,
Wagner, Ward, C. Romine, Cooper and Atkinson)**

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-53-1, §16-53-2 and §16-53-3, all relating to ensuring additional beds for purposes of providing substance abuse treatment; requiring these beds are made available in locations throughout the state; providing duties of the Secretary of the Department of Health and Human Resources; providing for requirements of facilities accepting funds; requiring facilities be appropriately licensed; creating the Ryan Brown Addiction Prevention and Recovery Fund; providing for administration of fund by the Secretary of the Department of Health and Human Resources; providing what moneys the fund shall consist of; directing the transfer of money recovered on behalf of the state arising out of the settlement of a certain civil action to the fund; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-53-1, §16-53-2 and §16-53-3, all to read as follows:

ARTICLE 53. ESTABLISHING ADDITIONAL SUBSTANCE ABUSE TREATMENT FACILITIES.

§16-53-1. Establishment of substance abuse treatment facilities.

- 1 (a) The Secretary of the Department of Health and
- 2 Human Resources shall ensure that beds for purposes of
- 3 providing substance abuse treatment services in existing or
- 4 newly constructed facilities are made available in locations
- 5 throughout the state which the Bureau for Behavioral Health

6 and Health Facilities determines to be the highest priority
7 for serving the needs of the citizens of the state.

8 (b) The secretary shall identify and allocate the beds to
9 privately owned facilities to provide substance abuse
10 treatment services.

11 (c) These facilities shall:

12 (1) Give preference to West Virginia residents;

13 (2) Accept payment from private pay patients, third
14 party payors or patients covered by Medicaid;

15 (3) Offer long term treatment, based upon need, of up to
16 one year; and

17 (4) Work closely with the Adult Drug Court Program,
18 provided for in article fifteen, chapter sixty-two of this code.

19 (d) Any facility subject to the provisions of this article
20 must be licensed by this state to provide addiction and
21 substance abuse services.

§16-53-2. Establishing the Ryan Brown Addiction Prevention and Recovery Fund.

1 The Ryan Brown Addiction Prevention and Recovery
2 Fund is hereby created in the state treasury as a special revenue
3 account. The fund shall be administered by the Secretary of
4 the Department of Health and Human Resources and shall
5 consist of all moneys made available for the purposes of this
6 article from any source, including, but not limited to, all grants,
7 bequests or transfers from any source, any moneys that may be
8 appropriated and designated for those purposes by the
9 Legislature and all interest or other return earned from
10 investment of the fund, gifts, and all other sums available for
11 deposit to the special revenue account from any source, public
12 or private. Expenditures from the fund shall be for the purposes
13 set forth in this article and are not authorized from collections
14 but are to be made only in accordance with appropriation by
15 the Legislature and in accordance with the provisions of article
16 three, chapter twelve of this code and upon the fulfillment of

17 the provisions set forth in article two, chapter eleven-b of this
18 code. Upon the effective date of this section, the attorney
19 general and any public official with custody or control of the
20 proceeds recovered for the state pursuant to settlement
21 agreement dated January 9, 2017, in that certain civil action
22 then pending in Boone County, designated Civil Action No.
23 12-C-141, shall forthwith transfer, or cause the transfer, of
24 those proceeds into the Ryan Brown Addiction Prevention and
25 Recovery Fund in the manner directed by the state treasurer
26 pursuant to articles one and two, chapter twelve of this code
27 and all other applicable law.

§16-53-3. Rulemaking.

1 The Secretary of the West Virginia Department of Health
2 and Human Resources shall promulgate emergency rules
3 pursuant to the provisions of section fifteen, article three,
4 chapter twenty-nine-a of this code to effectuate the provisions
5 of this article.



CHAPTER 195

**(Com. Sub. for S. B. 386 - By Senators Ojeda, Beach,
Facemire, Miller, Palumbo, Plymale, Romano,
Rucker, Stollings, Swope, Woelfel and Boso)**

[Passed April 6, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 19, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new chapter, designated §16A-1-1, §16A-
2-1, §16A-3-1, §16A-3-2, §16A-3-3, §16A-3-4, §16A-3-5,
§16A-4-1, §16A-4-2, §16A-4-3, §16A-4-4, §16A-4-5, §16A-
5-1, §16A-5-2, §16A-5-3, §16A-5-4, §16A-5-5, §16A-5-6,
§16A-5-7, §16A-5-8, §16A-5-9, §16A-5-10, §16A-6-1,
§16A-6-2, §16A-6-3, §16A-6-4, §16A-6-5, §16A-6-6, §16A-
6-7, §16A-6-8, §16A-6-9, §16A-6-10, §16A-6-11, §16A-6-

12, §16A-6-13, §16A-7-1, §16A-7-2, §16A-7-3, §16A-7-4, §16A-7-5, §16A-7-6, §16A-8-1, §16A-8-2, §16A-8-3, §16A-9-1, §16A-9-2, §16A-10-1, §16A-10-2, §16A-10-3, §16A-10-4, §16A-10-5, §16A-10-6, §16A-11-1, §16A-11-2, §16A-12-1, §16A-12-2, §16A-12-3, §16A-12-4, §16A-12-5, §16A-12-6, §16A-12-7, §16A-12-8, §16A-12-9, §16A-13-1, §16A-13-2, §16A-13-3, §16A-13-4, §16A-13-5, §16A-13-6, §16A-13-7, §16A-13-8, §16A-14-1, §16A-14-2, §16A-14-3, §16A-15-1, §16A-15-2, §16A-15-3, §16A-15-4, §16A-15-5, §16A-15-6, §16A-15-7, §16A-15-8, §16A-15-9 and §16A-16-1, all relating to medical cannabis generally; authorizing, under limited conditions, the use, possession, growing, processing and dispensing of cannabis for serious medical conditions; creating the West Virginia Medical Cannabis Act; defining terms; establishing medical cannabis program; placing the medical cannabis program within the Department of Health and Human Resources and under the direction of the Bureau for Public Health; listing duties of the Bureau for Public Health in the implementation and administration of the medical cannabis program; establishing lawful use and forms of medical cannabis; ensuring patient confidentiality; designating certain records as public records; authorizing reciprocity agreements to allow terminally ill cancer patients to obtain medical cannabis in other states; requiring registration of physicians who may issue certificates to patients allowing them to obtain medical cannabis; establishing requirements for certified physicians; placing limits on physician practices related to medical cannabis; authorizing issuance of certificates to medical cannabis patients and establishing conditions required for issuance of certificates; establishing limits on duration of certification and on amounts of medical cannabis which may be dispensed to a patient; authorizing issuance of identification cards to patients and caregivers and setting forth content of identification cards; establishing fees for patients, caregivers, physicians, growers, processors and dispensers; authorizing patients to have caregivers and establishing requirements for caregivers; requiring the Bureau for Public Health to verify information supplied by patients and caregivers; authorizing minors to

obtain medical cannabis through caregivers and establishing qualifications for minors' caregivers; prohibiting certain actions and behaviors by patients while they are using medical cannabis; authorizing and defining medical cannabis organizations; establishing permitting processes for growers, processors and dispensers of medical cannabis; requiring criminal background checks for caregivers, growers, processors and dispensers of medical cannabis; establishing terms for permits; authorizing renewal of permits and establishing requirements for renewal; authorizing the bureau to suspend or revoke permits of medical cannabis growers, processors and dispensers for violations; establishing limits on who may hold permits; establishing limits on who may hold positions or employment with growers, processors and dispensers; setting limits on number of permits that may be issued; requiring medical cannabis inventory tracking systems; requiring reporting by medical cannabis organizations; requiring rules for storage and transportation of medical cannabis; requiring medical cannabis organizations to contract with laboratories for testing of medical cannabis; requiring the bureau and the Department of Revenue to monitor the prices of medical cannabis; authorizing counties to prohibit medical cannabis organizations from being located within their county; establishing requirements for dispensaries; providing for imposition and collection of a tax; establishing the Medical Cannabis Program Fund; allocating monies placed in the fund; establishing the Office of Medical Cannabis within Bureau for Public Health; requiring reporting by medical cannabis organizations; authorizing the bureau to notify law enforcement of violations of the act; authorizing rulemaking; establishing the Medical Cannabis Advisory Board; establishing requirements for advisory board membership; establishing terms for advisory board members; establishing duties of the advisory board; establishing criminal offenses related to medical cannabis and setting penalties therefor; establishing confidentiality requirements for advisory board members and employees; authorizing civil penalties and setting amounts thereof for violations of the Medical Cannabis Act; authorizing research in medical

cannabis by the bureau; authorizing Medical Cannabis Advisory Board to issue recommendations as to forms of cannabis use and other issues; authorizing the bureau to implement recommendations of the advisory board; requiring publication of bureau actions and decisions in the State Register; authorizing academic research regarding medical cannabis and its uses; establishing requirements to be an academic research institution; exempting medical cannabis manufacture, distribution, possession and processing in compliance with the act from the provisions of the Uniform Controlled Substances Act; limiting persons who may hold an interest in medical cannabis organizations or employment thereby; clarifying that insurance companies are not required to provide medical cannabis coverage; limiting the arrest, prosecution, imposition of penalty, denial of any right or privilege for lawful use, manufacture, sale or dispensing of medical cannabis; requiring the Department of Education to promulgate rules regarding possession and use of medical cannabis in schools; requiring the bureau to promulgate rules regarding possession and use of medical cannabis in daycare centers; authorizing zoning restrictions on medical cannabis organizations; requiring notice to the bureau of zoning restrictions; requiring publication in the State Register of permits and authorizations issued; requiring issuance of permits and authorizations only after publication of same in the State Register; and establishing effective dates.

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 chapter, designated §16A-1-1, §16A-2-1, §16A-3-1, §16A-3-2, §16A-3-3, §16A-3-4, §16A-3-5, §16A-4-1, §16A-4-2, §16A-4-3, §16A-4-4, §16A-4-5, §16A-5-1, §16A-5-2, §16A-5-3, §16A-5-4, §16A-5-5, §16A-5-6, §16A-5-7, §16A-5-8, §16A-5-9, §16A-5-10, §16A-6-1, §16A-6-2, §16A-6-3, §16A-6-4, §16A-6-5, §16A-6-6, §16A-6-7, §16A-6-8, §16A-6-9, §16A-6-10, §16A-6-11, §16A-6-12, §16A-6-13, §16A-7-1, §16A-7-2, §16A-7-3, §16A-7-4, §16A-7-5, §16A-7-6, §16A-8-1, §16A-8-2, §16A-8-3, §16A-9-1, §16A-9-2, §16A-10-1, §16A-10-2, §16A-10-3, §16A-10-4, §16A-10-5, §16A-10-6, §16A-11-1,

§16A-11-2, §16A-12-1, §16A-12-2, §16A-12-3, §16A-12-4, §16A-12-5, §16A-12-6, §16A-12-7, §16A-12-8, §16A-12-9, §16A-13-1, §16A-13-2, §16A-13-3, §16A-13-4, §16A-13-5, §16A-13-6, §16A-13-7, §16A-13-8, §16A-14-1, §16A-14-2, §16A-14-3, §16A-15-1, §16A-15-2, §16A-15-3, §16A-15-4, §16A-15-5, §16A-15-6, §16A-15-7, §16A-15-8, §16A-15-9 and §16A-16-1, all to read as follows:

CHAPTER 16A. MEDICAL CANNABIS ACT.

ARTICLE 1. SHORT TITLE.

§16A-1-1. Short title.

1 This chapter is in honor of James William “Bill”
2 Flanigan and Lucile Gillespie and shall be known and cited
3 as the West Virginia Medical Cannabis Act.

ARTICLE 2. DEFINITIONS.

§16A-2-1. Definitions.

1 (a) The following words and phrases when used in this
2 chapter shall have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 (1) “Act” means the West Virginia Medical Cannabis
5 Act and the provisions contained in chapter sixty-a of this
6 code.

7 (2) “Advisory board” means the advisory board
8 established under article eleven of this chapter.

9 (3) “Bureau” mean the Bureau for Public Health within
10 the West Virginia Department of Health and Human
11 Resources.

12 (4) “Caregiver” means the individual designated by a
13 patient or, if the patient is under eighteen years of age, an
14 individual under article five, to deliver medical cannabis.

15 (5) “Certified medical use” means the acquisition,
16 possession, use or transportation of medical cannabis by a
17 patient, or the acquisition, possession, delivery,
18 transportation or administration of medical cannabis by a
19 caregiver, for use as part of the treatment of the patient’s
20 serious medical condition, as authorized in a certification
21 under this act, including enabling the patient to tolerate
22 treatment for the serious medical condition.

23 (6) “Change in control” means the acquisition by a
24 person or group of persons acting in concert of a controlling
25 interest in an applicant or permittee either all at one time or
26 over the span of a 12-consecutive-month period.

27 (7) “Commissioner” means the Commissioner of the
28 Bureau for Public Health.

29 (8) “Continuing care” means treating a patient for at
30 least six months, in the course of which the practitioner has
31 completed a full assessment of the patient’s medical history
32 and current medical condition, including an in-person
33 consultation with the patient, and is able to document and
34 make a medical diagnosis based upon the substantive
35 treatment of the patient.

36 (9) “Controlling interest” means:

37 (A) For a publicly traded entity, voting rights that
38 entitle a person to elect or appoint one or more of the
39 members of the board of directors or other governing board
40 or the ownership or beneficial holding of five percent or
41 more of the securities of the publicly traded entity.

42 (B) For a privately held entity, the ownership of any
43 security in the entity.

44 (10) “Dispensary” means a person, including a natural
45 person, corporation, partnership, association, trust or other
46 entity, or any combination thereof, which holds a permit
47 issued by the bureau to dispense medical cannabis. The term

48 does not include a health care medical cannabis
49 organization under article thirteen of this chapter.

50 (11) “Family or household member” means the same as
51 defined in section two hundred four, article twenty-seven,
52 chapter forty-eight of this code.

53 (12) “Financial backer” means an investor, mortgagee,
54 bondholder, note holder or other source of equity, capital or
55 other assets, other than a financial institution.

56 (13) “Financial institution” means a bank, a national
57 banking association, a bank and trust company, a trust
58 company, a savings and loan association, a building and
59 loan association, a mutual savings bank, a credit union or a
60 savings bank.

61 (14) “Form of medical cannabis” means the
62 characteristics of the medical cannabis recommended or
63 limited for a particular patient, including the method of
64 consumption and any particular dosage, strain, variety and
65 quantity or percentage of medical cannabis or particular
66 active ingredient.

67 (15) “Fund” means the Medical Cannabis Program
68 Fund established in section two, article nine of this chapter.

69 (16) “Grower” means a person, including a natural
70 person, corporation, partnership, association, trust or other
71 entity, or any combination thereof, which holds a permit
72 from the bureau under this act to grow medical cannabis.
73 The term does not include a health care medical cannabis
74 organization under article thirteen of this chapter.

75 (17) “Grower/processor” means either a grower or a
76 processor.

77 (18) “Identification card” means a document issued
78 under article five of this chapter that authorizes access to
79 medical cannabis under this act.

80 (19) “Individual dose” means a single measure of
81 medical cannabis.

82 (20) “Medical cannabis” means cannabis for certified
83 medical use as set forth in this act.

84 (21) “Medical cannabis organization” means a
85 dispensary, grower or processor. The term does not include
86 a health care medical cannabis organization under article
87 thirteen of this chapter.

88 (22) “Patient” means an individual who:

89 (A) Has a serious medical condition;

90 (B) Has met the requirements for certification under
91 this act; and

92 (C) Is a resident of this state.

93 (23) “Permit” means an authorization issued by the
94 bureau to a medical cannabis organization to conduct
95 activities under this act.

96 (24) “Physician” means a doctor of allopathic or
97 osteopathic medicine who is fully licensed pursuant to the
98 provisions of either article three or article fourteen, chapter
99 thirty of this code to practice medicine and surgery in this
100 state.

101 (25) “Post-traumatic stress disorder” means a diagnosis
102 made as part of continuing care of a patient by a medical
103 doctor, licensed counselor or psychologist.

104 (26) “Practitioner” means a physician who is registered
105 with the bureau under article four of this chapter.

106 (27) “Prescription drug monitoring program” means the
107 West Virginia Controlled Substances Monitoring program
108 under article nine, chapter sixty-a of this code.

109 (28) “Principal” means an officer, director or person
110 who directly owns a beneficial interest in or ownership of
111 the securities of an applicant or permittee, a person who has
112 a controlling interest in an applicant or permittee or who has
113 the ability to elect the majority of the board of directors of
114 an applicant or permittee or otherwise control an applicant
115 or permittee, other than a financial institution.

116 (29) “Processor” means a person, including a natural
117 person, corporation, partnership, association, trust or other
118 entity, or any combination thereof, which holds a permit
119 from the bureau under this act to process medical cannabis.
120 The term does not include a health care medical cannabis
121 organization under article thirteen of this chapter.

122 (30) “Registry” means the registry established by the
123 bureau for practitioners.

124 (31) “Serious medical condition” means any of the
125 following, as has been diagnosed as part of a patient’s
126 continuing care:

127 (A) Cancer.

128 (B) Positive status for human immunodeficiency virus
129 or acquired immune deficiency syndrome.

130 (C) Amyotrophic lateral sclerosis.

131 (D) Parkinson’s disease.

132 (E) Multiple sclerosis.

133 (F) Damage to the nervous tissue of the spinal cord with
134 objective neurological indication of intractable spasticity.

135 (G) Epilepsy.

136 (H) Neuropathies.

137 (I) Huntington’s disease.

138 (J) Crohn's disease.

139 (K) Post-traumatic stress disorder.

140 (L) Intractable seizures.

141 (M) Sickle cell anemia.

142 (N) Severe chronic or intractable pain of neuropathic
143 origin or severe chronic or intractable pain in which
144 conventional therapeutic intervention and opiate therapy is
145 contraindicated or has proved ineffective as determined as
146 part of continuing care.

147 (O) Terminally ill.

148 (32) "Terminally ill" means a medical prognosis of life
149 expectancy of approximately one year or less if the illness
150 runs its normal course.

ARTICLE 3. MEDICAL CANNABIS PROGRAM.

§16A-3-1. Establishment of program.

1 (a) A medical cannabis program for patients suffering
2 from serious medical conditions is established. The program
3 shall be implemented and administered by the bureau. The
4 bureau shall:

5 (1) Issue permits to medical cannabis organizations to
6 authorize them to grow, process or dispense medical
7 cannabis and ensure their compliance with this act.

8 (2) Register practitioners and ensure their compliance
9 with this act.

10 (3) Have regulatory and enforcement authority over the
11 growing, processing, sale and use of medical cannabis in
12 this state.

13 (4) Establish and maintain an electronic database to
14 include activities and information relating to medical

15 cannabis organizations, certifications and identification
16 cards issued, practitioner registration and electronic
17 tracking of all medical cannabis as required under this act to
18 include:

19 (A) Ensurance that medical cannabis is not diverted or
20 otherwise used for unlawful purposes by a practitioner or
21 medical cannabis organization.

22 (B) Ability to establish the authenticity of identification
23 cards.

24 (C) Recording recommended forms of medical
25 cannabis provided in a certification filed by the practitioner.

26 (D) Monitoring all growth, transfer, possession,
27 processing, testing and dispensing of medical cannabis in
28 this state.

29 (E) The tracking system under article seven of this
30 chapter must include information under section one, article
31 eight of this chapter and any other information required by
32 the bureau to be used by the bureau and dispensaries to
33 enable a dispensary to lawfully provide medical cannabis.
34 The tracking system and database shall be capable of
35 providing information in real time. The database shall be
36 capable of receiving information from a dispensary
37 regarding the disbursement of medical cannabis to patients
38 and caregivers. This information shall be immediately
39 accessible to the bureau and other dispensaries to inhibit
40 diversion and ensure compliance with this act.

41 (5) Maintain a directory of patients and caregivers
42 approved to use or assist in the administration of medical
43 cannabis within the bureau's database.

44 (6) Develop a four-hour training course for physicians
45 regarding the latest scientific research on medical cannabis,
46 including the risks and benefits of medical cannabis and
47 other information deemed necessary by the bureau.

48 Successful completion of the course shall be approved as
49 continuing education credits as determined by:

50 (A) The State Board of Medicine.

51 (B) The State Board of Osteopathic Medicine.

52 (7) Develop a two-hour course for the principals and
53 employees of a medical cannabis organization who either
54 have direct contact with patients or caregivers or who
55 physically handle medical cannabis. Employees must
56 successfully complete the course no later than ninety days
57 after commencing employment. Principals must
58 successfully complete the course prior to commencing
59 initial operation of the medical cannabis organization. The
60 subject matter of the course shall include the following:

61 (A) Methods to recognize and report unauthorized
62 activity, including diversion of medical cannabis for
63 unlawful purposes and falsification of identification cards.

64 (B) Proper handling of medical cannabis and
65 recordkeeping.

66 (C) Any other subject required by the bureau.

67 (8) Develop enforcement procedures, including
68 announced and unannounced inspections of facilities of the
69 grower/processors and dispensaries and all records of the
70 medical cannabis organizations.

71 (9) Establish a program to authorize the use of medical
72 cannabis to conduct medical research relating to the use of
73 medical cannabis to treat serious medical conditions,
74 including the collection of data and the provision of research
75 grants.

76 (10) Establish and maintain public outreach programs
77 about the medical cannabis program, including:

78 (A) A dedicated telephone number for patients,
79 caregivers and members of the public to obtain basic
80 information about the dispensing of medical cannabis under
81 this act.

82 (B) A publicly accessible Internet website with similar
83 information.

84 (11) Collaborate as necessary with other state agencies
85 or contract with third parties as necessary to carry out the
86 provisions of this act.

87 (12) Determine the number and type of medical
88 cannabis products to be produced by a grower/processor and
89 dispensed by a dispensary.

90 (13) Develop recordkeeping requirements for all books,
91 papers, any electronic database or tracking system data and
92 other information of a medical cannabis organization.
93 Information shall be retained for a minimum period of four
94 years unless otherwise provided by the bureau.

95 (14) Restrict the advertising and marketing of medical
96 cannabis, which shall be consistent with the Federal rules
97 and regulations governing prescription drug advertising and
98 marketing.

99 (b) The bureau shall propose rules for legislative
100 promulgation pursuant to the provisions of article three,
101 chapter twenty-nine-a of this code as may be necessary to
102 carry out and implement the provisions of this act. The
103 bureau shall also have the power to propose and promulgate
104 emergency rules as may be necessary to carry out and
105 implement the provisions of this act.

§16A-3-2. Lawful use of medical cannabis.

1 (a) Notwithstanding any provision of law to the
2 contrary, the use or possession of medical cannabis as set
3 forth in this act is lawful within this state, subject to the
4 following conditions:

5 (1) Medical cannabis may only be dispensed to:

6 (A) A patient who receives a certification from a
7 practitioner and is in possession of a valid identification
8 card issued by the bureau; and

9 (B) A caregiver who is in possession of a valid
10 identification card issued by the bureau.

11 (2) Subject to rules promulgated under this act, medical
12 cannabis may only be dispensed to a patient or caregiver in
13 the following forms:

14 (A) Pill;

15 (B) Oil;

16 (C) Topical forms, including gels, creams or ointments;

17 (D) A form medically appropriate for administration by
18 vaporization or nebulization, excluding dry leaf or plant
19 form until dry leaf or plant forms become acceptable under
20 rules adopted by the bureau;

21 (E) Tincture;

22 (F) Liquid; or

23 (G) Dermal patch.

24 (3) Unless otherwise provided in rules adopted by the
25 bureau under section two, article eleven of this chapter,
26 medical cannabis may not be dispensed to a patient or a
27 caregiver in dry leaf or plant form.

28 (4) An individual may not act as a caregiver for more
29 than five patients.

30 (5) A patient may designate up to two caregivers at any
31 one time.

32 (6) Medical cannabis that has not been used by the
33 patient shall be kept in the original package in which it was
34 dispensed.

35 (7) A patient or caregiver shall possess an identification
36 card whenever the patient or caregiver is in possession of
37 medical cannabis.

38 (8) Products packaged by a grower/processor or sold by
39 a dispensary shall only be identified by the name of the
40 grower/processor, the name of the dispensary, the form and
41 species of medical cannabis, the percentage of
42 tetrahydrocannabinol and cannabiniol contained in the
43 product.

§16A-3-3. Unlawful use of medical cannabis.

1 (a) Except as provided in section two of this article,
2 section four of article seven, article thirteen or article
3 fourteen of this chapter, the use of medical cannabis is
4 unlawful and shall, in addition to any other penalty provided
5 by law, be deemed a violation of the Uniform Controlled
6 Substances Act under chapter sixty-a of this code.

7 (b) It shall be unlawful to:

8 (1) Smoke medical cannabis.

9 (2) Except as provided under subsection (c), incorporate
10 medical cannabis into edible form or sell in edible form.

11 (3) Grow medical cannabis unless the grower/processor
12 has received a permit from the bureau under this act.

13 (4) Grow or dispense medical cannabis unless
14 authorized as a health care medical cannabis organization
15 under article thirteen of this chapter.

16 (5) Dispense medical cannabis unless the dispensary
17 has received a permit from the bureau under this act.

18 (c) *Edible medical cannabis.* — Nothing in this act
19 shall be construed to preclude the incorporation of medical
20 cannabis into edible form by a patient or a caregiver in order
21 to aid ingestion of the medical cannabis by the patient.

§16A-3-4. Confidentiality.

1 (a) *Patient information.* — The bureau shall maintain a
2 confidential list of patients and caregivers to whom it has
3 issued identification cards. All information obtained by the
4 bureau relating to patients, caregivers and other applicants
5 shall be confidential and not subject to public disclosure
6 under chapter twenty-nine-b of this code, including
7 specifically the following:

8 (1) Individual identifying information about patients
9 and caregivers.

10 (2) Certifications issued by practitioners.

11 (3) Information on identification cards.

12 (4) Information provided by the West Virginia State
13 Police under section two, article five of this chapter.

14 (5) Information relating to the patient's serious medical
15 condition.

16 (b) *Public information.* — The following records are
17 public records and shall be subject to the Freedom of
18 Information Act, under chapter twenty-nine-b of this code:

19 (1) Applications for permits submitted by medical
20 cannabis organizations.

21 (2) The names, business addresses and medical
22 credentials of practitioners authorized to provide
23 certifications to patients to enable them to obtain and use
24 medical cannabis in this state. All other practitioner
25 registration information shall be confidential and exempt

26 from public disclosure under the Freedom of Information
27 Act.

28 (3) Information relating to penalties or other
29 disciplinary actions taken against a medical cannabis
30 organization or practitioner by the bureau for violation of
31 this act.

§16A-3-5. Reciprocity for terminally ill cancer patients.

1 The bureau may enter into reciprocity agreements with
2 any states that have comparable requirements for the use
3 and lawful purchase of medical cannabis in a manner
4 consistent with the provisions of this article to allow
5 terminally ill cancer patients to purchase medical cannabis
6 in another state.

ARTICLE 4. PRACTITIONERS.

§16A-4-1. Registration.

1 (a) *Eligibility.* — A physician included in the registry
2 is authorized to issue certifications to patients to use medical
3 cannabis. To be eligible for inclusion in the registry:

4 (1) A physician must apply for registration in the form
5 and manner required by the bureau.

6 (2) The bureau must determine that the physician is, by
7 training or experience, qualified to treat a serious medical
8 condition. The physician shall provide documentation of
9 credentials, training or experience as required by the bureau.

10 (3) The physician must have successfully completed
11 the course under subsection (a), section one, article three of
12 this chapter.

13 (b) *Bureau action.* —

14 (1) The bureau shall review an application submitted by
15 a physician to determine whether to include the physician in
16 the registry. The review shall include information regarding

17 whether the physician has a valid, unexpired, unrevoked,
18 unsuspended license to practice medicine in this state and
19 whether the physician has been subject to discipline.

20 (2) The inclusion of a physician in the registry shall be
21 subject to annual review to determine if the physician's
22 license is no longer valid, has expired or been revoked or
23 the physician has been subject to discipline. If the license is
24 no longer valid, the bureau shall remove the physician from
25 the registry until the physician holds a valid, unexpired,
26 unrevoked, unsuspended state license to practice medicine
27 in West Virginia.

28 (3) The West Virginia Board of Medicine and West
29 Virginia Board of Osteopathic Medicine shall report to the
30 bureau the expiration, suspension or revocation of a
31 physician's license and any disciplinary actions in a timely
32 fashion.

33 (c) *Practitioner requirements.* — A practitioner
34 included in the registry shall have an ongoing responsibility
35 to immediately notify the bureau in writing if the
36 practitioner knows or has reason to know that any of the
37 following is true with respect to a patient for whom the
38 practitioner has issued a certification:

39 (1) The patient no longer has the serious medical
40 condition for which the certification was issued.

41 (2) Medical cannabis would no longer be therapeutic or
42 palliative.

43 (3) The patient has died.

§16A-4-2. Practitioner restrictions.

1 (a) *Practices prohibited.* — The following shall apply
2 with respect to practitioners:

3 (1) A practitioner may not accept, solicit or offer any
4 form of remuneration from or to a prospective patient,

5 patient, prospective caregiver, caregiver or medical
6 cannabis organization, including an employee, financial
7 backer or principal, to certify a patient, other than accepting
8 a fee for service with respect to the examination of the
9 prospective patient to determine if the prospective patient
10 should be issued a certification to use medical cannabis.

11 (2) A practitioner may not hold a direct or economic
12 interest in a medical cannabis organization.

13 (3) A practitioner may not advertise the practitioner's
14 services as a practitioner who can certify a patient to receive
15 medical cannabis.

16 (b) *Unprofessional conduct.* — A practitioner who
17 violates subsection (a) of this section shall not be permitted
18 to issue certifications to patients and shall be removed from
19 the registry.

20 (c) *Discipline.* — In addition to any other penalty that
21 may be imposed under this act, a violation of subsection (a)
22 of this section or subsection (f), section three of this article
23 shall be deemed unprofessional conduct under the West
24 Virginia Medical Practice Act, and shall subject the
25 practitioner to discipline by the West Virginia Board of
26 Medicine and West Virginia Board of Osteopathic
27 Medicine, as appropriate.

§16A-4-3. Issuance of certification.

1 (a) *Conditions for issuance.* — A certification to use
2 medical cannabis may be issued by a practitioner to a patient
3 if all of the following requirements are met:

4 (1) The practitioner has been approved by the bureau
5 for inclusion in the registry and has a valid, unexpired,
6 unrevoked, unsuspended license to practice medicine in this
7 state at the time of the issuance of the certification.

8 (2) The practitioner has determined that the patient has
9 a serious medical condition and has included the condition
10 in the patient's health care record.

11 (3) The patient is under the practitioner's continuing
12 care for the serious medical condition.

13 (4) In the practitioner's professional opinion and
14 review of past treatments, the practitioner determines the
15 patient is likely to receive therapeutic or palliative benefit
16 from the use of medical cannabis, and other treatments,
17 including treatments involving opioids, have proven
18 ineffective or otherwise are contraindicated.

19 (b) *Contents.* — The certification shall include:

20 (1) The patient's name, date of birth and address.

21 (2) The specific serious medical condition of the
22 patient.

23 (3) A statement by the practitioner that the patient has
24 a serious medical condition and the patient is under the
25 practitioner's continuing care for the serious medical
26 condition.

27 (4) The date of issuance.

28 (5) The name, address, telephone number and signature
29 of the practitioner.

30 (6) Any requirement or limitation concerning the
31 appropriate form of medical cannabis and limitation on the
32 duration of use, if applicable, including whether the patient
33 is terminally ill.

34 (c) *Consultation.* — (1) A practitioner shall review the
35 prescription drug monitoring program prior to:

36 (A) Issuing a certification to determine the controlled
37 substance history of a patient.

38 (B) Recommending a change of amount or form of
39 medical cannabis.

40 (2) The practitioner shall consider and give due
41 consideration to other controlled substances the patient may
42 be taking prior to certifying medical cannabis.

43 (d) *Other access by practitioner.* — A practitioner may
44 access the prescription drug monitoring program to do any
45 of the following:

46 (1) Determine whether a patient may be under
47 treatment with a controlled substance by another physician
48 or other person.

49 (2) Allow the practitioner to review the patient's
50 controlled substance history as deemed necessary by the
51 practitioner.

52 (3) Provide to the patient, or caregiver on behalf of the
53 patient if authorized by the patient, a copy of the patient's
54 controlled substance history.

55 (e) *Duties of practitioner.* — The practitioner shall:

56 (1) Provide the certification to the patient.

57 (2) Provide a copy of the certification to the bureau,
58 which shall place the information in the patient directory
59 within the bureau's electronic database. The bureau shall
60 permit electronic submission of the certification.

61 (3) File a copy of the certification in the patient's health
62 care record.

63 (f) *Prohibition.* — A practitioner may not issue a
64 certification for the practitioner's own use or for the use of
65 a family or household member.

§16A-4-4. Certification form.

1 The bureau shall develop a standard certification form,
2 which shall be available to practitioners upon request. The
3 form shall be available electronically. The form shall
4 include a statement that a false statement made by a
5 practitioner is punishable under the applicable provisions of
6 law.

§16A-4-5. Duration.

1 Receipt of medical cannabis by a patient or caregiver
2 from a dispensary may not exceed a 30-day supply of
3 individual doses. During the last seven days of any 30-day
4 period during the term of the identification card, a patient
5 may obtain and possess a 30-day supply for the subsequent
6 30-day period. Additional 30-day supplies may be provided
7 in accordance with this section for the duration of the
8 authorized period of the identification card unless a shorter
9 period is indicated on the certification.

ARTICLE 5. PATIENTS.

§16A-5-1. Identification cards.

1 (a) *Issuance.* — The bureau may issue an identification
2 card to a patient who has a certification approved by the
3 bureau and to a caregiver designated by the patient. An
4 identification card issued to a patient shall authorize the
5 patient to obtain and use medical cannabis as authorized by
6 this act. An identification card issued to a caregiver shall
7 authorize the caregiver to obtain medical cannabis on behalf
8 of the patient.

9 (b) *Procedure for issuance.* — The bureau shall
10 develop and implement procedures for:

11 (1) Review and approval of applications for
12 identification cards.

13 (2) Issuance of identification cards to patients and
14 caregivers.

15 (3) Review of the certification submitted by the
16 practitioner and the patient.

17 (c) *Application.* — A patient or a caregiver may apply,
18 in a form and manner prescribed by the bureau, for issuance
19 or renewal of an identification card. A caregiver must
20 submit a separate application for issuance or renewal. Each
21 application must include:

22 (1) The name, address and date of birth of the patient.

23 (2) The name, address and date of birth of a caregiver.

24 (3) The certification issued by the practitioner.

25 (4) The name, address and telephone number of the
26 practitioner and documentation from the practitioner that all
27 of the requirements of subsection (a), section three, article
28 four of this chapter have been met.

29 (5) A \$50 processing fee. The bureau may waive or
30 reduce the fee if the applicant demonstrates financial
31 hardship.

32 (6) The signature of the applicant and date signed.

33 (7) Other information required by the bureau.

34 (d) *Forms.* — Application and renewal forms shall be
35 available on the bureau's publicly accessible Internet
36 website.

37 (e) *Expiration.* — An identification card of a patient or
38 caregiver shall expire within one year from the date of
39 issuance, upon the death of the patient, or as otherwise
40 provided in this section.

41 (f) *Separate cards to be issued.* — The bureau shall
42 issue separate identification cards for patients and
43 caregivers as soon as reasonably practicable after receiving
44 completed applications, unless it determines that an

45 application is incomplete or factually inaccurate, in which
46 case it shall promptly notify the applicant.

47 (g) *Change in name or address.* — A patient or
48 caregiver who has been issued an identification card shall
49 notify the bureau within ten days of any change of name or
50 address. In addition, the patient shall notify the bureau
51 within ten days if the patient no longer has the serious
52 medical condition noted on the certification.

53 (h) *Lost or defaced card.* — In the event of a lost,
54 stolen, destroyed or illegible identification card, the patient
55 or caregiver shall apply to the bureau within ten business
56 days of discovery of the loss or defacement of the card for a
57 replacement card. The application for a replacement card
58 shall be on a form furnished by the bureau and accompanied
59 by a \$25 fee. The bureau may establish higher fees for
60 issuance of second and subsequent replacement
61 identification cards. The bureau may waive or reduce the fee
62 in cases of demonstrated financial hardship. The bureau
63 shall issue a replacement identification card as soon as
64 practicable. A patient or caregiver may not obtain medical
65 cannabis until the bureau issues the replacement card.

§16A-5-2. Caregivers.

1 (a) *Requirements.* —

2 (1) If the patient designates a caregiver, the application
3 shall include the name, address and date of birth of the
4 caregiver, and other individual identifying information
5 required by the bureau and the following:

6 (A) Federal and state criminal history record
7 information as set forth in subsection (b) of this section.

8 (B) If the caregiver has an identification card for the
9 caregiver or another patient, the expiration date of the
10 identification card.

11 (C) Other information required by the bureau.

12 (2) The application shall be accompanied by a fee of
13 \$50. The bureau may waive or reduce the fee in cases of
14 demonstrated financial hardship.

15 (3) The bureau may require additional information for
16 the application.

17 (4) The application shall be signed and dated by the
18 applicant.

19 (b) *Criminal history.* — A caregiver shall submit
20 fingerprints for the purpose of obtaining criminal history
21 record checks, and the West Virginia State Police or its
22 authorized agent shall submit the fingerprints to the Federal
23 Bureau of Investigation for the purpose of verifying the
24 identity of the applicant and obtaining a current record of
25 any criminal arrests and convictions. Any criminal history
26 record information relating to a caregiver obtained under
27 this section by the bureau may be interpreted and used by
28 the bureau only to determine the applicant's character,
29 fitness and suitability to serve as a caregiver under this act.
30 The bureau shall also review the prescription drug
31 monitoring program relating to the caregiver. The bureau
32 shall deny the application of a caregiver who has been
33 convicted of a criminal offense that occurred within the past
34 five years relating to the felony sale or possession of drugs,
35 narcotics or controlled substances, or conspiracy thereof.
36 The bureau may deny an application if the applicant has a
37 history of drug abuse or of diverting controlled substances
38 or illegal drugs.

§16A-5-3. Notice.

1 An application for an identification card shall include
2 notice that a false statement made in the application is
3 punishable under the applicable provisions of law.

§16A-5-4. Verification.

1 The bureau shall verify the information in a patient or
2 caregiver's application and on any renewal form.

§16A-5-5. Special conditions.

1 The following apply:

2 (1) If the practitioner states in the certification that, in
3 the practitioner's professional opinion, the patient would
4 benefit from medical cannabis only until a specified earlier
5 date, then the identification card shall expire on that date.

6 (2) If the certification so provides, the identification
7 card shall state any requirement or limitation by the
8 practitioner as to the form of medical cannabis for the
9 patient.

§16A-5-6. Minors.

1 If a patient is under eighteen years of age, the following
2 shall apply:

3 (1) The patient shall have a caregiver.

4 (2) A caregiver must be one of the following:

5 (A) A parent or legal guardian of the patient.

6 (B) An individual designated by a parent or legal
7 guardian.

8 (C) An appropriate individual approved by the bureau
9 upon a sufficient showing that no parent or legal guardian is
10 appropriate or available.

§16A-5-7. Caregiver authorization and limitations.

1 (a) *Age.* — An individual who is under twenty-one
2 years of age may not be a caregiver unless a sufficient
3 showing, as determined by the bureau, is made to the bureau
4 that the individual should be permitted to serve as a
5 caregiver.

6 (b) *Changing caregiver.* — If a patient wishes to
7 change or terminate the designation of the patient's

8 caregiver, for whatever reason, the patient shall notify the
9 bureau as soon as practicable. The bureau shall issue a
10 notification to the caregiver that the caregiver's
11 identification card is invalid and must be promptly returned
12 to the bureau.

13 (c) *Denial in part.* — If an application of a patient
14 designates an individual as a caregiver who is not authorized
15 to be a caregiver, that portion of the application shall be
16 denied by the bureau. The bureau shall review the balance
17 of the application and may approve that portion of it.

§16A-5-8. Contents of identification card.

1 An identification card shall contain the following:

2 (1) The name of the caregiver or the patient, as
3 appropriate. The identification card shall also state whether
4 the individual is designated as a patient or as a caregiver.

5 (2) The date of issuance and expiration date.

6 (3) An identification number for the patient or
7 caregiver, as appropriate.

8 (4) A photograph of the individual to whom the
9 identification card is being issued, whether the individual is
10 a patient or a caregiver. The method of obtaining the
11 photograph shall be specified by the bureau by rule. The
12 bureau shall provide reasonable accommodation for a
13 patient who is confined to the patient's home or is in
14 inpatient care.

15 (5) Any requirement or limitation set by the practitioner
16 as to the form of medical cannabis.

17 (6) Any other requirements determined by the bureau,
18 except the bureau may not require that an identification card
19 disclose the patient's serious medical condition.

§16A-5-9. Suspension.

1 If a patient or caregiver intentionally, knowingly or
2 recklessly violates any provision of this act as determined
3 by the bureau, the identification card of the patient or
4 caregiver may be suspended or revoked. The suspension or
5 revocation shall be in addition to any criminal or other
6 penalty that may apply.

§16A-5-10. Prohibitions.

1 The following prohibitions shall apply:

2 (1) A patient may not operate or be in physical control
3 of any of the following while under the influence with a
4 blood content of more than three nanograms of active
5 tetrahydrocannabinis per milliliter of blood in serum:

6 (A) Chemicals which require a permit issued by the
7 Federal Government or a state government or an agency of
8 the Federal Government or a state government.

9 (B) High-voltage electricity or any other public utility.

10 (C) Vehicle, aircraft, train, boat or heavy machinery.

11 (2) A patient may not perform any employment duties
12 at heights or in confined spaces, including, but not limited
13 to, mining while under the influence of medical cannabis.

14 (3) A patient may be prohibited by an employer from
15 performing any task which the employer deems life-
16 threatening, to either the employee or any of the employees
17 of the employer, while under the influence of medical
18 cannabis. The prohibition shall not be deemed an adverse
19 employment decision even if the prohibition results in
20 financial harm for the patient.

21 (4) A patient may be prohibited by an employer from
22 performing any duty which could result in a public health or
23 safety risk while under the influence of medical cannabis.
24 The prohibition shall not be deemed an adverse employment

25 decision even if the prohibition results in financial harm for
26 the patient.

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.

§16A-6-1. Authorized medical cannabis organizations.

1 The following entities shall be authorized to receive a
2 permit to operate as a medical cannabis organization to
3 grow, process or dispense medical cannabis:

4 (1) Growers.

5 (2) Processors.

6 (3) Dispensaries.

§16A-6-2. Permits.

1 (a) *Application.* — An application for a grower,
2 processor or dispensary permit to grow, process or dispense
3 medical cannabis shall be in a form and manner prescribed
4 by the bureau and shall include:

5 (1) Verification of all principals, operators, financial
6 backers or employees of a medical cannabis
7 grower/processor or dispensary.

8 (2) A description of responsibilities as a principal,
9 operator, financial backer or employee.

10 (3) Any release necessary to obtain information from
11 governmental agencies, employers and other organizations.

12 (4) A criminal history record check. Medical cannabis
13 organizations applying for a permit shall submit fingerprints
14 of principals, financial backers, operators and employees to
15 the West Virginia State Police for the purpose of obtaining
16 criminal history record checks and the West Virginia State
17 Police or its authorized agent shall submit the fingerprints
18 to the Federal Bureau of Investigation for the purpose of
19 verifying the identity of the principals, financial backers,

20 operators and employees and obtaining a current record of
21 any criminal arrests and convictions. Any criminal history
22 record information relating to principals, financial backers,
23 operators and employees obtained under this section by the
24 bureau may be interpreted and used by the bureau only to
25 determine the principal's, financial backer's, operator's and
26 employee's character, fitness and suitability to serve as a
27 principal, financial backer, operator and employee under
28 this act. This subdivision shall not apply to an owner of
29 securities in a publicly traded corporation if the bureau
30 determines that the owner of the securities is not
31 substantially involved in the activities of the medical
32 cannabis organization.

33 (5) Details relating to a similar license, permit or other
34 authorization obtained in another jurisdiction, including any
35 suspensions, revocations or discipline in that jurisdiction.

36 (6) A description of the business activities in which it
37 intends to engage as a medical cannabis organization.

38 (7) A statement that the applicant:

39 (A) Is of good moral character. For purposes of this
40 subparagraph, an applicant shall include each financial
41 backer, operator, employee and principal of the medical
42 cannabis organization.

43 (B) Possesses the ability to obtain in an expeditious
44 manner the right to use sufficient land, buildings and other
45 premises and equipment to properly carry on the activity
46 described in the application and any proposed location for a
47 facility.

48 (C) Is able to maintain effective security and control to
49 prevent diversion, abuse and other illegal conduct relating
50 to medical cannabis.

51 (D) Is able to comply with all applicable State laws and
52 rules relating to the activities in which it intends to engage
53 under this act.

54 (8) The name, residential address and title of each
55 financial backer and principal of the applicant. Each
56 individual, or lawful representative of a legal entity, shall
57 submit an affidavit with the application setting forth:

58 (A) Any position of management or ownership during
59 the preceding ten years of a controlling interest in any other
60 business, located inside or outside this state, manufacturing
61 or distributing controlled substances.

62 (B) Whether the person or business has been convicted
63 of a criminal offense graded higher than a summary offense
64 or has had a permit relating to medical cannabis suspended
65 or revoked in any administrative or judicial proceeding.

66 (9) Any other information the bureau may require.

67 (b) *Notice.* — An application shall include notice that a
68 false statement made in the application is punishable under
69 the applicable provisions of law.

§16A-6-3. Granting of permit.

1 (a) The bureau may grant or deny a permit to a grower,
2 processor or dispensary. In making a decision under this
3 subsection, the bureau shall determine that:

4 (1) The applicant will maintain effective control of and
5 prevent diversion of medical cannabis.

6 (2) The applicant will comply with all applicable laws
7 of this state.

8 (3) The applicant is a resident of this state, or is
9 organized under the law of this state.

10 (4) The applicant is ready, willing and able to properly
11 carry on the activity for which a permit is sought.

12 (5) The applicant possesses the ability to obtain in an
13 expeditious manner sufficient land, buildings and

14 equipment to properly grow, process or dispense medical
15 cannabis.

16 (6) It is in the public interest to grant the permit.

17 (7) The applicant, including the financial backer or
18 principal, is of good moral character and has the financial
19 fitness necessary to operate.

20 (8) The applicant is able to implement and maintain
21 security, tracking, recordkeeping and surveillance systems
22 relating to the acquisition, possession, growth, manufacture,
23 sale, delivery, transportation, distribution or the dispensing
24 of medical cannabis as required by the bureau.

25 (9) The applicant satisfies any other conditions as
26 determined by the bureau.

27 (b) *Nontransferability*. — A permit issued under this
28 chapter shall be nontransferable.

29 (c) *Privilege*. — The issuance or renewal of a permit
30 shall be a revocable privilege.

31 (d) *Regions*. — The bureau shall establish a minimum
32 of three regions within this state for the purpose of granting
33 permits to grower/processors and dispensaries and
34 enforcing this act. The bureau shall approve permits for
35 growers, processors and dispensaries in a manner which will
36 provide an adequate amount of medical cannabis to patients
37 and caregivers in all areas of this state. The bureau shall
38 consider the following when issuing a permit:

39 (1) Regional population.

40 (2) The number of patients suffering from serious
41 medical conditions.

42 (3) The types of serious medical conditions.

43 (4) Access to public transportation.

- 44 (5) Approval by local health departments.
- 45 (6) Whether the county has disallowed the location of a
46 grower, processor or dispensary.
- 47 (7) Any other factor the bureau deems relevant.

§16A-6-4. Notice.

1 When the boundaries under subsection (d), section three
2 of this article are established, the bureau shall publish notice
3 of the determination in the State Register. The bureau may
4 adjust the boundaries as necessary every two years. Notice
5 of any adjustment to the boundaries shall be published in the
6 State Register.

§16A-6-5. Application and issuance.

1 (a) *Duty to report.* — An applicant to be a
2 grower/processor or to operate a dispensary is under a
3 continuing duty to:

4 (1) Report to the bureau any change in facts or
5 circumstances reflected in the application or any newly
6 discovered or occurring fact or circumstance which is
7 required to be included in the application, including a
8 change in control of the medical cannabis organization.

9 (2) Report to law enforcement, within twenty-four
10 hours, any loss or theft of medical cannabis.

11 (3) Submit to announced or unannounced inspections
12 by the bureau of the facilities for growing, processing,
13 dispensing or selling medical cannabis, including all records
14 of the organization.

15 (b) *Additional information.* — If the bureau is not
16 satisfied that the applicant should be issued a permit, the
17 bureau shall notify the applicant in writing of the factors for
18 which further documentation is required. Within thirty days
19 of the receipt of the notification, the applicant may submit
20 additional material to the bureau.

§16A-6-6. Fees and other requirements.

1 The following apply:

2 (1) For a grower or processor:

3 (A) An initial application fee in the amount of \$5,000
4 shall be paid. The fee is nonrefundable.

5 (B) A fee for a permit as a grower/processor in the
6 amount of \$50,000 shall be paid. The permit shall be valid
7 for one year. Applicants shall submit the permit fee at the
8 time of submission of the application. The fee shall be
9 returned if the permit is not granted.

10 (C) A renewal fee for the permit as a grower/processor
11 in the amount of \$5,000 shall be paid and shall cover
12 renewal for all locations. The renewal fee shall be returned
13 if the renewal is not granted.

14 (D) An application to renew a permit must be filed with
15 the bureau not more than six months nor less than four
16 months prior to expiration.

17 (E) All fees shall be paid by certified check or money
18 order.

19 (2) For a dispensary:

20 (A) An initial application fee in the amount of \$2,500
21 shall be paid. The fee is nonrefundable.

22 (B) A permit fee for a dispensary shall be \$10,000 for
23 each location. The period of the permit is one year. An
24 applicant shall submit the permit fee at the time of
25 submission of the application. The fee shall be returned if
26 the application is not granted.

27 (C) A renewal fee for the permit as a dispensary in the
28 amount of \$2,500 shall be paid. The fee shall be returned if
29 the renewal is not granted and shall cover renewal for all
30 locations.

31 (D) An application to renew a permit must be filed with
32 the bureau not more than six months nor less than four
33 months prior to expiration.

34 (E) All fees shall be paid by certified check or money
35 order.

36 (3) A fee of \$250 shall be required when amending the
37 application to indicate relocation within this state or the
38 addition or deletion of approved activities by the medical
39 cannabis organization.

40 (4) Fees payable under this section shall be deposited
41 into the fund.

§16A-6-7. Issuance.

1 A permit issued by the bureau to a medical cannabis
2 organization shall be effective only for that organization and
3 shall specify the following:

4 (1) The name and address of the medical cannabis
5 organization.

6 (2) The activities of the medical cannabis organization
7 permitted under this act.

8 (3) The land, buildings, facilities or location to be used
9 by the medical cannabis organization.

10 (4) Any other information required by the bureau.

§16A-6-8. Relocation.

1 The bureau may approve an application from a medical
2 cannabis organization to relocate within this state or to add
3 or delete activities or facilities.

§16A-6-9. Terms of permit.

1 A permit issued by the bureau shall be valid for one year
2 from the date of issuance.

§16A-6-10. Permit renewals.

1 (a) *Renewal.* — An application for renewal shall
2 include the following information:

3 (1) Any material change in the information provided by
4 the medical cannabis organization in a prior application or
5 renewal of a permit.

6 (2) Any charge or initiated, pending or concluded
7 investigation, during the period of the permit, by any
8 governmental or administrative agency with respect to:

9 (A) Any incident involving the theft, loss or possible
10 diversion of medical cannabis grown, processed or
11 dispensed by the applicant; and

12 (B) Compliance by the applicant with the laws of this
13 state with respect to any substance listed under article two,
14 chapter sixty-a of this code.

15 (b) *Approval.* — The bureau shall renew a permit
16 unless the bureau determines that:

17 (1) The applicant is unlikely to maintain or be able to
18 maintain effective control against diversion of medical
19 cannabis.

20 (2) The applicant is unlikely to comply with all laws of
21 this state applicable to the activities in which it may engage
22 under the permit.

23 (c) *Nonrenewal decision.* — The denial or nonrenewal
24 shall specify in detail how the applicant has not satisfied the
25 bureau's requirements for renewal. Within thirty days of the
26 bureau's decision, the applicant may submit additional
27 material to the bureau or demand a hearing, or both. If a
28 hearing is demanded, the bureau shall fix a date as soon as
29 practicable.

§16A-6-11. Suspension or revocation.

1 The bureau may suspend or revoke a medical cannabis
2 organization permit if:

3 (1) The bureau has evidence that the medical cannabis
4 organization has failed to maintain effective control against
5 diversion of medical cannabis.

6 (2) The organization violates any provision of this act
7 or a rule of the bureau.

8 (3) The organization has intentionally, knowingly,
9 recklessly or negligently failed to comply with applicable
10 laws of this State relating to medical cannabis.

§16A-6-12. Convictions prohibited.

1 (a) The following individuals may not hold volunteer
2 positions or positions with remuneration in or be affiliated
3 with a medical cannabis organization, including a clinical
4 registrant under article fourteen of this chapter, in any way
5 if the individual has been convicted of any felony criminal
6 offense related to the sale or possession of illegal drugs,
7 narcotics or controlled substances, or conspiracy thereof:

8 (1) Financial backers.

9 (2) Principals.

10 (3) Employees.

11 (b) If an individual seeking to hold a volunteer position
12 or position with remuneration in or be affiliated with a
13 dispensary is otherwise prohibited under subsection (a) of
14 this section, such individual may seek a waiver from the
15 bureau in order to hold such a position with a dispensary.
16 The allowance of the waiver, including any additional
17 restrictions or conditions as part of the waiver, shall be in
18 the discretion of the bureau.

§16A-6-13. Limitations on permits.

1 (a) The following limitations apply to approval of
2 permits for growers, processors and dispensaries, subject to
3 the limitations in subsection (b) of this section:

4 (1) The bureau may not issue permits to more than ten
5 growers: *Provided*, That each grower may have up to two
6 locations per permit.

7 (2) The bureau may not issue permits to more than ten
8 processors.

9 (3) The bureau may not issue permits to more than
10 thirty dispensaries, with no more than five in any region.

11 (4) The bureau may not issue more than two individual
12 dispensary permits to one person.

13 (5) The bureau may not issue more than one individual
14 grower permit to one person.

15 (6) The bureau may not issue more than one individual
16 processor permit to one person.

17 (7) A dispensary may only obtain medical cannabis
18 from a grower or processor holding a valid permit under this
19 act.

20 (8) A grower or processor may only provide medical
21 cannabis to a dispensary holding a valid permit under this
22 act.

23 (9) A grower or a processor may not be a dispensary.

24 (b) Before a permit may be issued, the bureau shall
25 obtain the following:

26 (1) A written approval from the Board of Health for the
27 county in which the permit is to be located and operate
28 business.

29 (2) A written statement from the county commission for
30 the county in which the permit is to be located and conduct

31 business that the County has not voted, pursuant to section
32 six, article seven of this chapter to disapprove a medical
33 cannabis organization to be located or operate within the
34 county.

ARTICLE 7. MEDICAL CANNABIS CONTROLS.

§16A-7-1. Electronic tracking.

1 (a) *Requirement.* — A medical cannabis organization
2 must implement an electronic inventory tracking system
3 which shall be directly accessible to the bureau through its
4 electronic database that electronically tracks all medical
5 cannabis on a daily basis. The system shall include tracking
6 of all of the following:

7 (1) For a grower or processor, a seed-to-sale tracking
8 system that tracks the medical cannabis from seed to plant
9 until the medical cannabis is sold to a dispensary.

10 (2) For a dispensary, medical cannabis from purchase
11 from the grower/processor to sale to a patient or caregiver
12 and that includes information that verifies the validity of an
13 identification card presented by the patient or caregiver.

14 (3) For a medical cannabis organization, a daily log of
15 each day's beginning inventory, acquisitions, amounts
16 purchased and sold, disbursements, disposals and ending
17 inventory. The tracking system shall include prices paid and
18 amounts collected from patients and caregivers.

19 (4) For a medical cannabis organization, a system for
20 recall of defective medical cannabis.

21 (5) For a medical cannabis organization, a system to
22 track the plant waste resulting from the growth of medical
23 cannabis or other disposal, including the name and address
24 of any disposal service.

25 (b) *Additional requirements.* — In addition to the
26 information under subsection (a) of this section, each
27 medical cannabis organization shall track the following:

28 (1) Security and surveillance.

29 (2) Recordkeeping and record retention.

30 (3) The acquisition, possession, growing and processing
31 of medical cannabis.

32 (4) Delivery and transportation, including amounts and
33 method of delivery.

34 (5) Dispensing, including amounts, pricing and
35 amounts collected from patients and caregivers.

36 (c) *Access.* — (1) Information maintained in electronic
37 tracking systems under subsection (a) of this section shall
38 be confidential and not subject to public disclosure under
39 chapter twenty-nine-b of this code.

40 (2) Pursuant to conditions and procedures established
41 by the bureau, law enforcement shall be provided access to
42 the tracking system.

43 (d) *Reports.* — Within one year of the issuance of the
44 first permit to a medical cannabis organization, and every
45 three months thereafter in a form and manner prescribed by
46 the bureau, the following information shall be provided to
47 the bureau, which shall compile the information and post it
48 on the bureau's publicly accessible Internet website:

49 (1) The amount of medical cannabis sold by a grower
50 and a processor during each three-month period.

51 (2) The price of amounts of medical cannabis sold by
52 growers and processors as determined by the bureau.

53 (3) The amount of medical cannabis purchased by each
54 dispensary in this state.

55 (4) The cost of amounts of medical cannabis to each
56 dispensary in amounts as determined by the bureau.

57 (5) The total amount and dollar value of medical
58 cannabis sold by each dispensary in the three-month period.

§16A-7-2. Grower/processors.

1 (a) *Authorization.* — Subject to subsection (b), a
2 grower or processor may do all of the following in
3 accordance with bureau rules:

4 (1) Obtain seed from outside this state to initially grow
5 medical cannabis.

6 (2) Obtain seed and plant material from another
7 grower/processor within this state to grow medical
8 cannabis.

9 (b) *Limitations.* — A grower or processor may only
10 grow, store, harvest or process medical cannabis in an
11 indoor, enclosed, secure facility which:

12 (1) Includes electronic locking systems, electronic
13 surveillance and other features required by the bureau; and

14 (2) Is located within this state.

§16A-7-3. Storage and transportation.

1 The bureau shall develop rules relating to the storage
2 and transportation of medical cannabis among
3 grower/processors, testing laboratories and dispensaries
4 which ensure adequate security to guard against in-transit
5 losses. The tracking system developed by the bureau shall
6 include all transportation and storage of medical cannabis.
7 The rules shall provide for the following:

8 (1) Requirements relating to shipping containers and
9 packaging.

- 10 (2) The manner in which trucks, vans, trailers or other
11 carriers will be secured.
- 12 (3) Security systems that include a numbered seal on
13 the trailer.
- 14 (4) Obtaining copies of drivers' licenses and
15 registrations and other information related to security and
16 tracking.
- 17 (5) Use of GPS systems.
- 18 (6) Number of drivers or other security required to
19 ensure against storage or in-transit losses.
- 20 (7) Recordkeeping for delivery and receipt of medical
21 cannabis products.
- 22 (8) Requirements to utilize any electronic tracking
23 system required by the bureau.
- 24 (9) Transporting medical cannabis to a
25 grower/processor, approved laboratory or dispensary.

§16A-7-4. Laboratory.

1 A grower and processor shall contract with an
2 independent laboratory to test the medical cannabis
3 produced by the grower or processor. The bureau shall
4 approve the laboratory and require that the laboratory report
5 testing results in a manner as the bureau shall determine,
6 including requiring a test at harvest and a test at final
7 processing. The possession by a laboratory of medical
8 cannabis shall be a lawful use.

§16A-7-5. Prices.

1 The bureau and the Department of Revenue shall
2 monitor the price of medical cannabis sold by growers,
3 processors and by dispensaries, including a per-dose price.
4 If the bureau and the Department of Revenue determine that
5 the prices are unreasonable or excessive, the bureau may

6 implement a cap on the price of medical cannabis being sold
7 for a period of six months. The cap may be amended during
8 the six-month period. If the bureau and the Department of
9 Revenue determine that the prices become unreasonable or
10 excessive following the expiration of a six-month cap,
11 additional caps may be imposed for periods not to exceed
12 six months.

§16A-7-6. County prohibition.

1 A county may pass an ordinance by vote of the residents
2 of the county to prohibit the operation or location of a
3 medical cannabis organization within that particular county.
4 A prohibition under this section shall remain in effect unless
5 and until changed by a subsequent vote.

ARTICLE 8. DISPENSARIES.

§16A-8-1. Dispensing to patients and caregivers.

1 (a) *General rule.* — A dispensary that has been issued
2 a permit under article six of this chapter may lawfully
3 dispense medical cannabis to a patient or caregiver upon
4 presentation to the dispensary of a valid identification card
5 for that patient or caregiver. The dispensary shall provide to
6 the patient or caregiver a receipt, as appropriate. The receipt
7 shall include all of the following:

8 (1) The name, address and any identification number
9 assigned to the dispensary by the bureau.

10 (2) The name and address of the patient and caregiver.

11 (3) The date the medical cannabis was dispensed.

12 (4) Any requirement or limitation by the practitioner as
13 to the form of medical cannabis for the patient.

14 (5) The form and the quantity of medical cannabis
15 dispensed.

16 (b) *Requirements.* — A dispensary shall have a
17 physician or a pharmacist onsite at all times during the hours
18 the dispensary is open to receive patients and caregivers. A
19 physician or a pharmacist shall, prior to assuming duties
20 under this paragraph, successfully complete the course
21 established in subsection (a), section one, article three of
22 this chapter. A physician may not issue a certification to
23 authorize patients to receive medical cannabis or otherwise
24 treat patients at the dispensary.

25 (c) *Filing with bureau.* — Prior to dispensing medical
26 cannabis to a patient or caregiver, the dispensary shall file
27 the receipt information with the bureau utilizing the
28 electronic tracking system. When filing receipts under this
29 subsection, the dispensary shall dispose of any
30 electronically recorded certification information as
31 provided by rule.

32 (d) *Limitations.* — No dispensary may dispense to a
33 patient or caregiver:

34 (1) A quantity of medical cannabis greater than that
35 which the patient or caregiver is permitted to possess under
36 the certification; or

37 (2) A form of medical cannabis prohibited by this act.

38 (e) *Supply.* — When dispensing medical cannabis to a
39 patient or caregiver, the dispensary may not dispense an
40 amount greater than a 30-day supply until the patient has
41 exhausted all but a seven-day supply provided pursuant to
42 section five, article four of this chapter.

43 (f) *Verification.* — Prior to dispensing medical
44 cannabis to a patient or caregiver, the dispensary shall verify
45 the information in subsections (e) and (g) of this section by
46 consulting the electronic tracking system included in the
47 bureau's electronic database established under section one,
48 article three of this chapter and the dispensary tracking
49 system under section one, article seven of this chapter.

50 (g) *Form of medical cannabis.* — Medical cannabis
51 dispensed to a patient or caregiver by a dispensary shall
52 conform to any requirement or limitation set by the
53 practitioner as to the form of medical cannabis for the
54 patient.

55 (h) *Safety insert.* — When a dispensary dispenses
56 medical cannabis to a patient or caregiver, the dispensary
57 shall provide to that patient or caregiver, as appropriate, a
58 safety insert. The insert shall be developed and approved by
59 the bureau. The insert shall provide the following
60 information:

61 (1) Lawful methods for administering medical cannabis
62 in individual doses.

63 (2) Any potential dangers stemming from the use of
64 medical cannabis.

65 (3) How to recognize what may be problematic usage
66 of medical cannabis and how to obtain appropriate services
67 or treatment for problematic usage.

68 (4) How to prevent or deter the misuse of medical
69 cannabis by minors or others.

70 (5) Any other information as determined by the bureau.

71 (i) *Sealed and labeled package.* — Medical cannabis
72 shall be dispensed by a dispensary to a patient or caregiver
73 in a sealed, properly labeled and child-resistant package.
74 The labeling shall contain the following:

75 (1) The information required to be included in the
76 receipt provided to the patient or caregiver, as appropriate,
77 by the dispensary.

78 (2) The packaging date.

79 (3) Any applicable date by which the medical cannabis
80 should be used.

81 (4) A warning stating:

82 “This product is for medicinal use only. Women should
83 not consume during pregnancy or while breastfeeding
84 except on the advice of the practitioner who issued the
85 certification and, in the case of breastfeeding, the infant’s
86 pediatrician. This product might impair the ability to drive
87 or operate heavy machinery. Keep out of reach of children.”

88 (5) The amount of individual doses contained within
89 the package and the species and percentage of
90 tetrahydrocannabinol and cannabidiol.

91 (6) A warning that the medical cannabis must be kept
92 in the original container in which it was dispensed.

93 (7) A warning that unauthorized use is unlawful and
94 will subject the person to criminal penalties.

95 (8) Any other information required by the bureau.

§16A-8-2. Facility requirements.

1 (a) *General rule.* —

2 (1) A dispensary may only dispense medical cannabis
3 in an indoor, enclosed, secure facility located within this
4 state, as determined by the bureau.

5 (2) A dispensary may not operate on the same site as a
6 facility used for growing and processing medical cannabis.

7 (3) A dispensary may not be located within one
8 thousand feet of the property line of a public, private or
9 parochial school or a daycare center.

10 (4) A dispensary may, pursuant to bureau conditions
11 and limitations, sell medical devices and instruments which
12 are needed to administer medical cannabis under this act.

13 (b) *Adjustment or waiver of prohibition.* — The bureau
14 may amend a prohibition under subsection (a)(3) of this

15 section if it is shown by clear and convincing evidence that
16 the amendment is necessary to provide adequate access to
17 patients. An amendment may include additional security,
18 physical plant of a facility or other conditions necessary to
19 protect children.

§16A-8-3. Posting.

1 A dispensary shall post a copy of its permit in a location
2 within its facility in a manner that is easily observable by
3 patients, caregivers, law enforcement officers and agents of
4 the bureau.

ARTICLE 9. TAX ON MEDICAL CANNABIS.

§16A-9-1. Tax on medical cannabis.

1 (a) *Tax imposed.* — A tax is imposed on the gross
2 receipts of a grower/processor received from the sale of
3 medical cannabis by a grower/processor to a dispensary, to
4 be paid by the grower/processor, at the rate of ten percent.
5 The tax shall be charged against and be paid by the
6 grower/processor and shall not be added as a separate
7 charge or line item on any sales slip, invoice, receipt or other
8 statement or memorandum of the price paid by a dispensary,
9 patient or caregiver.

10 (b) *Payment of tax and reports.* — A grower/processor
11 shall make quarterly payments under this section for each
12 calendar quarter at the rate prescribed in subsection (a) on
13 the gross receipts for the calendar quarter. The tax shall be
14 due and payable on the 20th day of January, April, July and
15 October for the preceding calendar quarter on a form
16 prescribed by the Department of Revenue.

17 (c) *Deposit of proceeds.* — All money received from
18 the tax imposed under subsection (a) shall be deposited into
19 the fund.

20 (d) *Exemption.* — Medical cannabis shall not be subject
21 to a sales tax.

22 (e) *Information.* — A grower/processor that sells
23 medical cannabis shall provide to the Department of
24 Revenue information required by the bureau.

§16A-9-2. Medical Cannabis Program Fund.

1 (a) *Fund established.* — The Medical Cannabis Program
2 Fund is established as a special fund in the State Treasury.
3 Money in the fund is appropriated as set forth in subsection (c)
4 of this section. Any amount unspent at the end of a fiscal year
5 shall be appropriated to the bureau for its operations.

6 (b) *Source of funds.* — Fees and taxes payable under this
7 act shall be deposited into the fund. The money deposited into
8 the fund may only be used for the purposes set forth in this
9 section. Any interest accrued shall be deposited into the fund.

10 (c) *Use of proceeds.* — Money in the fund is allocated
11 in accordance with the following percentages:

12 (1) Fifty-five percent of the revenue in the fund shall be
13 allocated to the bureau.

14 (2) The remaining forty-five percent of the revenue in
15 the fund shall be allocated as follows:

16 (A) Fifty percent shall be allocated to the Fight
17 Substance Abuse Fund created by section eight, article nine,
18 chapter sixty-a of the code.

19 (B) Forty percent shall be allocated to the Division of
20 Justice and Community Services, for grants to local law
21 enforcement agencies for training, drug diversion, and other
22 programs focused on crime and addiction, pursuant to and
23 in accordance with the provisions of article nine-a, chapter
24 fifteen of this code.

25 (C) Ten percent shall be allocated to the fund created in
26 section four, article twenty-nine, chapter thirty, to be used
27 for law enforcement professional training and professional
28 development programs.

ARTICLE 10. ADMINISTRATION.**§16A-10-1. Administration.**

1 The Commissioner of the Bureau for Public Health may
2 establish and create an Office of Medical Cannabis within
3 the bureau to assist in the administration and enforcement
4 of the provisions of this act.

§16A-10-2. Reports by medical cannabis organizations.

1 A medical cannabis organization shall periodically file
2 reports related to its activities. The bureau shall determine the
3 information required in and the frequency of filing the reports.

§16A-10-3. Law-enforcement notification.

1 Notwithstanding any provision of this act or any other
2 law to the contrary, the bureau may notify any appropriate
3 law-enforcement agency of information relating to any
4 violation or suspected violation of this act. In addition, the
5 bureau shall verify to law-enforcement personnel in an
6 appropriate case whether a certification, permit, registration
7 or an identification card is valid, including release of the
8 name of the patient.

§16A-10-4. Evaluation.

1 The bureau may provide for an analysis and evaluation
2 of the implementation and effectiveness of this act. The
3 bureau may enter into agreements with one or more persons
4 for the performance of an evaluation of the implementation
5 and effectiveness of this act.

§16A-10-5. Report.

1 (a) *Report required.* — The bureau shall submit a
2 written report under subsection (b) of this section every two
3 years, beginning two years after the effective date of this
4 section, to the following:

5 (1) The Governor.

6 (2) The Joint Committee on Government and Finance.

7 (3) The Attorney General of the State.

8 (b) *Contents of report.* — The following information
9 shall be included in the report:

10 (1) An assessment of the use of medical cannabis as a
11 result of the enactment of this act.

12 (2) An assessment of the benefits and risks to patients
13 using medical cannabis under this act, including adverse
14 events.

15 (3) Recommendations for amendments to this act for
16 reasons of patient safety or to aid the general welfare of the
17 citizens of this state.

§16A-10-6. Emergency rules.

1 (a) *Promulgation.* — In order to facilitate the prompt
2 implementation of this act, the bureau may promulgate
3 emergency rules that shall expire not later than two years
4 following the publication of the emergency rule.

5 (b) *Expiration.* — The bureau's authority to adopt
6 emergency rules under subsection (a) of this section shall
7 expire two years after the effective date of this section.
8 Rules adopted after this period shall be promulgated as
9 provided by law.

10 (c) *Publication.* — The bureau shall begin publishing
11 emergency rules in the State Register no later than six
12 months after the effective date of this section.

ARTICLE 11. MEDICAL CANNABIS ADVISORY BOARD.

§16A-11-1. Advisory board.

1 (a) The Medical Cannabis Advisory Board is
2 established within the bureau. The advisory board shall
3 consist of the following members:

- 4 (1) The commissioner or a designee.
- 5 (2) The Superintendent of the West Virginia State
6 Police or a designee.
- 7 (3) Four physicians licensed to practice in the state to
8 be appointed by the State Medical Association with one
9 from each of the following specialized medicine:
 - 10 (A) Family Practice/Neurologist/General Practitioner.
 - 11 (B) Pain Management.
 - 12 (C) Oncologist/Palliative Care.
 - 13 (D) Psychiatrist.
- 14 (4) One pharmacist licensed to practice in the state, to
15 be designated by the Board of Pharmacy.
- 16 (5) One pharmacologist who has experience in the
17 science of cannabis and a knowledge of the uses, effects,
18 and modes of actions of drugs, to be appointed by the
19 Governor.
- 20 (6) One member who is a horticulturalist, to be
21 designated by the West Virginia Commissioner of
22 Agriculture.
- 23 (7) One member designated by the West Virginia
24 Association of Alcoholism and Drug Counselors.
- 25 (8) An attorney licensed in the state who is
26 knowledgeable about medical cannabis laws.
- 27 (9) One member appointed by the West Virginia
28 Prosecuting Attorneys Institute.
- 29 (10) One member appointed by the Governor, who shall
30 be a patient, a family or household member of a patient or a
31 patient advocate.

32 (b) *Terms.* — Except as provided under subsection (g)
33 of this section, the members shall serve a term of four years
34 or until a successor has been appointed and qualified, but no
35 longer than six months beyond the four-year period.

36 (c) *Chair.* — The commissioner, or a designee, shall
37 serve as chair of the advisory board.

38 (d) *Voting; quorum.* — A majority of the members
39 shall constitute a quorum for the purpose of organizing the
40 advisory board, conducting its business and fulfilling its
41 duties. A vote of the majority of the members present shall
42 be sufficient for all actions of the advisory board unless the
43 bylaws require a greater number.

44 (e) *Attendance.* — A member of the advisory board
45 who fails to attend three consecutive meetings shall be
46 deemed vacant, unless the commissioner, upon written
47 request from the member, finds that the member should be
48 excused from a meeting for good cause. A member who
49 cannot be physically present may attend meetings via
50 electronic means, including video conference.

51 (f) *Governance.* — The advisory board shall have the
52 power to prescribe, amend and repeal bylaws governing the
53 manner in which the business of the advisory board is
54 conducted and the manner in which the duties granted to it
55 are fulfilled. The advisory board may delegate supervision
56 of the administration of advisory board activities to an
57 administrative commissioner and other employees of the
58 bureau as the commissioner shall appoint.

59 (g) *Initial terms.* — The initial terms of members
60 appointed under shall be for terms of one, two, three or four
61 years, the particular term of each member to be designated
62 by the commissioner at the time of appointment. All other
63 members shall serve for a term of four years.

64 (h) *Vacancy.* — In the event that any member appointed
65 under subsection (a) of this section shall die or resign or

66 otherwise become disqualified during the member's term of
67 office, a successor shall be appointed in the same way and
68 with the same qualifications as set forth in this section and
69 shall hold office for the unexpired term. An appointed
70 member of the advisory board shall be eligible for
71 reappointment.

72 (i) *Expenses.* — A member shall receive the amount of
73 reasonable travel, hotel and other necessary expenses
74 incurred in the performance of the duties of the member in
75 accordance with state rules, but shall receive no other
76 compensation for the member's service on the board.

77 (j) *Duties.* — The advisory board shall have the
78 following duties:

79 (1) To examine and analyze the statutory and regulatory
80 law relating to medical cannabis within this state.

81 (2) To examine and analyze the law and events in other
82 states and the nation with respect to medical cannabis.

83 (3) To accept and review written comments from
84 individuals and organizations about medical cannabis.

85 (4) To issue two years after the effective date of this
86 section a written report to the Governor, the Senate and the
87 House of Delegates.

88 (5) The written report under subdivision (4) shall
89 include recommendations and findings as to the following:

90 (A) Whether to change the types of medical
91 professionals who can issue certifications to patients.

92 (B) Whether to change, add or reduce the types of
93 medical conditions which qualify as serious medical
94 conditions under this act.

95 (C) Whether to change the form of medical cannabis
96 permitted under this act.

97 (D) Whether to change, add or reduce the number of
98 growers, processors or dispensaries.

99 (E) How to ensure affordable patient access to medical
100 cannabis.

101 (F) Whether to permit medical cannabis to be dispensed
102 in dry leaf or plant form, for administration by vaporization.

103 (6) The final written report under this section shall be
104 adopted at a public meeting.

§16A-11-2. Rules based on recommendations of advisory board.

1 After receiving the report of the advisory board, at the
2 discretion of the commissioner, the bureau may propose
3 rules for legislative promulgation pursuant to the provisions
4 of article three, chapter twenty-nine-a of this code to
5 effectuate recommendations made by the advisory board.
6 The commissioner shall issue notice in the State Register
7 within twelve months of the receipt of the report of the
8 advisory board. The notice shall include the
9 recommendations of the advisory board and shall state the
10 specific reasons for the decision of the commissioner on
11 whether or not to effectuate each recommendation.

ARTICLE 12. OFFENSES RELATED TO MEDICAL CANNABIS.

§16A-12-1. Criminal diversion of medical cannabis by practitioners.

1 In addition to any other penalty provided by law, a
2 practitioner who intentionally and knowingly certifies a
3 person as being able to lawfully receive medical cannabis or
4 who otherwise provides medical cannabis to a person who
5 is not lawfully permitted to receive medical cannabis, is
6 guilty of a felony, and upon conviction thereof, shall be
7 imprisoned in a state correctional facility for not less than
8 one nor more than five years.

§16A-12-2. Criminal diversion of medical cannabis.

1 (a) In addition to any other penalty provided by law, any
2 employee, financial backer, operator or principal of any
3 qualifying entities who intentionally and knowingly sells,
4 dispenses, trades, delivers or otherwise provides medical
5 cannabis to a person who is not lawfully permitted to receive
6 medical cannabis, is guilty of a felony, and upon conviction
7 thereof, shall be imprisoned in a state correctional facility
8 for not less than one nor more than five years.

9 (b) For purposes of this section, “qualifying entity” shall
10 mean:

11 (1) A medical cannabis organization.

12 (2) A health care medical cannabis organization or
13 university participating in a research study under article
14 thirteen of this chapter.

15 (3) A clinical registrant or academic clinical research
16 center under article fourteen of this chapter.

17 (4) A laboratory utilized to test medical cannabis under
18 section four, article seven of this chapter.

§16A-12-3. Criminal retention of medical cannabis.

1 In addition to any other penalty provided by law, any
2 patient or caregiver who intentionally and knowingly
3 possesses, stores or maintains an amount of medical
4 cannabis in excess of the amount legally permitted is guilty
5 of a misdemeanor, and upon conviction thereof, shall be
6 confined in jail for not more than six months.

§16A-12-4. Criminal diversion of medical cannabis by patient or caregiver.

1 In addition to any other penalty provided by law, any
2 patient or caregiver that intentionally and knowingly
3 provides medical cannabis to a person who is not lawfully
4 permitted to receive medical cannabis is guilty of a felony,

5 and upon conviction thereof, shall be imprisoned in a state
6 correctional facility for not less than one nor more than five
7 years.

§16A-12-5. Falsification of identification cards.

1 In addition to any other penalty provided by law, any
2 person who commits one of the following, knowing he or
3 she is not privileged to hold an identification card:

4 (1) possesses an identification card and either attempts
5 to use the card to obtain medical cannabis or obtains medical
6 cannabis;

7 (2) Possesses an identification card which falsely
8 identifies the person as being lawfully entitled to receive
9 medical cannabis and either attempts to use the card to
10 obtain medical cannabis or obtains medical cannabis; or

11 (3) Possesses an identification card which contains any
12 false information on the card and the person either attempts
13 to use the card to obtain medical cannabis or obtains medical
14 cannabis, is guilty of a misdemeanor, and upon conviction
15 thereof, shall be confined in jail for not more than twelve
16 months.

§16A-12-6. Adulteration of medical cannabis.

1 In addition to any other penalty provided by law, any
2 person who adulterates, fortifies, contaminates or changes
3 the character or purity of medical cannabis from that set
4 forth on the patient's or caregiver's identification card, is
5 guilty of a felony, and upon conviction thereof, shall be
6 imprisoned in a state correctional facility for not less than
7 one nor more than five years.

§16A-12-7. Disclosure of information prohibited.

1 (a) In addition to any other penalty provided by law, any
2 employee, financial backer, operator or principal who
3 discloses, except to authorized persons for official

4 governmental or health care purposes, any information
5 related to the use of medical cannabis:

6 (1) A medical cannabis organization.

7 (2) A health care medical cannabis organization or
8 university participating in a research study under article
9 thirteen of this chapter.

10 (3) A clinical registrant or academic clinical research
11 center under article fourteen of this chapter.

12 (4) An employee of the bureau.

13 (b) *Exception.* — Subsection (a) of this section shall not
14 apply where disclosure is permitted or required by law or by
15 court order.

§16A-12-8. Additional penalties.

1 (a) *Civil penalties.* — In addition to any other remedy
2 available to the bureau, the bureau may assess a civil penalty
3 for a violation of this act, a rule promulgated under this act
4 or an order issued under this act or rule, subject to the
5 following:

6 (1) The bureau may assess a penalty of not more than
7 \$10,000 for each violation and an additional penalty of not
8 more than \$1,000 for each day of a continuing violation. In
9 determining the amount of each penalty, the bureau shall
10 take the following factors into consideration:

11 (A) The gravity of the violation.

12 (B) The potential harm resulting from the violation to
13 patients, caregivers or the general public.

14 (C) The willfulness of the violation.

15 (D) Previous violations, if any, by the person being
16 assessed.

17 (E) The economic benefit to the person being assessed
18 for failing to comply with the requirements of this act, a rule
19 promulgated under this act or an order issued under this act
20 or rule.

21 (2) If the bureau finds that the violation did not threaten
22 the safety or health of a patient, caregiver or the general
23 public and the violator took immediate action to remedy the
24 violation upon learning of it, the bureau may issue a written
25 warning in lieu of assessing a civil penalty.

26 (3) A person who aids, abets, counsels, induces,
27 procures or causes another person to violate this act, a rule
28 promulgated under this act or an order issued under this act
29 or rule shall be subject to the civil penalties provided under
30 this subsection.

31 (b) *Sanctions.* —

32 (1) In addition to the penalties provided in subsection
33 (a) of this section, and any other penalty authorized by law,
34 the bureau may impose the following sanctions:

35 (A) Revoke or suspend the permit of a person found to
36 be in violation of this act, a rule promulgated under this act
37 or an order issued under this act or rule.

38 (B) Revoke or suspend the permit of a person for
39 conduct or activity or the occurrence of an event that would
40 have disqualified the person from receiving the permit.

41 (C) Revoke or suspend the registration of a practitioner
42 for a violation of this act or a rule promulgated or an order
43 issued under this act or for conduct or activity which would
44 have disqualified the practitioner from receiving a
45 registration.

46 (D) Suspend a permit or registration of a person
47 pending the outcome of a hearing in a case in which the
48 permit or registration could be revoked.

49 (E) Order restitution of funds or property unlawfully
50 obtained or retained by a permittee or registrant.

51 (F) Issue a cease and desist order.

52 (2) A person who aids, abets, counsels, induces,
53 procures or causes another person to violate this act shall be
54 subject to the sanctions provided under this subsection.

55 (c) *Costs of action.* — The bureau may assess against a
56 person determined to be in violation of this act the costs of
57 investigation of the violation.

58 (d) *Minor violations.* — Nothing in this section shall be
59 construed to require the assessment of a civil penalty or the
60 imposition of a sanction for a minor violation of this act if
61 the bureau determines that the public interest will be
62 adequately served under the circumstances by the issuance
63 of a written warning.

§16A-12-9. Other restrictions.

1 This act does not permit any person to engage in and
2 does not prevent the imposition of any civil, criminal or
3 other penalty for the following:

4 (1) Undertaking any task under the influence of medical
5 cannabis when doing so would constitute negligence,
6 professional malpractice or professional misconduct.

7 (2) Possessing or using medical cannabis in a state
8 correctional facility or Regional Jail Authority facility,
9 including a facility owned or operated or under contract
10 with the Bureau of Corrections or the Regional Jail
11 Authority, which houses inmates serving a portion of their
12 sentences on parole or other community correction
13 program.

14 (3) Possessing or using medical cannabis in a youth
15 detention center or other facility which houses children
16 adjudicated delinquent, including the separate, secure state-

17 owned facility or unit utilized for sexually violent
18 delinquent children.

ARTICLE 13. RESEARCH PROGRAM.

§16A-13-1. Definitions.

1 The following words and phrases when used in this
2 chapter shall have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 (1) “Health care medical cannabis organization”. A
5 vertically integrated health system approved by the bureau
6 to dispense medical cannabis or grow and process medical
7 cannabis, or both, in accordance with a research study under
8 this chapter.

9 (2) “Vertically integrated health system”. A health
10 delivery system in which the complete spectrum of care,
11 including primary and specialty care, hospitalization and
12 pharmaceutical care, is provided within a single
13 organization.

§16A-13-2. Establishment of medical cannabis research program.

1 (a) *Program to be established.* — The bureau shall
2 establish and develop a research program to study the
3 impact of medical cannabis on the treatment and symptom
4 management of serious medical conditions. The program
5 shall not include a clinical registrant or academic clinical
6 research center under article fourteen of this chapter.

7 (b) *Bureau duties.* — The bureau shall:

8 (1) Review all serious medical conditions which are
9 cited by a practitioner upon the practitioner’s certification
10 that a patient be granted an identification card.

11 (2) Create a database of all serious medical conditions,
12 including comorbidities, which are cited by practitioners in
13 the certifications of patients. The database shall also include

14 the form of medical cannabis certified to treat each serious
15 medical condition.

16 (3) When the database contains twenty-five or more
17 patients with the same serious medical condition, petition
18 the United States Food and Drug Administration and the
19 United States Drug Enforcement Administration for
20 approval to study the condition and the impact of medical
21 cannabis on the condition.

22 (4) Concurrent with the request to the United States
23 Food and Drug Administration and United States Drug
24 Enforcement Administration, publicly announce the
25 formation of a research study to which a vertically
26 integrated health system and a university within this state
27 may submit a request to participate.

28 (5) Upon approval of a research study by the United
29 States Food and Drug Administration and the United States
30 Drug Enforcement Administration, select a vertically
31 integrated health system or systems to conduct the research
32 study and designate the form or forms of medical cannabis
33 which will be used to treat the serious medical condition.

34 (6) Notify a patient who has been issued an
35 identification card:

36 (A) that the patient has been selected to participate, at
37 the patient's option, in a research study to study medical
38 cannabis as a treatment; and

39 (B) where the patient may secure medical cannabis
40 through a health care medical cannabis organization at no
41 cost to the patient in accordance with subsection (c).

42 (7) If the United States Food and Drug Administration
43 and the United States Drug Enforcement Administration
44 reject the proposal for the research study, take all reasonable
45 steps to collect and collate data on the serious medical
46 condition and the use of medical cannabis as a treatment for
47 the serious medical condition and consider submitting an

48 additional request to the United States Food and Drug
49 Administration and United States Drug Enforcement
50 Administration for a research study on the same condition.

51 (c) *Costs.* — The cost of the medical cannabis which is
52 dispensed to patients in accordance with an approved
53 research study shall be paid for by the fund.

54 (d) *Geographic accessibility.* — The bureau shall take
55 into consideration the geographic location of the health care
56 medical cannabis organization when assigning a patient to a
57 health care medical cannabis organization. The bureau shall
58 make an effort to assign a patient to a health care medical
59 cannabis organization that is located within fifty miles of
60 the patient's residence.

61 (e) *Data.* — Data collected by the health care medical
62 cannabis organization shall be provided to the university
63 participating in the research study for analysis.

§16A-13-3. Medical cannabis research program administration.

1 (a) The bureau may establish a research study for each
2 serious medical condition. The bureau may engage
3 universities within this state to participate in the collection,
4 collation, analysis and conclusive findings of the research
5 studies. The bureau shall, by rule, establish the procedure to
6 be used by health care medical cannabis organizations with
7 respect to:

8 (1) Real time inventory tracking.

9 (2) Real time tracking of the medical cannabis
10 dispensed.

11 (3) Recall of defective medical cannabis.

12 (b) *Request for distributions.* — The bureau shall
13 establish a form and procedure for universities selected to
14 participate in a research study to request distributions from

15 the fund to conduct research on medical cannabis, including
16 administrative costs. These distributions shall also be used
17 to pay for the cost of the medical cannabis so that it is not
18 borne by the patient participating in the research study. The
19 forms shall include, at a minimum, the following:

20 (1) The form or forms of medical cannabis to be
21 studied.

22 (2) The serious medical condition to be studied.

23 (c) *Research reports.* —

24 (1) A vertically integrated health system shall report on
25 the effectiveness of the use of medical cannabis for the
26 treatment of the serious medical condition studied and all
27 counterindications and noted side effects.

28 (2) The bureau shall notify the vertically integrated
29 health system and the university participating in the
30 research study of the data which is required to meet the
31 United States Food and Drug Administration's and the
32 United States Drug Enforcement Administration's approval
33 for the research study.

34 (3) The first report, including the data required under
35 subdivision (2), shall be submitted to the bureau and made
36 publicly available within one hundred eighty days of the
37 initiation of a research study for a specific serious medical
38 condition.

39 (4) An annual report of the data required under
40 subdivision (2) shall be submitted to the bureau beginning
41 one year after the initiation of a research study for a specific
42 serious medical condition and each year thereafter.

§16A-13-4. Approval.

1 A vertically integrated health system located in this state
2 may petition the bureau to participate in a research study to
3 study a serious medical condition. Approval of the vertically

4 integrated health system as a health care medical cannabis
5 organization by the bureau shall authorize access within a
6 region under subsection (d), section three, article six of this
7 chapter to medical cannabis for all patients included in an
8 approved research study.

§16A-13-5. Requirements.

1 (a) *Dispensing.* — A health care medical cannabis
2 organization that dispenses medical cannabis shall:

3 (1) Maintain licensure with the bureau.

4 (2) Secure the medical cannabis within the associated
5 pharmacies of the health care medical cannabis organization
6 in a manner and method prescribed by the bureau.

7 (3) Keep a daily log of the medical cannabis dispensed
8 and the research study with which the patient and the
9 medical cannabis are associated. Reports shall be delivered
10 to the bureau and the university participating in the research
11 study on a weekly basis.

12 (4) Report the utilization rates of those patients
13 participating in the research of medical cannabis and
14 treatment options.

15 (5) Only dispense medical cannabis received from a
16 grower, processor or a health care medical cannabis
17 organization that is approved to grow and process medical
18 cannabis.

19 (6) Provide all patients or caregivers with the safety
20 insert, prepared by the bureau, which includes potential
21 dangers, recognition and correction of problematic dosage
22 and any other information required by the bureau or which
23 the bureau deems relevant for patient safety.

24 (b) *Growing and processing.* — A health care medical
25 cannabis organization that grows and processes medical
26 cannabis shall:

- 27 (1) Maintain licensure with the bureau.
- 28 (2) Only make available medical cannabis to health
29 care medical cannabis organizations that dispense medical
30 cannabis.
- 31 (3) Keep a daily log of medical cannabis intended for
32 ultimate use by patients participating in a research study.

§16A-13-6. Restrictions.

1 A health care medical cannabis organization may not
2 participate in a research study of any kind, including the
3 program established under this article, or dispense or grow
4 and process medical cannabis if it has violated its licensure
5 requirements or conditions.

§16A-13-7. Rules.

1 The bureau shall, by rule, establish the procedure to be
2 used by a health care medical cannabis organization that
3 grows and processes medical cannabis with respect to:

4 (1) Real time inventory tracking, including a seed-to-
5 dispensing tracking system that tracks medical cannabis
6 from seed or immature plant stage until the medical
7 cannabis is provided to a patient in a research study.

8 (2) Security, recordkeeping, record retention and
9 surveillance systems relating to every stage of growing and
10 processing medical cannabis.

11 (3) A daily log of each day's beginning inventory,
12 acquisitions, disbursements, disposals and ending
13 inventory.

14 (4) A system to recall defective medical cannabis.

15 (5) A system to track the plant waste resulting from the
16 growth of medical cannabis.

17 (6) Testing of medical cannabis by an independent
18 laboratory to test the medical cannabis produced by the
19 health care medical cannabis organization, including
20 requiring a test at harvest and a test at final processing.

21 (7) Any other procedure deemed necessary by the bureau.

§16A-13-8. Nonentitlement.

1 Nothing in this chapter shall be construed to create an
2 entitlement or right of a patient to receive medical cannabis
3 or to participate in a research study.

ARTICLE 14. ACADEMIC CLINICAL RESEARCH CENTERS.

§16A-14-1. Definitions.

1 The following words and phrases when used in this
2 chapter shall have the meanings given to them in this section
3 unless the context clearly indicates otherwise:

4 (1) “Academic clinical research center” means an
5 accredited medical school within this state that operates or
6 partners with an acute care hospital licensed within this state.

7 (2) “Clinical registrant” means an entity that:

8 (A) Holds a permit as a grower, processor and a
9 dispensary; and

10 (B) Has a contractual relationship with an academic
11 clinical research center under which the academic clinical
12 research center or its affiliate provides advice to the entity,
13 regarding, among other areas, patient health and safety,
14 medical applications and dispensing and management of
15 controlled substances.

§16A-14-2. Clinical registrants.

1 Notwithstanding the limitations in section thirteen,
2 article six of this chapter, the bureau may register up to four
3 clinical registrants, and subject to the following:

4 (1) A clinical registrant must pay the fees and meet all
5 other requirements under this act for obtaining a permit as a
6 grower, processor and a dispensary.

7 (2) The clinical registrant must comply with all other
8 requirements of this act regarding growing, processing and
9 dispensing medical cannabis.

§16A-14-3. Research study.

1 Notwithstanding any provision of this act to the
2 contrary, the bureau may, upon application, approve the
3 dispensing of medical cannabis by a clinical registrant to the
4 academic clinical research center for the purpose of
5 conducting a research study. The bureau shall develop the
6 application and standards for approval of such dispensing
7 by the clinical registrant. The following apply to the
8 research study:

9 (1) The clinical registrant shall disclose the following
10 information to the bureau in its application:

11 (i) The reason for the research project, including the
12 reason for the trial.

13 (ii) The strain of medical cannabis to be used and the
14 strength of the medical cannabis to be used in the research
15 study.

16 (iii) The anticipated duration of the study.

17 (iv) Evidence of approval of the trial by an accredited
18 institutional review board, including any other required
19 regulatory approvals.

20 (v) Other information required by the bureau, except
21 that the bureau may not require disclosure of any
22 information that would infringe upon the academic clinical
23 research center's exclusive right to intellectual property or
24 legal obligations for patient confidentiality.

25 (2) The academic clinical research center shall provide
26 its findings to the bureau within three hundred sixty-five
27 days of the conclusion of the research study or within three
28 hundred sixty-five days of publication of the results of the
29 research study in a peer-reviewed medical journal,
30 whichever is later.

31 (3) The bureau shall allow the exchange of medical
32 cannabis seed between clinical registrants for the conduct of
33 research.

ARTICLE 15. MISCELLANEOUS PROVISIONS.

§16A-15-1. Conflict.

1 The growth, processing, manufacture, acquisition,
2 transportation, sale, dispensing, distribution, possession and
3 consumption of medical cannabis permitted under this act
4 shall not be deemed to be a violation of the provisions of the
5 Uniform Controlled Substance Act under chapter sixty-a of
6 this code. If a provision of Uniform Controlled Substance
7 Act under chapter sixty-a relating to cannabis conflicts with
8 a provision of this act, this act shall take precedence.

§16A-15-2. Financial and employment interests.

1 (a) *Financial interests.* — A public official, or an
2 immediate family member thereof, shall not intentionally or
3 knowingly hold a financial interest in a medical cannabis
4 organization or in a holding company, affiliate,
5 intermediary or subsidiary thereof, while the individual is a
6 public official and for one year following termination of the
7 individual's status as a public official.

8 (b) *Employment.* — No public official, or an immediate
9 family member thereof, shall be employed by a medical
10 cannabis organization or by any holding company, affiliate,
11 intermediary or subsidiary thereof, while the individual is a
12 public official and for one year following termination of the
13 individual's status as a public official.

14 (c) For purposes of this section, “public official” and
15 “immediate family” shall have the same definitions as those
16 phrases are defined in section three, article one, chapter six-
17 b of this code.

§16A-15-3. Insurers.

1 Nothing in this act shall be construed to require an
2 insurer or a health plan, whether paid for by state funds or
3 private funds, to provide coverage for medical cannabis.

§16A-15-4. Protections for patients and caregivers.

1 (a) *Licensure.* — None of the following shall be subject
2 to arrest, prosecution or penalty in any manner, or denied
3 any right or privilege, including civil penalty or disciplinary
4 action by a state licensing board or commission, solely for
5 lawful use of medical cannabis or manufacture or sale or
6 dispensing of medical cannabis, or for any other action
7 taken in accordance with this act:

8 (1) A patient.

9 (2) A caregiver.

10 (3) A practitioner.

11 (4) A medical cannabis organization.

12 (5) A health care medical cannabis organization or
13 university participating in a research study under article
14 thirteen of this chapter.

15 (6) A clinical registrant or academic clinical research
16 center under article fourteen of this chapter.

17 (7) An employee, principal or financial backer of a
18 medical cannabis organization.

19 (8) An employee of a health care medical cannabis
20 organization or an employee of a university participating in
21 a research study under article thirteen of this chapter.

22 (9) An employee of a clinical registrant or an employee
23 of an academic clinical research center under article
24 fourteen of this chapter.

25 (b) *Employment.* —

26 (1) No employer may discharge, threaten, refuse to hire
27 or otherwise discriminate or retaliate against an employee
28 regarding an employee's compensation, terms, conditions,
29 location or privileges solely on the basis of such employee's
30 status as an individual who is certified to use medical
31 cannabis.

32 (2) Nothing in this act shall require an employer to
33 make any accommodation of the use of medical cannabis on
34 the property or premises of any place of employment. This
35 act shall in no way limit an employer's ability to discipline
36 an employee for being under the influence of medical
37 cannabis in the workplace or for working while under the
38 influence of medical cannabis when the employee's conduct
39 falls below the standard of care normally accepted for that
40 position.

41 (3) Nothing in this act shall require an employer to
42 commit any act that would put the employer or any person
43 acting on its behalf in violation of federal law.

§16A-15-5. Schools.

1 The Department of Education shall promulgate rules
2 within six months of the effective date of this section
3 regarding the following:

4 (1) Possession and use of medical cannabis by a student
5 on the grounds of a preschool, primary school and a
6 secondary school.

7 (2) Possession and use of medical cannabis by an
8 employee of a preschool, primary school and a secondary
9 school on the grounds of such school.

§16A-15-6. Daycare centers.

1 The Bureau shall promulgate rules within six months of
2 the effective date of this section regarding the following:

3 (1) Possession and use of medical cannabis by a child
4 under the care of a child-care or social service center
5 licensed or operated by the Department of Health and
6 Human Resources.

7 (2) Possession and use of medical cannabis by an
8 employee of a child-care or social service center licensed or
9 operated by the Department of Health and Human Resources.

10 (3) Possession and use of medical cannabis by
11 employees of a youth development center or other facility
12 which houses children adjudicated delinquent.

§16A-15-7. Zoning.

1 The following apply:

2 (1) A grower/processor shall meet the same municipal
3 zoning and land use requirements as other manufacturing,
4 processing and production facilities that are located in the
5 same zoning district.

6 (2) A dispensary shall meet the same municipal zoning
7 and land use requirements as other commercial facilities
8 that are located in the same zoning district.

9 (3) A municipality may enact an ordinance prohibiting
10 or limiting the number and type of medical cannabis
11 organizations permitted to operate in the municipality,
12 including the time, place, and manner of operation.

§16A-15-8. Notice to bureau.

1 (a) A municipality that enacts a restrictive ordinance
2 pursuant to section seven of this article, shall promptly
3 notify the bureau of such action.

4 (b) A county commission shall notify the bureau if a
5 county votes to prohibit allowance of a medical cannabis

6 organization pursuant to section six, article seven of this
7 chapter.

§16A-15-9. Applicability.

1 The issuance of permits and other authorizations shall
2 begin upon publication of a notice by the bureau in the State
3 Register that adequate emergency or permanent rules have
4 been adopted to initiate the program under this act.

ARTICLE 16. EFFECTIVE DATE.

§16A-16-1. Effective date.

1 (a) Unless excepted in subsection (b) or (c), the
2 provisions of this act shall be effective upon passage.

3 (b) The provisions of article twelve of this chapter, and
4 any other criminal provisions or penalties contained in this
5 act, shall not be effective until ninety days from passage of
6 Senate Bill 386 during the 2017 regular session.

7 (c) Notwithstanding any provision of this chapter to the
8 contrary, no identification cards may be issued to patients
9 until July 1, 2019. The Bureau may take sufficient steps
10 through rule to implement the preliminary provisions in
11 preparation for implementation of the provisions of this act.

CHAPTER 196

**(Com. Sub. for S. B. 187 - By Senators Takubo,
Facemire, Jeffries and Woelfel)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended, relating generally to confidentiality of medical records for patients' physical, mental or emotional conditions generally; eliminating disclosure exception for

treatment or internal review purposes; eliminating 30-day requirement; eliminating requirement that provider make good faith effort to obtain consent from the patient or legal representative; eliminating requirement that the minimum information necessary is released for a specifically stated purpose; eliminating requirement that prompt notice of the disclosure, the recipient of the information and the purpose of the disclosure is given to the patient or legal representative; adopting provisions of federal law which pertain to disclosure of protected health information; and providing for disclosure upon execution of a duly executed release in compliance with the Health Insurance Portability and Accountability Act of 1996.

Be it enacted by the Legislature of West Virginia:

That §27-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CONFIDENTIALITY.

***§27-3-1. Definition of confidential information; disclosure.**

1 (a) Communications and information obtained in the
2 course of treatment or evaluation of any client or patient are
3 confidential information. Such confidential information
4 includes the fact that a person is or has been a client or patient,
5 information transmitted by a patient or client or family thereof
6 for purposes relating to diagnosis or treatment, information
7 transmitted by persons participating in the accomplishment of
8 the objectives of diagnosis or treatment, all diagnoses or
9 opinions formed regarding a client's or patient's physical,
10 mental or emotional condition, any advice, instructions or
11 prescriptions issued in the course of diagnosis or treatment,
12 and any record or characterization of the matters hereinbefore
13 described. It does not include information which does not
14 identify a client or patient, information from which a person
15 acquainted with a client or patient would not recognize such
16 client or patient and uncoded information from which there is
17 no possible means to identify a client or patient.

*NOTE: This section was also amended by H. B. 2674 (Chapter 64), which passed subsequent to this act.

18 (b) Confidential information shall not be disclosed,
19 except:

20 (1) In a proceeding under section four, article five of this
21 chapter to disclose the results of an involuntary examination
22 made pursuant to section two, three or four of said article;

23 (2) In a proceeding under article six-a of this chapter to
24 disclose the results of an involuntary examination made
25 pursuant thereto;

26 (3) Pursuant to an order of any court based upon a
27 finding that the information is sufficiently relevant to a
28 proceeding before the court to outweigh the importance of
29 maintaining the confidentiality established by this section;

30 (4) To provide notice to the federal National Instant
31 Criminal Background Check System, established pursuant
32 to section 103(d) of the Brady Handgun Violence
33 Prevention Act, 18 U. S. C. §922, in accordance with article
34 seven-a, chapter sixty-one of this code;

35 (5) To protect against a clear and substantial danger of
36 imminent injury by a patient or client to himself, herself or
37 another;

38 (6) Pursuant to and as provided for under the federal
39 privacy rule of the Health Insurance Portability and
40 Accountability Act of 1996 in 45 CFR §164.506; and

41 (7) Pursuant to and as provided for under the federal
42 privacy rule of the Health Insurance Portability and
43 Accountability Act of 1996 in 45 CFR §164.512: *Provided*,
44 That disclosures made pursuant to 45 CFR §164.512(e)
45 comply with subdivision (3) of this subsection.

46 (8) Upon execution of a duly executed release in
47 compliance with the Health Insurance Portability and
48 Accountability Act of 1996.

CHAPTER 197

**(Com. Sub. for S. B. 398 - By Senators Takubo,
Stollings, Unger and Maroney)**

[Passed April 5, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-30-1, §29-30-2, §29-30-3, §29-30-4, §29-30-5, §29-30-6, §29-30-7, §29-30-8, §29-30-9, §29-30-10 and §29-30-11, all relating to creating the Emergency Volunteer Health Practitioners Act; defining terms; providing for applicability of the article; regulating the practice of volunteer health practitioners during an emergency; creating a registration system; permitting volunteer health practitioners who are registered with a registration system and licensed and in good standing in the state upon which the practitioner's registration is based to practice in this state to the extent authorized by the article as if the practitioner were licensed in this state while an emergency declaration is in effect; providing that the provisions of this article do not affect credentialing or privileging standards of a health facility and do not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect; providing for sanctions; providing for relation to other laws; providing for limitation of liability; and providing for rulemaking by the Secretary of the Department of Health and Human Resources.

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 §29-30-1, §29-30-2, §29-30-3, §29-30-4, §29-30-5, §29-30-6, §29-30-7,

§29-30-8, §29-30-9, §29-30-10 and §29-30-11, all to read as follows:

ARTICLE 30. EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT.

§29-30-1. Short title.

1 This article shall be cited as the Emergency Volunteer
2 Health Practitioners Act.

§29-30-2. Definitions.

1 The following words have the following meaning:

2 (a) “Credentialing” means obtaining, verifying and
3 assessing the qualifications of a health practitioner to
4 provide treatment, care or services in or for a health facility.

5 (b) “Disaster relief organization” means an entity that
6 provides emergency or disaster relief services that include
7 health or veterinary services provided by volunteer health
8 practitioners and that:

9 (1) Is designated or recognized as a provider of those
10 services pursuant to a disaster response and recovery plan
11 adopted by an agency of the federal government or by the
12 Governor of this state; or

13 (2) Regularly plans and conducts its activities in
14 coordination with an agency of the federal government or
15 any agency designated by the Governor.

16 (c) “Emergency” means an event or condition that is an
17 emergency, disaster or public health emergency pursuant to
18 a declaration of the Governor or any agency designated by
19 the Governor.

20 (d) “Emergency declaration” means a declaration of
21 emergency issued by the Governor or his or her designee
22 pursuant to the laws of this state.

23 (e) “Emergency Management Assistance Compact”
24 means the interstate compact approved by Congress by
25 Public Law No. 104-321, 110 Stat. 3877.

26 (f) “Entity” means a person other than an individual.

27 (g) “Health facility” means an entity licensed pursuant
28 to the laws of this or another state to provide health or
29 veterinary services.

30 (h) “Health practitioner” means an individual licensed
31 pursuant to the laws of this or another state to provide health
32 or veterinary services. For the purposes of this article, a
33 health practitioner includes a physician, a physician
34 assistant, a dentist, a dental hygienist, a pharmacist, a
35 pharmacy technician, a pharmacy intern, a registered
36 professional nurse, a licensed practical nurse, an
37 optometrist, an osteopathic physician, a chiropractor, a
38 physical therapist, a psychologist, an occupational therapist
39 and a veterinarian.

40 (i) “Health services” means the provision of treatment,
41 care, advice or guidance, or other services or supplies,
42 related to the health or death of individuals or human
43 populations, to the extent necessary to respond to an
44 emergency, including:

45 (1) The following, concerning the physical or mental
46 condition or functional status of an individual or affecting
47 the structure or function of the body:

48 (A) Preventive, diagnostic, therapeutic, rehabilitative,
49 maintenance or palliative care; and

50 (B) Counseling, assessment, procedures or other
51 services;

52 (2) Sale or dispensing of a drug, a device, equipment or
53 another item to an individual in accordance with a
54 prescription; and

55 (3) Funeral, cremation, cemetery or other mortuary
56 services.

57 (j) “Host entity” means an entity operating in this state
58 which uses volunteer health practitioners to respond to an
59 emergency.

60 (k) “License” means authorization and licensing by an
61 appropriate licensing board to engage in health or veterinary
62 services that are unlawful without the license. The term
63 includes authorization pursuant to the laws of this state to an
64 individual to provide health or veterinary services based upon
65 a national certification issued by a public or private entity.

66 (l) “Person” means an individual, corporation, business
67 trust, trust, partnership, limited liability company,
68 association, joint venture, public corporation, government
69 or governmental subdivision, agency or instrumentality or
70 any other legal or commercial entity.

71 (m) “Privileging” means the authorizing by an
72 appropriate authority, such as a governing body, of a health
73 practitioner to provide specific treatment, care or services at
74 a health facility subject to limits based on factors that
75 include license, education, training, experience,
76 competence, health status and specialized skill.

77 (n) “Scope of practice” means the extent of the
78 authorization to provide health or veterinary services
79 granted to a health practitioner by a license issued to the
80 practitioner in the state in which the principal part of the
81 practitioner’s services is rendered, including any conditions
82 imposed by the licensing authority.

83 (o) “State” means a state of the United States, the
84 District of Columbia, Puerto Rico, the United States Virgin
85 Islands or any territory or insular possession subject to the
86 jurisdiction of the United States.

87 (p) “Veterinary services” means the provision of
88 treatment, care, advice or guidance or other services or

89 supplies related to the health or death of an animal or to
90 animal populations, to the extent necessary to respond to an
91 emergency, including:

92 (1) Diagnosis, treatment or prevention of an animal
93 disease, injury or other physical or mental condition by the
94 prescription, administration or dispensing of a vaccine,
95 medicine, surgery or therapy;

96 (2) Use of a procedure for reproductive management;
97 and

98 (3) Monitoring and treatment of animal populations for
99 diseases that have spread or demonstrate the potential to
100 spread to humans.

101 (q) “Volunteer health practitioner” means a health
102 practitioner who provides health or veterinary services,
103 whether or not the practitioner receives compensation for those
104 services. The term does not include a practitioner who receives
105 compensation pursuant to a preexisting employment
106 relationship with a host entity or affiliate which requires the
107 practitioner to provide health services in this state, unless the
108 practitioner is not a resident of this state and is employed by a
109 disaster relief organization providing services in this state
110 while an emergency declaration is in effect.

§29-30-3. Applicability.

1 This article applies to volunteer health practitioners
2 registered with a registration system pursuant to section five
3 of this article and who provide health or veterinary services
4 in this state for a host entity while an emergency declaration
5 is in effect.

§29-30-4. Regulation during an emergency.

1 (a) While an emergency declaration is in effect, the
2 Governor or his or her designee may limit, restrict or
3 otherwise regulate:

4 (1) The duration of practice by volunteer health
5 practitioners;

6 (2) The geographical areas in which volunteer health
7 practitioners may practice;

8 (3) The types of volunteer health practitioners who may
9 practice; and

10 (4) Any other matters necessary to coordinate
11 effectively the provision of health or veterinary services
12 during the emergency.

13 (b) An order issued pursuant to this section may take
14 effect immediately.

15 (c) A host entity that uses volunteer health practitioners
16 to provide health or veterinary services in this state shall:

17 (1) Consult and coordinate its activities with the
18 Governor or his or her designee to the extent practicable to
19 provide for the efficient and effective use of volunteer
20 health practitioners; and

21 (2) Comply with any laws of this state relating to the
22 management of emergency health or veterinary services.

§29-30-5. Volunteer health practitioner registration system.

1 (a) To qualify as a volunteer health practitioner
2 registration system, a system must:

3 (1) Accept applications for the registration of volunteer
4 health practitioners before or during an emergency;

5 (2) Include information about the licensure and good
6 standing of health practitioners which is accessible by
7 authorized persons;

8 (3) Be capable of confirming the accuracy of
9 information concerning whether a health practitioner is

10 licensed and in good standing before health services or
11 veterinary services are provided pursuant to this article; and

12 (4) Meet one of the following conditions:

13 (A) Be an emergency system for advance registration of
14 volunteer health care practitioners established by a state and
15 funded through the Department of Health and Human
16 Services pursuant to Section 319I of the Public Health
17 Services Act, 42 U. S. C. Section 247d-7b, as amended;

18 (B) Be a local unit consisting of trained and equipped
19 emergency response, public health, and medical personnel
20 formed pursuant to Section 2801 of the Public Health
21 Services Act, 42 U.S.C. Section 300hh as amended;

22 (C) Be operated by a:

23 (i) Disaster relief organization;

24 (ii) Licensing board;

25 (iii) National or regional association of licensing boards
26 or health practitioners;

27 (iv) Health facility that provides comprehensive
28 inpatient and outpatient health care services, including a
29 tertiary care and teaching hospital; or

30 (v) Governmental entity; or

31 (D) Be designated by the Governor or his or her
32 designee as a registration system for purposes of this article.

33 (b) While an emergency declaration is in effect, the
34 Governor or his or her designee or a host entity, may
35 confirm whether volunteer health practitioners utilized in
36 this state are registered with a registration system that
37 complies with this article. Confirmation is limited to
38 obtaining identities of the practitioners from the system and
39 determining whether the system indicates that the
40 practitioners are licensed and in good standing.

41 (c) Upon request of a person in this state authorized
42 pursuant to this article, or a similarly authorized person in
43 another state, a registration system located in this state shall
44 notify the person of the identities of volunteer health
45 practitioners and whether the practitioners are licensed and
46 in good standing.

47 (d) A host entity is not required to use the services of a
48 volunteer health practitioner even if the practitioner is
49 registered with a registration system that indicates that the
50 practitioner is licensed and in good standing.

**§29-30-6. Recognition of volunteer health practitioners
licensed in other states.**

1 (a) While an emergency declaration is in effect, a
2 volunteer health practitioner, registered with a registration
3 system pursuant to this article and licensed and in good
4 standing in the state upon which the practitioner's
5 registration is based, may practice in this state to the extent
6 authorized by this article as if the practitioner were licensed
7 in this state.

8 (b) A volunteer health practitioner qualified pursuant to
9 this article is not entitled to the protections of this article if
10 the practitioner is licensed in more than one state and any
11 license of the practitioner is suspended, revoked or subject
12 to an agency order limiting or restricting practice privileges,
13 or has been voluntarily terminated under threat of sanction.

§29-30-7. Credentialing and privileging.

1 The provisions of this article do not affect credentialing
2 or privileging standards of a health facility and does not
3 preclude a health facility from waiving or modifying those
4 standards while an emergency declaration is in effect.

§29-30-8. Administrative sanctions.

1 (a) Subject to subsections (b) and (c) of this section, a
2 volunteer health practitioner shall adhere to the scope of

3 practice for a similarly licensed practitioner established by
4 the licensing provisions, practice acts or other laws of this
5 state.

6 (b) Except as otherwise provided in subsection (c) of
7 this section, this section does not authorize a volunteer
8 health practitioner to provide services that are outside the
9 practitioner's scope of practice, even if a similarly licensed
10 practitioner in this state would be permitted to provide the
11 services.

12 (c) The State Health Officer at the West Virginia
13 Department of Health and Human Resources may modify
14 or restrict the health or veterinary services that volunteer
15 health practitioners may provide pursuant to this article. An
16 order issued pursuant to this section takes effect
17 immediately.

18 (d) A host entity may restrict the health or veterinary
19 services that a volunteer health practitioner may provide
20 pursuant to this article.

21 (e) A volunteer health practitioner does not engage in
22 unauthorized practice unless the practitioner has reason to
23 know of any limitation, modification or restriction under
24 this section or that a similarly licensed practitioner in this
25 state would not be permitted to provide the services. A
26 volunteer health practitioner has reason to know of a
27 limitation, modification or restriction or that a similarly
28 licensed practitioner in this state would not be permitted to
29 provide a service if:

30 (1) The practitioner knows the limitation, modification
31 or restriction exists or that a similarly licensed practitioner
32 in this state would not be permitted to provide the service;
33 or

34 (2) From all the facts and circumstances known to the
35 practitioner at the relevant time, a reasonable person would
36 conclude that the limitation, modification or restriction

37 exists or that a similarly licensed practitioner in this state
38 would not be permitted to provide the service.

39 (f) In addition to the authority granted by law of this
40 state other than this to regulate the conduct of health
41 practitioners, a licensing board or other disciplinary
42 authority in this state:

43 (1) May impose administrative sanctions upon a health
44 practitioner licensed in this state for conduct outside of this
45 state in response to an out-of-state emergency;

46 (2) May impose administrative sanctions upon a
47 practitioner not licensed in this state for conduct in this state
48 in response to an in-state emergency; and

49 (3) Shall report any administrative sanctions imposed
50 upon a practitioner licensed in another state to the
51 appropriate licensing board or other disciplinary authority
52 in any other state in which the practitioner is known to be
53 licensed.

54 (g) In determining whether to impose administrative
55 sanctions under subsection (f) of this section, a licensing
56 board or other disciplinary authority shall consider the
57 circumstances in which the conduct took place, including
58 any exigent circumstances, and the practitioner's scope of
59 practice, education, training, experience and specialized
60 skill.

§29-30-9. Relation to other laws.

1 (a) Nothing contained in this article limits rights,
2 privileges or immunities provided to volunteer health
3 practitioners by laws other than this article. Except as
4 otherwise provided in subsection (b) of this section, this
5 article does not affect requirements for the use of health
6 practitioners pursuant to the Emergency Management
7 Assistance Compact.

8 (b) The West Virginia Department of Health and
9 Human Resources, pursuant to the Emergency Management
10 Assistance Compact, may incorporate into the emergency
11 forces of this state volunteer health practitioners who are not
12 officers or employees of this state, a political subdivision of
13 this state or a municipality or other local government within
14 this state.

§29-30-10. Limitation of liability.

1 (a) Subject to subsection (b) of this section, a volunteer
2 health practitioner who provides health or veterinary
3 services pursuant to this article is not liable for damages for
4 an act or omission of the practitioner in providing those
5 services unless the act or omission is an intentional tort or is
6 willful misconduct or wanton, grossly negligent, reckless or
7 criminal conduct.

8 (b) This section does not limit the liability of a volunteer
9 health practitioner for:

10 (1) Willful misconduct or wanton, grossly negligent,
11 reckless or criminal conduct;

12 (2) An intentional tort;

13 (3) Breach of contract;

14 (4) A claim asserted by a host entity or by an entity
15 located in this or another state which employs or uses the
16 services of the practitioner; or

17 (5) An act or omission relating to the operation of a
18 motor vehicle, vessel, aircraft or other vehicle.

19 (c) A person that operates, uses or relies upon
20 information provided by a volunteer health practitioner
21 registration system is not liable for damages for an act or
22 omission relating to that operation, use or reliance unless the
23 act or omission is an intentional tort or is willful misconduct
24 or wanton, grossly negligent, reckless or criminal conduct.

§29-30-11. Rulemaking.

1 The Secretary of the Department of Health and Human
2 Resources may promulgate rules pursuant to article three,
3 chapter twenty-nine-a of this code to implement the
4 provisions of this article. These rules shall include measures
5 to facilitate the receipt of benefits for injury or death
6 pursuant to the workers' compensation laws of this state by
7 volunteer health practitioners who reside in other states.

**CHAPTER 198**

**(Com. Sub. for H. B. 2792 - By Delegates Arvon, Hill,
Walters and Martin)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §10-1-23, relating to requiring the Library Commission to survey the libraries of the state; requiring the Library Commission develop a status report and ten-year plan for public libraries; requiring a report to the Governor and the Legislature; and posting the report electronically.

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 §10-1-23, to read as follows:

ARTICLE 1. PUBLIC LIBRARIES.**§10-1-23. Library Survey; status report; and ten-year plan.**

1 (a) The Library Commission shall survey the libraries
2 of the state, in consultation with each library, and other

3 interested parties, in order for the Library Commission to
4 develop a status report on the conditions and needs of the
5 libraries in this state, and to prepare a ten-year plan for
6 construction and maintenance needs of public libraries:
7 *Provided*, That the Library Commission may use
8 information that it has already compiled that it would
9 otherwise be required to survey pursuant to this subsection.
10 On or before November 30, 2017, the Library Commission
11 shall conduct a survey of state libraries which shall include,
12 at a minimum:

13 (1) The annual maintenance and utility expenses of each
14 library and satellite location for the past three years;

15 (2) A status report regarding the condition of all
16 plumbing, electrical, heating, air-conditioning and
17 ventilation systems of each library and satellite location;

18 (3) Estimated costs for maintenance upgrades or
19 replacement of any plumbing, electrical, heating, air-
20 conditioning and ventilation systems of each library and
21 satellite location over the next ten years;

22 (4) A report regarding compliance of the structure of
23 each library and satellite location with the Americans with
24 Disabilities Act, and any needs for improved access thereof;

25 (5) A report on the technology capabilities of each
26 library and satellite location, including, but not limited to,
27 telephone and computer systems, telecommunication
28 capabilities, availability of equipment to facilitate
29 teleconferences or simulcasts, electronic media viewing
30 capabilities, and any other technology-related information
31 as the Library Commission deems appropriate, along with a
32 breakdown stating whether such technology is available for
33 public or library staff use;

34 (6) A report on the available public meeting space at
35 each library and satellite location, and the process by which
36 the public may request the use of the meeting space, and the
37 frequency of use of such meeting space; and

38 (7) A report on all materials available to the public at
39 each library and satellite location, including, but not limited
40 to, books and electronic media available for loan, reference
41 materials on site, access to any online accounts provided by
42 the library that enable research of scholarly or reference
43 materials, and any other information as the Library
44 Commission deems appropriate.

45 (b) On or before January 31, 2018, the Library
46 Commission shall prepare a report on the status of the
47 libraries in this state, to be submitted to the Governor and to
48 the Joint Committee on Government and Finance. The
49 Library Commission report shall include the conditions of
50 the libraries in this state and a proposed ten-year
51 maintenance and construction plan for the public libraries,
52 which shall include at a minimum:

53 (1) The name and location of each library and satellite
54 location in this state;

55 (2) The condition of the physical structure of each
56 library and satellite location;

57 (3) A report on the three-year average cost of utilities
58 and maintenance of each library and satellite location;

59 (4) A cost estimate for structural repairs at each library
60 and satellite location, including improvements for access for
61 people with disabilities;

62 (5) A cost estimate for upgrades or replacement of any
63 plumbing, electrical, heating, air-conditioning and
64 ventilation systems of each library and satellite location;

65 (6) A cost estimate for improvements to the technology
66 capabilities and a description of those needs for each library
67 and satellite location, including, but not limited to,
68 improvements for telecommunication services, additional
69 computer work stations for public access, technology needs
70 for library staff, and other technology assessments as the
71 Library Commission deems appropriate;

72 (7) A report regarding the meeting space available for
73 public use at each library and satellite location, and the
74 process by which the public may request the use of the
75 meeting room; and

76 (8) Any other information the Library Commission
77 deems appropriate to propose for the improvement of
78 library facilities, lending materials and needs of the library
79 system over the next ten years.

80 (c) The Library Commission shall post a digital copy of
81 the report, as required by this section, on the Library
82 Commission website to be made available to the public.

CHAPTER 199

**(Com. Sub. for H. B. 2759 - By Delegates Ellington,
Espinosa and Frich)**

[Passed April 8, 2017; in effect from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §5A-3-3a; to amend and reenact §5A-6-8 of said code; to amend and reenact §5A-10-6 of said code; and to amend said code by adding thereto a new article, designed §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §15-14-7, §15-14-8, §15-14-9 and §15-14-10, all relating to creating Statewide Interoperable Radio Network; establishing short title; defining terms; establishing objectives and purpose; creating position of Statewide Interoperable Coordinator; prescribing duties for Statewide Interoperability Coordinator; creating Statewide Interoperability Executive Committee; prescribing duties for Statewide Interoperability Executive Committee; creating the Regional Interoperability Committee; prescribing duties for

Regional Interoperability Committee; providing for transfer of assets and staffing of Statewide Interoperable Radio Network from the Department of Health and Human Resources to the West Virginia Department of Homeland Security and Emergency Management with a certain exception; establishing special revenue account for Statewide Interoperable Radio Network designated as the Statewide Interoperable Radio Network Account; providing for deposit of revenues derived from the lease of property managed as part of the West Virginia Statewide Interoperable Radio Network into the Statewide Interoperable Radio Network Account; exempting Statewide Interoperable Radio Network from certain Purchasing Division and Office of Technology requirements; and authorizing emergency and legislative rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5A-3-3a; that §5A-6-8 of said code be amended and reenacted; that §5A-10-6 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §15-14-7, §15-14-8, §15-14-9 and §15-14-10, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3a. Additional exemptions from purchasing requirements.

1 The provisions of subdivision nine, section three, article
2 three, chapter five-a do not apply to construction or repair
3 contracts entered into by the state for the emergency
4 construction or repair of the Statewide Interoperable Radio
5 Network created by article fourteen, chapter fifteen of this
6 code.

ARTICLE 6. OFFICE OF TECHNOLOGY.**§5A-6-8. Exemptions.**

1 (a) The provisions of this article do not apply to the
2 Legislature, the judiciary or any state Constitutional officer
3 designated in section two, article seven, chapter six of this
4 code.

5 (b) Notwithstanding any other provision of this article
6 to the contrary, except for participation in the compilation
7 and maintenance of an inventory of information technology
8 and technical infrastructure of the state authorized by
9 section four of this article, the provisions of this article do
10 not apply to the West Virginia Board of Education, the West
11 Virginia Department of Education, the county boards of
12 education or the West Virginia Division of Homeland
13 Security and Emergency Management relating to the
14 technology used with the Statewide Interoperable Radio
15 Network, created by article fourteen, chapter fifteen of this
16 code. However, the West Virginia Board of Education, the
17 West Virginia Department of Education and the county
18 boards of education will attempt to cooperate and
19 collaborate with the Chief Technology Officer to the extent
20 feasible.

21 (c) The Governor may by executive order exempt from
22 the provisions of this article any entity created and
23 organized to facilitate the public and private use of health
24 care information and the use of electronic medical records
25 throughout the state.

ARTICLE 10. REAL ESTATE DIVISION.**§5A-10-6. Long-term leases of public lands for wireless communication towers.**

1 (a) Notwithstanding any provision of law to the
2 contrary, the executive director has sole authority to
3 negotiate and enter into long-term lease agreements for
4 lease of public lands to be used for placement of wireless

5 communication towers: *Provided*, That such long-term
6 lease agreements may not be for periods in excess of thirty
7 years: *Provided, however*, That for the governmental units
8 named in subsection (d) of this section, any lease proposed
9 by the executive director may only be entered into upon
10 approval in writing of the ranking administrator of the
11 respective governmental unit described in said subsection.

12 (b) All revenues derived from leases established upon
13 the enactment of this section shall be deposited into the
14 General Revenue Fund except as provided in subsections (c)
15 and (d) of this section.

16 (c) Revenues from leases initiated prior to the enactment
17 of this section or subsequently renewed shall continue to be
18 treated as they were prior to the enactment of this section.

19 (d) Revenues derived from the lease of property under
20 the control of the Department of Transportation shall be
21 deposited into the State Road Fund. Revenues derived from
22 the lease of property under the control of the Division of
23 Natural Resources shall be retained by the Division of
24 Natural Resources and deposited into the appropriate fund.
25 Revenues derived from the lease of property under the
26 control of the Department of Agriculture shall be deposited
27 into the Agriculture Fees Fund. Revenues derived from the
28 lease of property under the control of the Division of
29 Forestry shall be deposited into the Division of Forestry
30 Fund. Revenues derived from the lease of property under
31 the control of institutions of higher education shall be
32 deposited into the institution's education and general capital
33 fees fund. Revenues derived from the lease of property
34 under the control of the Higher Education Policy
35 Commission shall be deposited into the commission's State
36 Gifts Grants and Contracts Fund. Revenues derived from
37 the lease of property under the control of the West Virginia
38 Council for Community and Technical College Education
39 shall be deposited into the council's Tuition and Required
40 Educational and General Fees Fund. Revenues derived
41 from the lease of property, towers or tower space owned,

42 operated or controlled by the West Virginia Division of
43 Homeland Security and Emergency Management or any
44 other state agency managed as part of the West Virginia
45 Statewide Interoperable Radio Network shall be deposited
46 in the Statewide Interoperable Radio Network Account
47 created in section nine, article fourteen, chapter fifteen of
48 this code.

49 (e) Any long-term lease agreement entered into pursuant
50 to this section shall contain provisions allowing for the
51 nonexclusive use of the public lands and allowance for use
52 of the same public space for additional towers by competing
53 persons or corporations.

54 (f) The executive director is further authorized to enter
55 into long-term lease agreements for additional wireless
56 communication towers by other persons or corporations
57 upon the same public lands in which there already exists a
58 lease and tower provided for under this section.

59 (g) Any long-term lease agreement entered into
60 pursuant to this section shall be recorded in the office of the
61 county clerk where public land which is the subject of the
62 lease agreement is located.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 14. THE STATEWIDE INTEROPERABLE RADIO NETWORK.

§15-14-1. Short title.

1 This article is known as and may be cited as the
2 “Statewide Interoperable Radio Network Act”.

§15-14-2. Definitions.

1 (a) “Director” means the Director of West Virginia
2 Division of Homeland Security and Emergency
3 Management.

4 (b) “Statewide Interoperable Radio Network” or
5 “SIRN” means the interoperable communications network
6 established for the purpose of implementing and
7 maintaining an interoperable communications network for
8 first responders to help assure the safety of all citizens in the
9 event of disaster or emergency.

10 (c) “Statewide Interoperability Coordinator” or “SWIC”
11 means the individual appointed by the Director to oversee
12 the state’s interoperable communications efforts in planning
13 and coordinating the SIRN.

14 (d) “Statewide Interoperability Executive Committee”
15 or “Executive Committee” means the governing body of the
16 SIRN.

17 (e) “WVDHSEM” means the West Virginia Division of
18 Homeland Security and Emergency Management.

19 (f) “Regional Interoperability Committee” means the
20 committee or committees that assist the SWIC and the
21 Executive Committee with governing and monitoring the
22 implementation and operation of the SIRN and establishing
23 goals for the betterment of the SIRN.

§15-14-3. Purpose and objectives.

1 (a) One of the most important and profound duties of the
2 State of West Virginia is to provide for the safety and
3 security of her citizens. The state must constantly be
4 prepared to immediately respond to any homeland security
5 threat or event and all disasters, natural or man-made. With
6 any Homeland Security threat or event, and all disasters,
7 natural or man-made, the state must be able to instantly and
8 effectively communicate in order to collaborate with
9 various entities which are geographically dispersed.

10 (b) The purpose of this article is to ensure the most
11 effective communication in the provision of emergency
12 services, to assure an immediate and coordinated response

13 to disasters and emergencies, and to ensure the maintenance
14 and operation of the equipment comprising the SIRN.

**§15-14-4. Appointment of the Statewide Interoperability
Coordinator.**

1 (a) On or before July 1, 2017, the director shall appoint
2 the Statewide Interoperability Coordinator from a
3 recommendation of the Statewide Interoperability
4 Executive Committee (SIEC), who shall be employed by
5 and report to the director. The coordinator shall have at a
6 minimum five years' experience in overseeing and
7 managing major communications systems and supervising
8 employees.

9 (b) The coordinator shall oversee the state's
10 interoperable communications efforts in planning and
11 coordinating a statewide interoperable radio network that
12 serves the state's first responders and other users of the
13 network.

14 (c) The coordinator shall provide recommendations to
15 the director to determine statewide priorities related to
16 interoperable communications and shall work with all
17 agencies to ensure the greatest input to the plans.

18 (d) The coordinator shall ensure all interoperable
19 communications funds and functions of this state are
20 coordinated to the maximum extent with the comparable
21 functions of the federal government including its various
22 departments and agencies, of other states and localities and
23 of private agencies of every type, so that the most effective
24 preparation and use may be made of the nation's and this
25 state's communications resources and facilities for dealing
26 with any disaster or emergency that may occur.

27 (e) The coordinator will provide the Statewide
28 Interoperable Radio Network approved compatibility
29 equipment list to any state spending unit or state agency,
30 including purchases on behalf of state agencies, county and
31 local first responder agencies for purchases of two-way

32 radio, microwave or satellite equipment and related
33 services, or purchases that utilize state or federal funds
34 distributed to local entities by the State of West Virginia.
35 The purchase of any equipment not on the approved
36 compatibility list must receive prior approval from the
37 coordinator.

38 (f) The coordinator is the point of contact for any public
39 or private entity or individual seeking information about the
40 Radio Network;

41 (g) Prior to any state agency proceeding with a major
42 communications project, an agency shall submit to the
43 coordinator a project proposal, outlining the need for the
44 project, the proposed technology solution, if known, and an
45 explanation of how the project will support the agency's
46 objective and the state's strategic interoperable
47 communications plan.

48 (h) The coordinator shall perform any other duties as
49 may be prescribed by the director.

50 (i) If a vacancy exists in this position, the director shall
51 appoint someone to act in this capacity until the Executive
52 Committee makes its recommendations and the director
53 appoints a replacement.

**§15-14-5. The Statewide Interoperability Executive
Committee.**

1 (a) The Statewide Interoperability Executive
2 Committee shall consist of the following members or their
3 designee:

4 (1) The Director of the WVDHSEM;

5 (2) The Superintendent of the West Virginia State
6 Police;

7 (3) The President of the West Virginia Emergency
8 Management Council;

- 9 (4) The Adjutant General of the West Virginia National
10 Guard;
- 11 (5) The West Virginia Chief Technology Officer;
- 12 (6) The President of the West Virginia Enhanced 911
13 Council;
- 14 (7) The President of the West Virginia Sheriffs'
15 Association;
- 16 (8) The West Virginia State Fire Marshal;
- 17 (9) The President of the West Virginia County
18 Commissioners' Association;
- 19 (10) The President of the West Virginia Municipal
20 League;
- 21 (11) The Secretary of the Department of Transportation;
- 22 (12) The Director of the West Virginia Department of
23 Health and Human Resources, Office of Emergency
24 Medical Services;
- 25 (13) One representative from each of the agencies which
26 own one of the SIRN's zoned master site switches not
27 otherwise represented;
- 28 (14) The chairman of each of the Regional
29 Interoperability Committees;
- 30 (15) A representative of the West Virginia Chapter of
31 the Association of Public Safety Communications Officials;
- 32 (16) The Director of the West Virginia Parkways
33 Authority; and
- 34 (17) The Statewide Interoperability Coordinator who
35 shall serve in a nonvoting Ex officio capacity.

36 (b) The director shall serve as the chairman of the
37 Executive Committee.

38 (c) Members of the Executive Committee shall serve
39 without compensation. However, each member of the
40 Executive Committee may receive reimbursement from the
41 Statewide Interoperable Radio Network Account, for actual
42 expenses, including travel expenses, in accordance with
43 state travel guidelines.

44 (d) The Executive Committee may appoint, as
45 nonvoting members, individuals with technical expertise
46 that may assist with its mission.

**§15-14-6. Duties of the Statewide Interoperability Executive
Committee.**

1 The Executive Committee shall:

2 (1) Monitor the implementation and operation of the
3 SIRN;

4 (2) Establish goals and guidance for the betterment of
5 the SIRN;

6 (3) Review and approve all requests for use of the SIRN
7 and its equipment, by a public or private entity;

8 (4) Serve as the mechanism for developing, updating
9 and implementing policies, procedures and guidelines
10 related to the SIRN;

11 (5) Identify new technologies and develop technologies
12 and standards for the SIRN;

13 (6) Enhance the coordination of all available resources
14 for public safety communications interoperability;

15 (7) Investigate all matters relating to integrity, foresight
16 in funding and operations and planning for the SIRN.

§15-14-7. Maintenance and Operations of the Statewide Interoperable Network; personnel; assets; agreements.

1 (a) The director may employ such technical, clerical,
2 legal counsel, stenographic and other personnel, fix their
3 compensation and make expenditures within the
4 appropriation to the agency or from other funds made
5 available for the purpose of providing interoperable
6 communications services to carry out the purpose of this
7 article.

8 (b) All equipment, structures, property, and personnel
9 along with their equipment and vehicles, owned, managed,
10 directed, controlled, and governed by the Department of
11 Health and Human Resources associated with the statewide
12 interoperable radio and/or microwave network and medical
13 command radio system, are transferred to, incorporated in
14 and administered as a part of the WVDHSEM: *Provided*,
15 That medical command radio system communication
16 equipment, not including the microwave and SIRN
17 equipment, and personnel located in the medical
18 coordination center at Flatwoods, West Virginia shall
19 continue to be managed, directed, controlled, and governed
20 by the Department of Health and Human Resources and are
21 not included in the transfer authorized by this subsection.

22 (c) The director may acquire in the name of the state by
23 purchase, lease or gift, real property and rights or easements
24 necessary or convenient to construct thereon the necessary
25 building or buildings for housing Radio Network
26 employees, equipment or infrastructure.

27 (d) The director or his or her designee may enter into
28 cooperative agreements, land and tower leases,
29 memorandums of understanding/agreement, training
30 contracts or service contracts with political subdivisions of
31 the state, other states, federal agencies, and with public or
32 private agencies for use by the radio network.

33 (e) The WVDHSEM is exempt from the requirements
34 and associated fees of any local ordinances of any political
35 subdivision of the state relating to the construction of towers
36 or other infrastructure for use by the Radio Network to
37 enhance interoperable communications.

38 (f) The WVDHSEM shall support a unified approach to
39 interoperable communications across state, county, and
40 municipal government, to include:

41 (1) Providing ongoing assistance and support to the
42 state's Medical Command System; and

43 (2) Providing ongoing assistance and support to state
44 agencies in the development of interoperable and
45 emergency communications plans or projects.

**§15-14-8. The Regional Interoperability Committees;
composition; duties.**

1 (a) The Regional Interoperability Committees shall
2 operate in each of the defined state homeland security
3 regions.

4 (b) Each Regional Interoperability Committee consists
5 of no more than one representative from each identified
6 discipline within each region, and includes, is not limited to,
7 the following agencies, as well as those deemed necessary
8 by the SWIC, Regional Interoperability Committee, or
9 Executive Committee to ensure public safety:

10 (1) Municipal, county or regional hospitals;

11 (2) Municipal, county or state law enforcement;

12 (3) Municipal, county or private transit;

13 (4) Civil Air Patrol;

14 (5) County Enhanced 911;

15 (6) Emergency medical services;

- 16 (7) Federal law enforcement;
- 17 (8) Federal government (non-law enforcement);
- 18 (9) Municipal or county fire service;
- 19 (10) Municipal or county health department;
- 20 (11) Higher education public safety;
- 21 (12) Municipal or county Homeland Security/Emergency
22 Management;
- 23 (13) Private industry-critical infrastructure and key
24 resources;
- 25 (14) Regional response team;
- 26 (15) Radio Amateur Civil Emergency Services
27 (RACES) or Amateur Radio Emergency Service (ARES);
- 28 (16) American Red Cross;
- 29 (17) Non-first responder state agencies;
- 30 (18) Volunteer search and rescue organizations;
- 31 (19) County Commissioners' Association of West
32 Virginia; and
- 33 (20) West Virginia Municipal League.
- 34 (c) The Regional Interoperability Committees shall:
- 35 (1) Assist the SWIC and the Executive Committee with
36 governing and monitoring the implementation and
37 operation of the SIRN and establishing goals for the
38 betterment of the SIRN; and
- 39 (2) Serve as the mechanism for providing local level
40 input to the Executive Committee for governance,
41 identifying and developing technologies and standards, and
42 coordination of resources.

43 (d) Regional Interoperability Committee members shall
44 serve without compensation.

§15-14-9. Creation of the Statewide Interoperable Radio Network account; purpose; funding; disbursements.

1 (a) There is hereby created in the State Treasury a
2 special revenue account to be known as the “Statewide
3 Interoperable Radio Network Account” to be administered
4 by the director. The special revenue account shall consist
5 of appropriations made by the Legislature; income derived
6 from the lease of property, towers or tower space owned,
7 operated or controlled by the WVDHSEM or any other state
8 agency managed as part of the SIRN; moneys received by
9 the Department of Health and Human Resources or
10 WVDHSEM as proceeds of any claims for damages to
11 structures, equipment or property of any kind, including
12 moneys in the Insurance Property Loss Claims Fund
13 administered by the Division of Health; income from the
14 investment of moneys held in the special revenue account;
15 grant money and all other sums available for deposit to the
16 special revenue account from any source, public or private.

17 (b) Expenditures from the Statewide Interoperable
18 Radio Network Account shall be for the purposes set forth
19 in this article and used exclusively, to pay costs, fees and
20 expenses incurred, or to be incurred for the following
21 purposes: (1) The maintenance, upkeep and repair of the
22 SIRN; (2) operations of the Executive Committee; (3)
23 payment of salaries for the SWIC and any personnel
24 required to operate and maintain the SIRN; (4) the design,
25 implementation and management of the SIRN; (5) all other
26 related SIRN activities approved by the Executive
27 Committee; and (6) all costs incurred in the administration
28 of the Statewide Interoperable Radio Network Account.
29 Expenditures from the fund are not authorized from
30 collections but are to be made only in accordance with
31 appropriation by the Legislature and in accordance with the
32 provisions of article three, chapter twelve of this code and
33 upon fulfillment of the provisions of article two, chapter

34 eleven-b of this code: *Provided*, That for the fiscal year
35 ending June 30, 2018, expenditures are authorized from
36 collections rather than pursuant to appropriation by the
37 Legislature.

38 (c) Disbursements from the Statewide Interoperable
39 Radio Network Account shall be authorized by the director
40 or his or her designee. Moneys in the Statewide
41 Interoperable Radio Network Account are not available for
42 the payment of any personal injury claims, workers'
43 compensation claims or other types of disability claims.

44 (d) Quarterly, the director shall prepare an accounting
45 of all moneys disbursed from and any deposits made to the
46 Statewide Interoperable Radio Network Account. This
47 accounting shall include the reason for the withdraw, the
48 recipients of any withdraw, and the source of any deposit.

§15-14-10. Rule-making.

1 To implement the provisions of this article, the director
2 may promulgate emergency rules pursuant to section
3 fifteen, article three, chapter twenty-nine-a of this code and
4 may propose rules for legislative approval in accordance
5 with article three, chapter twenty-nine-a of this code.

CHAPTER 200

**(Com. Sub. for S. B. 230 - By Senators Trump, Blair
and Maroney)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend and reenact §7-4-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-29-12, all relating to

authorizing West Virginia prosecuting attorneys and assistant prosecuting attorneys to carry concealed firearms nationwide as authorized by the federal Law-Enforcement Officers Safety Act; providing the statutory authority necessary to give prosecuting attorneys and assistant prosecuting attorneys the option to carry firearms pursuant to federal law upon completion of required training and annual background check; granting prosecuting attorneys and assistant prosecuting attorneys arrest powers under certain circumstances; requiring West Virginia law-enforcement agencies to offer access to training and certification for honorably retired officers of said agencies to be permitted to carry a concealed firearm nationwide as a qualified retired law-enforcement officer as provided in the federal Law-Enforcement Officers Safety Act of 2004 and establishing a fee limit thereof; and authorizing West Virginia law-enforcement agencies to offer training to retired law-enforcement officers of other departments.

Be it enacted by the Legislature of West Virginia:

That §7-4-1 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 §30-29-12, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY; REWARDS; AND LEGAL ADVICE.

§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.

1 (a) The prosecuting attorney shall attend to the criminal
2 business of the state in the county in which he or she is
3 elected and qualified and when the prosecuting attorney has
4 information of the violation of any penal law committed
5 within the county, the prosecuting attorney shall institute
6 and prosecute all necessary and proper proceedings against
7 the offender and may, in such case, issue or cause to be
8 issued a summons for any witness the prosecuting attorney

9 considers material. Every public officer shall give the
10 prosecuting attorney information regarding the commission
11 of any criminal offense committed within his or her county.
12 The prosecuting attorney shall also attend to civil suits in
13 the county in which the state or any department,
14 commission or board thereof, is interested, and to advise,
15 attend to, bring, prosecute or defend, as the case may be, all
16 matters, actions, suits and proceedings in which such county
17 or any county board of education is interested.

18 (b) (1) In furtherance of a prosecuting attorney's duty to
19 investigate and prosecute criminal offenses, a prosecuting
20 attorney and assistant prosecuting attorneys under his or her
21 supervision shall have the authority to arrest any person
22 committing a violation of the criminal laws of the State of
23 West Virginia, the United States or a violation of Rule 42 of
24 the West Virginia Rules of Criminal Procedure which occur
25 within the office of the prosecuting attorney and committed
26 in the presence of the prosecuting attorney or assistant
27 prosecuting attorney.

28 (2) For purposes of subdivision (1) of this subsection,
29 the arrest authority of a prosecuting attorney or assistant
30 prosecuting attorney shall be consistent with that authority
31 vested in a deputy sheriff within the geographic limitations
32 set forth in said subdivision.

33 (3) Should a prosecuting attorney desire to establish a
34 program authorizing prosecuting attorneys and assistant
35 prosecuting attorneys to carry a concealed firearm for self-
36 defense purposes pursuant to the provisions of 18 U. S. C.
37 §926B, the following criteria must be met:

38 (A) The prosecuting attorney's office shall have a
39 written policy authorizing the prosecuting attorney and his
40 or her assistant prosecuting attorneys to carry a concealed
41 firearm for self-defense purposes;

42 (B) There shall be in place in the office of the
43 prosecuting attorney a requirement that the prosecuting

44 attorney and assistant prosecuting attorneys must regularly
45 qualify in the use of a firearm with standards therefor which
46 are equal to or exceed those required of sheriff's deputies in
47 the county in which the prosecuting attorney was elected or
48 appointed;

49 (C) The office of the prosecuting attorney shall issue a
50 photographic identification and certification card which
51 identify the prosecuting attorney or assistant prosecuting
52 attorneys as law-enforcement employees of the prosecuting
53 attorney's office pursuant to the provisions of section
54 twelve, article twenty-nine, chapter thirty of this code.

55 (4) Any policy instituted pursuant to paragraph (A),
56 subdivision (3) of this subsection shall include provisions
57 which: (i) Preclude or remove a person from participation in
58 the concealed firearm program who is subject to any
59 disciplinary or legal action which could result in the loss of
60 the authority to participate in the program; (ii) preclude
61 from participation persons prohibited by federal or state law
62 from possessing or receiving a firearm and; (iii) prohibit
63 persons from carrying a firearm pursuant to the provisions
64 of this subsection while in an impaired state as defined in
65 section two, article five, chapter seventeen-c of this code.

66 (5) Any prosecuting attorney or assistant prosecuting
67 attorney who participates in a program authorized by the
68 provisions of this subsection shall be responsible, at his or
69 her expense, for obtaining and maintaining a suitable
70 firearm and ammunition.

71 (6) It is the intent of the Legislature in enacting the
72 amendments to this section during the 2017 regular session
73 of the Legislature to authorize prosecuting attorney's offices
74 wishing to do so to allow prosecuting attorneys and assistant
75 prosecuting attorneys to meet the requirements of the
76 federal Law-Enforcement Officer's Safety Act, 18 U. S. C.
77 §926B.

78 (c) The prosecuting attorney shall keep his or her office
79 open in the charge of a responsible person during the hours
80 when polls are open during general, primary and special
81 countywide election days, and the prosecuting attorney, or
82 the prosecuting attorney's assistant, if any, shall be
83 available for the purpose of advising election officials. The
84 prosecuting attorney, when requested by the Attorney
85 General, shall perform or assist the Attorney General in
86 performing, in the county in which the prosecuting attorney
87 is elected, any legal duties required to be performed by the
88 Attorney General and which are not inconsistent with the
89 duties of the prosecuting attorney as the legal representative
90 of the county. The prosecuting attorney, when requested by
91 the Attorney General, shall perform or assist the Attorney
92 General in performing, any legal duties required to be
93 performed by the Attorney General in any county other than
94 that in which the prosecuting attorney is elected and for the
95 performance of these duties in any county other than that in
96 which the prosecuting attorney is elected, the prosecuting
97 attorney shall be paid his or her actual expenses.

98 Upon the request of the Attorney General, the
99 prosecuting attorney shall make a written report of the state
100 and condition of the several causes in which the state is a
101 party, pending in his or her county, and upon any matters
102 referred to the prosecuting attorney by the Attorney General
103 as provided by law.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-12. Law-enforcement officers to receive identification and certification to carry weapons off duty.

1 (a) Every person employed by a West Virginia state,
2 county or municipal agency as a qualified law-enforcement
3 officer within the meaning of 18 U. S. C. §926B, shall
4 receive an appropriate photo identification and certification

5 of training required to carry a concealed firearm under the
6 federal Law-Enforcement Officers Safety Act, 18 U. S. C.
7 §926B. No currently employed officer may be charged a fee
8 for the photo identification and certification. This
9 subsection does not prohibit a law-enforcement agency
10 from controlling the use of any department-owned weapon.

11 (b) When a qualified law-enforcement officer, within
12 the meaning of 18 U. S. C. §926B, retires from, or otherwise
13 honorably ceases employment with, a West Virginia state,
14 county or municipal agency, the agency shall provide, at no
15 charge, an appropriate photo identification to show the
16 former employee's status as an honorably separated or
17 retired qualified retired law-enforcement officer within the
18 meaning of 18 U. S. C. §926C. Every West Virginia state,
19 county or municipal law enforcement agency which
20 conducts firearms qualification for current employees shall
21 offer its honorably retired or separated former employees an
22 opportunity to participate in such firearms qualification on
23 an annual basis. The former employees shall provide, at
24 their own expense, an appropriate firearm and ammunition
25 and may be charged a fee not to exceed \$25 for such
26 training. Upon completion of the training and payment of
27 any fee, the law-enforcement agency shall issue a new photo
28 identification and certification which identifies the former
29 employee as a "qualified retired law-enforcement officer"
30 who has satisfied the annual training requirements of 18 U.
31 S. C. §926C.

32 (c) A law-enforcement agency may, in its sole
33 discretion, allow a person who honorably retired or
34 separated from another federal, state, county or municipal
35 law-enforcement agency as a qualified law-enforcement
36 officer within the meaning of 18 U. S. C. §926B, the
37 opportunity to participate in firearms qualification the
38 agency provides its own former employees under subsection
39 (b) of this section. Participants shall provide, at their own
40 expense, an appropriate firearm and ammunition and may
41 be charged a fee not to exceed \$50 for such training. Upon
42 completion of the training and payment of any fee, the law-

43 enforcement agency shall issue a certificate which states
44 that the retiree satisfied the training requirements of 18 U.
45 S. C. §926C.

CHAPTER 201

(H. B. 2796 - By Delegate Hanshaw)

[Passed April 4, 2017; in effect from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §15-1J-2 and §15-1J-4 of the Code of West Virginia, 1931, as amended, all relating to authorizing the West Virginia Military Authority to contract on behalf of the West Virginia National Guard with the federal government, certain other entities and individuals for specialized technical services to support specific activities related to national security, homeland security and other military-related programs.

Be it enacted by the Legislature of West Virginia:

That §15-1J-2 and §15-1J-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1J. THE WEST VIRGINIA MILITARY AUTHORITY ACT.

§15-1J-2. Legislative findings.

1 The Legislature finds that the West Virginia National
2 Guard is a unique entity that has a dual mission for both
3 West Virginia and the United States. In this dual capacity,
4 the West Virginia National Guard receives funds to
5 administer programs, including the hiring of employees,
6 that the federal government, including the Department of
7 Defense, provides to the guard in support of specific

8 activities for various federal agencies for national security
9 and homeland security purposes. These programs fulfill
10 specific agency purposes and necessarily require continued
11 funding by the federal government.

12 Additionally, the guard continues to receive federal
13 funding to develop and maintain capabilities to house,
14 refurbish, rebuild and maintain military equipment and
15 conduct other test and operational activities to support
16 national and homeland security objectives. These activities
17 require the guard to enter into contracts and subcontracts for
18 specialized technical services and hire persons who will be
19 compensated, in whole or in part, with federal funds. It is
20 further determined and declared that it is necessary for the
21 guard to develop and implement a procedure for hiring and
22 management of nonmilitary employees to support its
23 specific missions.

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

1 (a) The West Virginia Military Authority is hereby
2 established to administer national security, homeland
3 security and other military-related or sponsored programs.

4 (b) The authority will be administered by the Adjutant
5 General and the Adjutant General's department.

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

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

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

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

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

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

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

42 (6) Contract on behalf of the guard with the federal
43 government, its instrumentalities and agencies, any state,
44 territory or the District of Columbia and its agencies and
45 instrumentalities, municipalities, foreign governments,
46 public bodies, private corporations, partnerships,
47 associations and individuals for specialized technical
48 services at a rate commensurate with industry standards as
49 determined by the Adjutant General to support specific
50 activities related to national security, homeland security and
51 other military-related programs;

52 (7) Hire employees at an appropriate salary equivalent
53 to a competitive wage rate;

54 (8) Enroll employees in PERS, PEIA and workers'
55 compensation and unemployment programs, or their
56 equivalents: *Provided*, That the authority, through the
57 receipt of federal and/or state funds, pays the required
58 employer contributions;

59 (9) Cooperate with economic development agencies in
60 efforts to promote the expansion of industrial, commercial
61 and manufacturing in the state;

62 (10) Develop a human resources division that will
63 administer and manage its employees and receive state
64 matching funds as necessary to ensure maximum federal
65 funds are secured;

66 (11) Due to the at-will employment relationship with the
67 authority, its employees may not avail themselves of the
68 state grievance procedure as set forth in article six-a, chapter
69 twenty- nine of this code; and

70 (12) Have the ability to secure all other bonding,
71 insurance or other liability protections necessary for its
72 employees to fulfill their duties and responsibilities.

CHAPTER 202

**(Com. Sub. for S. B. 280 - By Senators Boso and
Weld)**

[Passed April 4, 2017; in effect July 1, 2017.]
[Approved by the Governor on April 21, 2017.]

AN ACT to repeal §29-2A-3a of the Code of West Virginia, 1931,
as amended; and to amend said code by adding thereto a new

article, designated §15-1K-1, §15-1K-2, §15-1K-3, §15-1K-4, §15-1K-5, §15-1K-6, §15-1K-7, §15-1K-8 and §15-1K-9, all relating to the West Virginia wing of the Civil Air Patrol; eliminating the State Aeronautics Commission's authority to expend funds to support the West Virginia wing of the Civil Air Patrol; providing for legislative findings and intent; defining terms; providing for the Adjutant General to administer the West Virginia wing of the Civil Air Patrol; providing the Adjutant General the authority to expend appropriated funds to provide certain support to the West Virginia wing of the Civil Air Patrol; providing for unpaid Civil Air Patrol leave and the protection of employees performing Civil Air Patrol missions; providing that employers may not discriminate based on an employee's membership in the Civil Air Patrol; and providing that an employee may bring a civil action to enforce the provisions of this article but shall not recover monetary damages.

Be it enacted by the Legislature of West Virginia:

That §29-2A-3a of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §15-1K-1, §15-1K-2, §15-1K-3, §15-1K-4, §15-1K-5, §15-1K-6, §15-1K-7, §15-1K-8 and §15-1K-9, all to read as follows:

ARTICLE 1K. CIVIL AIR PATROL.

§15-1K-1. Legislative findings and intent.

1 (a) The Legislature hereby makes the following
2 findings:

3 (1) The Civil Air Patrol is the congressionally chartered
4 official auxiliary of the United States Air Force. It performs
5 three congressionally assigned key missions: emergency
6 services, which includes search and rescue, by air and
7 ground, and disaster relief operations; aerospace education
8 for youth and the general public; and cadet programs for
9 teenage youth. In addition, the Civil Air Patrol is tasked with
10 homeland security and other missions.

11 (2) The Civil Air Patrol also performs nonauxiliary
12 missions for various federal and state governmental and
13 private agencies, such as the West Virginia Army and Air
14 National Guard, State Division of Homeland Security and
15 Emergency Management, the Division of Forestry, local
16 law enforcement, the Federal Emergency Management
17 Agency and the American Red Cross.

18 (3) The West Virginia wing of the Civil Air Patrol, is
19 organized, equipped, governed, administered and trained in
20 accordance with the rules and regulations of the United
21 States Air Force and the Civil Air Patrol.

22 (4) The West Virginia wing of the Civil Air Patrol has air
23 and ground assets located throughout the state, as well as
24 highly trained aircrews, ground search crews and other mission
25 support personnel who perform, as unpaid professionals,
26 valuable emergency services missions for the citizens of West
27 Virginia. Additionally, the West Virginia wing of the Civil Air
28 Patrol, through its missions of aerospace education and cadet
29 programs, is instrumental in developing West Virginia's youth
30 to be the leaders of the future.

31 (b) In light of the invaluable services provided by the
32 West Virginia wing of the Civil Air Patrol to the state, it is
33 the intent of the Legislature for the state and the Adjutant
34 General to provide administrative, financial and other
35 support to the West Virginia wing of the Civil Air Patrol so
36 that it can continue to train and equip itself and its unpaid
37 personnel to perform these valuable missions for the
38 citizens of the state.

39 (c) It is also the intent of the Legislature to create
40 protections for employees who are members of the Civil Air
41 Patrol and who train for, and respond to, emergency services
42 missions.

§15-1K-2. Definitions.

1 As used in this article:

2 (1) "Civil Air Patrol leave" means leave requested by an
3 employee who:

4 (A) Is a volunteer member of the civilian auxiliary of
5 the United States Air Force known as the Civil Air Patrol;
6 and

7 (B) Has been authorized by the United States Air Force,
8 the Governor or a department, division, agency or political
9 subdivision of the state to respond to or train for an
10 emergency mission.

11 (2) "Emergency mission" means an Air Force assigned
12 mission under which the West Virginia wing of the Civil
13 Air Patrol conducts operations.

14 (3) "Employee" means any individual who performs
15 services for, or under the control of, a provider of wages or
16 remuneration.

17 (4) "Employee benefits" means all benefits other than
18 wages given by an employer.

19 (5) "Employer" means any person or entity that employs
20 more than fifteen employees.

**§15-1K-3. Adjutant General administration; expenses of Civil
Air Patrol.**

1 (a) Due to the nature of its congressionally assigned key
2 missions and nonassigned missions, the West Virginia wing
3 of the Civil Air Patrol shall be administered by the Adjutant
4 General and the Adjutant General's department in
5 accordance with applicable state, federal and Civil Air
6 Patrol regulations.

7 (b) The Adjutant General, in addition to all other powers
8 and functions authorized by law, may expend state funds:

9 (1) For operational missions or other objectives related
10 to national security, homeland security, emergency
11 response, disaster relief or other similar missions;

12 (2) For educational and training purposes of the Civil
13 Air Patrol, including, but not limited to, the purchase of
14 Civil Air Patrol aviation, homeland security and emergency
15 services education training aid books, materials and
16 equipment;

17 (3) To defray maintenance, repair and replacement costs
18 of Civil Air Patrol aircraft, motor vehicles and other
19 homeland security and emergency services equipment;

20 (4) To purchase and obtain supplies and equipment for
21 the Civil Air Patrol; and

22 (5) To maintain the communications network for the
23 Civil Air Patrol and to integrate it with other state
24 communications networks.

25 (c) Funds specifically appropriated by the Legislature
26 for the purposes specified in subsection (b) of this section
27 may be expended by the Adjutant General and shall be
28 expended for no other purposes.

**§15-1K-4. Nondiscrimination by employer against Civil Air
Patrol members.**

1 (a) An employer may not discriminate against or
2 discharge from employment an employee who has been
3 employed for a minimum of ninety days and is a member of
4 the Civil Air Patrol because of membership in the Civil Air
5 Patrol.

6 (b) An employer may not hinder or prevent an employee
7 who has been employed for a minimum of ninety days from
8 performing service as part of the West Virginia wing of the
9 Civil Air Patrol during an emergency mission or training if
10 the member is entitled to leave under this article.

§15-1K-5. Employer to provide leave.

1 (a) An employer shall provide up to a maximum of ten
2 days per calendar year of unpaid Civil Air Patrol leave to an
3 employee training for an emergency mission of the West
4 Virginia wing of the Civil Air Patrol.

5 (b) An employer shall provide up to a maximum of
6 thirty days per calendar year of unpaid Civil Air Patrol leave
7 to an employee responding to an emergency mission of the
8 West Virginia wing of the Civil Air Patrol.

9 (c) An employee shall give the employer:

10 (1) At least fourteen days' notice of the intended dates
11 of the beginning and end of leave together with an estimate
12 of the amount of time needed to complete training; and

13 (2) As much notice as possible of the intended dates of
14 the beginning and end of leave together with an estimate of
15 the amount of time needed to complete an emergency
16 mission.

17 (d) The employee shall report to the employer necessary
18 changes in the time required to complete the training or
19 mission.

20 (e) The employer may require verification of the
21 eligibility of the employee for the Civil Air Patrol leave
22 requested or taken.

23 (f) If the employee fails to provide the required
24 verification, the employer may deny the Civil Air Patrol
25 leave.

26 (g) An employee taking leave under this article is not
27 required to exhaust all available leave or time-off benefits
28 before using Civil Air Patrol leave.

29 (h) This article shall not prevent an employer from
30 providing an employee paid leave.

§15-1K-6. Return to work by employee.

1 (a) When the employee returns to work, the employer
2 shall restore the employee to the position held when the
3 leave began or to a position with equivalent seniority status,
4 benefits, pay and conditions of employment.

5 (b) An employer may decline to restore an employee as
6 required in this article because of circumstances unrelated
7 to the provisions of this article.

8 (c) An employer and an employee may negotiate for the
9 employer to pay for the benefits of the employee during the
10 leave, but the employer is not required to continue or
11 maintain employee benefits for any employee eligible for
12 leave under this article where the employee would not be
13 otherwise eligible for any benefit under the policies of the
14 employer or the content of any employee benefit plan which
15 regulates eligibility for benefits.

§15-1K-7. Accrued benefits not lost; leave not to be used with other leave; rights and obligations under collective bargaining or other agreements.

1 (a) The use of Civil Air Patrol leave under this article
2 may not result in the loss of an employee benefit accrued
3 before the first date of leave.

4 (b) An employee using leave under any other provision
5 of state or federal law may not concurrently use leave
6 granted under this article.

7 (c) This article does not affect the obligation of an
8 employer to comply with a collective bargaining agreement or
9 an employee benefit plan that provides greater leave rights to
10 employees than the rights provided under this article.

11 (d) The grant of leave under this article may not be
12 diminished by a collective bargaining agreement or an
13 employee benefit plan entered into on or after July 1, 2017.

14 (e) This article does not affect or diminish the contract
15 rights or seniority status of an employee not entitled to Civil
16 Air Patrol leave.

§15-1K-8. Certain actions by employer prohibited.

1 (a) An employer may not interfere with the use of Civil
2 Air Patrol leave allowed under this article.

3 (b) An employer may not discharge, fine, suspend, expel,
4 discipline or in any other manner discriminate against an
5 employee who is a member of the Civil Air Patrol because that
6 employee complies with the provisions of this article or
7 opposes a practice not in compliance with this article.

§15-1K-9. Action to enforce article authorized.

1 (a) An employee may bring a civil action in the
2 appropriate circuit court to enforce this article.

3 (b) The court may enjoin an act or practice that violates
4 this article and may order equitable relief to redress the
5 violation or to enforce this article, including the recovery of
6 lost wages incurred as a result of any violation under this
7 article. No other monetary damages may be awarded or
8 recovered.

CHAPTER 203

**(S. B. 690 - By Senators Trump, Weld, Clements,
Cline, Ferns, Karnes, Maynard, Rucker, Smith,
Swope, Beach, Jeffries, Miller, Ojeda, Romano and
Woelfel)**

[Passed April 6, 2017; in effect from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §15-2-3 of the Code of West Virginia, 1931, as amended, relating to authorizing the Superintendent of the West Virginia State Police to impose and collect a fee for agencies and entities using the facilities under his or her direction for training purposes.

Be it enacted by the Legislature of West Virginia:

That §15-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-3. State Police structure; how established; training; special revenue account.

1 (a) The superintendent shall create, appoint and equip
2 the State Police which shall consist of the number of troops,
3 districts and detachments required for the proper
4 administration of the State Police. Each troop, district or
5 detachment shall be composed of the number of officers and
6 members the superintendent determines are necessary to
7 meet operational needs and are required for the efficient
8 operation of the State Police. The superintendent shall
9 establish the general organizational structure of the State
10 Police by interpretive rule in accordance with the provisions
11 of article three, chapter twenty-nine-a of this code. The
12 superintendent shall provide adequate facilities for the
13 training of all members of the State Police and shall
14 prescribe basic training requirements for newly enlisted
15 members. He or she shall also provide advanced or in-
16 service training, from time to time, for all members of the
17 State Police. The superintendent shall hold entry-level
18 training classes for other law-enforcement officers in the
19 state without cost to those officers, except actual expenses
20 for food, lodging and school supplies. The superintendent
21 may hold advanced levels of training classes for other law-
22 enforcement officers and those individuals in law
23 enforcement-related professions for a reasonable daily fee
24 per student not to exceed \$100. The superintendent may also
25 allow the use of classrooms, firearms training facilities and
26 other training venues by other agencies or entities for a daily
27 fee not to exceed \$100 per day, per venue.

28 (b) There is hereby created in the State Treasury a
29 special revenue account, which shall be an interest bearing
30 account, to be known as the Academy Training and

31 Professional Development Fund. The special revenue
32 account shall consist of training fees, any appropriations
33 that may be made by the Legislature, income from the
34 investment of moneys held in the special revenue account
35 and all other sums available for deposit to the special
36 revenue account from any source, public or private. No
37 expenditures, for purposes of this section, are authorized
38 from collections except in accordance with the provisions
39 of article three, chapter twelve of this code and upon
40 fulfillment of the provisions set forth in article two, chapter
41 eleven-b of this code. Any balance remaining in the special
42 revenue account at the end of any state fiscal year does not
43 revert to the General Revenue Fund but remains in the
44 special revenue account and shall be used solely in a manner
45 consistent with this article. The superintendent is authorized
46 to expend funds from the account to offset operational and
47 training costs; for building maintenance and repair; for
48 purchases and for equipment repair or replacement for the
49 West Virginia State Police Academy; and to defray
50 necessary expenses incidental to those and other activities
51 associated with law-enforcement training.

52 (c) There is hereby created in the State Treasury a
53 special revenue account, which is an interest bearing
54 account, to be known as the State Police 100th Anniversary
55 Fund. The special revenue account shall consist of
56 merchandise sales, any appropriations that may be made by
57 the Legislature, income from the investment of moneys held
58 in the special revenue account and all other sums available
59 for deposit to the special revenue account from any source,
60 public or private. No expenditures for purposes of this
61 section are authorized from collections except in accordance
62 with the provisions of article three, chapter twelve of this
63 code and upon fulfillment of the provisions set forth in
64 article two, chapter eleven-b of this code. Any balance
65 remaining in the special revenue account at the end of any
66 state fiscal year does not revert to the General Revenue Fund
67 but remains in the special revenue account and shall be used
68 solely in a manner consistent with this article. The

69 superintendent is authorized to expend funds from the
70 account to offset costs for the 100th anniversary celebration;
71 for purchasing 100th anniversary commemorative
72 merchandise, equipment and vehicles; and to defray
73 necessary expenses incidental to those and other activities
74 associated with the 100th anniversary of the West Virginia
75 State Police. This fund expires on December 31, 2019, and
76 remaining funds shall be transferred to the Academy
77 Training and Professional Development Fund.

78 (d) The superintendent may hold training classes for
79 certification to access and use the West Virginia Automated
80 Police Network for a reasonable daily fee per student not to
81 exceed \$100.

82 (e) There is hereby created in the State Treasury a
83 special revenue account, which is an interest bearing
84 account, to be known as the West Virginia State Police
85 Criminal Justice Information Services Fund. The special
86 revenue account shall consist of: Fees collected for training
87 and certification for access to the West Virginia Automated
88 Police Network system; any appropriations that may be
89 made by the Legislature; income from the investment of
90 moneys held in the special revenue account; and all other
91 sums available for deposit to the special revenue account
92 from any source, public or private. Any balance remaining
93 in the special revenue account at the end of any state fiscal
94 year does not revert to the General Revenue Fund but
95 remains in the special revenue account and may be used
96 solely in a manner consistent with this article. The
97 superintendent is authorized to expend funds from the
98 account for the following purposes: To offset operational
99 and training costs; for building maintenance and repair; for
100 purchases and for equipment repair; personal services;
101 software; other associated maintenance costs; and to defray
102 necessary expenses incidental to those and other activities
103 associated with the communications section of the West
104 Virginia State Police.

CHAPTER 204

**(S. B. 684 - By Senators Trump, Weld, Azinger,
Clements, Cline, Ferns, Karnes, Maynard, Rucker,
Smith, Swope, Beach, Jeffries, Miller, Ojeda, Romano
and Woelfel)**

[Passed March 31, 2017; in effect from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §15-2-10 and §15-2-24 of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia State Police; and correcting agency referrals and code citations relating to the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That §15-2-10 and §15-2-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

- 1 (a) The standard uniform to be used by the West
- 2 Virginia State Police after the effective date of this article
- 3 shall be as follows: Forestry green blouse with West
- 4 Virginia State Police emblem on sleeve; black shoulder
- 5 strap one-inch black stripe around sleeve, four inches from
- 6 end of sleeve; forestry green breeches with one-inch black
- 7 stripe down the side; trousers (slacks) with one-inch black
- 8 stripe down the side for officers and clerks regularly enlisted

9 in the State Police; forestry green shirts with West Virginia
10 State Police emblem on sleeve; black shoulder straps;
11 forestry green mackinaw with West Virginia State Police
12 emblem on sleeve; black shoulder straps; one-inch black
13 stripe around sleeve four inches from end of sleeve;
14 campaign hat of olive drab color; black Sam Browne belt
15 with holster; black leggings and shoes; the officer's uniform
16 will have one and one-quarter inch black stripe around the
17 sleeve of blouse and mackinaw four inches from end of
18 sleeve circumposed with one-half inch gold braid, also
19 black collars on blouse, with two silver shoulder bars for
20 captains, one silver shoulder bar for first lieutenant, one
21 gold shoulder bar for second lieutenant. For
22 noncommissioned officers the uniform blouse and shirt will
23 have thereon black chevrons of the appropriate rank.

24 (b) The superintendent shall establish the weapons and
25 enforcement equipment which are authorized for use by
26 members of the State Police and shall provide for periodic
27 inspection of the weapons and equipment. He or she shall
28 provide for the discipline of members using other than
29 authorized weapons and enforcement equipment.

30 (c) The superintendent shall provide the members of the
31 State Police with suitable arms and weapons and, when he
32 or she considers it necessary, with suitably equipped
33 automobiles, motorcycles, watercraft, airplanes and other
34 means of conveyance to be used by the West Virginia State
35 Police, the Governor and other officers and executives in the
36 discretion of the Governor, in times of flood, disaster and
37 other emergencies, for traffic study and control, criminal
38 and safety work and in other matters of official business. He
39 or she shall also provide the standard uniforms for all
40 members of the State Police, for officers, noncommissioned
41 officers and troopers provided for in this section. All
42 uniforms and all arms, weapons and other property
43 furnished the members of the State Police by the State of
44 West Virginia are and remain the property of the state.

45 (d) The superintendent may purchase and maintain on
46 behalf of members group life insurance not to exceed the
47 amount of \$5,000 on behalf of each member.

48 (e) The superintendent may contract and furnish at State
49 Police expense medical and hospital services for treatment
50 of illness or injury of a member which shall be determined
51 by the superintendent to have been incurred by the member
52 while engaged in the performance of duty and from causes
53 beyond control of the members. Notwithstanding any other
54 provision of this code, the superintendent has the right of
55 subrogation in any civil action or settlement brought by or
56 on behalf of a member in relation to any act by another
57 which results in the illness, injury or death of a member. To
58 this end, the superintendent may initiate an action on behalf
59 of the State Police in order to recover the costs incurred in
60 providing medical and hospital services for the treatment of
61 a member resulting from injury or illness originating in the
62 performance of official duties. This subsection shall not
63 affect the power of a court to apply ordinary equitable
64 defenses to the right of subrogation.

65 The superintendent may also consult with the West
66 Virginia Insurance Commissioner in an effort to defray the
67 cost of medical and hospital services. In no case will the
68 compensation rendered to health care providers for medical
69 and hospital services exceed the then current rate schedule
70 in use by the West Virginia Insurance Commissioner.

71 Third-party reimbursements received by the
72 superintendent after the expiration of the fiscal year in
73 which the injury, illness or death occurred will be deposited
74 to a nonexpiring special revenue account. Funds deposited
75 to this account may be used solely for defraying the costs of
76 medical or hospital services rendered to any sworn members
77 as a direct result of an illness, injury or death resulting from
78 the performance of official duties.

79 (f) The superintendent shall establish and maintain local
80 headquarters at those places in West Virginia that are in his

81 or her judgment suitable and proper to render the West
82 Virginia State Police most efficient for the purpose of
83 preserving the peace, protecting property, preventing crime,
84 apprehending criminals and carrying into effect all other
85 provisions of this article. The superintendent shall provide,
86 by acquisition, lease or otherwise, for local headquarters, for
87 housing and quarters for the accommodation of the
88 members of the West Virginia State Police, and for any
89 other facilities necessary or useful for the effective
90 operation of the West Virginia State Police and shall
91 provide all equipment and supplies necessary for the
92 members of the West Virginia State Police to perform their
93 duties.

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

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

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

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

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

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

46 (f) Persons in charge of any penal or correctional
47 institution, including any city or county jail in this state,
48 shall take, or cause to be taken, the fingerprints and
49 description of all persons lawfully committed thereto or
50 confined therein and furnish the same in duplicate to the
51 Criminal Identification Bureau, Department of Public
52 Safety. Such fingerprints shall be taken on forms approved
53 by the superintendent of the Department of Public Safety.
54 All such officials as herein named may, when possible to do

55 so, furnish photographs to the Criminal Identification
56 Bureau of such persons so fingerprinted.

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

86 (h) All persons arrested or detained pursuant to the
87 requirements of this article shall give fingerprints and
88 information required by subsections (f) and (g) of this
89 section. Any person who has been fingerprinted or
90 photographed in accordance with the provisions of this
91 section who is acquitted of the charges upon which he or she

92 was arrested and who has no previous criminal record may,
93 upon the presentation of satisfactory proof to the
94 department, have such fingerprints or photographs, or both,
95 returned to them.

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

111 (j) Neglect or refusal of any person mentioned in this
112 section to make the report required herein, or to do or
113 perform any act on his or her part to be done or performed
114 in connection with the operation of this section, shall
115 constitute a misdemeanor and such person shall, upon
116 conviction thereof, be punished by a fine of not less than
117 \$25 nor more than \$200, or by imprisonment in the county
118 jail for a period of not more than sixty days, or both. Such
119 neglect shall constitute misfeasance in office and subject
120 such persons to removal from office. Any person who
121 willfully removes, destroys or mutilates any of the
122 fingerprints, photographs, records or other information of
123 the Department of Public Safety shall be guilty of a
124 misdemeanor and such person shall, upon conviction
125 thereof, be punished by a fine of not more than \$100, or by
126 imprisonment in the county jail for a period of not more than
127 six months, or both.

128 (k) The Criminal Identification Bureau (CIB) and the
129 Federal Bureau of Investigation (FBI) shall retain applicant
130 fingerprints for the purpose of participating in the Rap Back
131 Program to determine suitability or fitness for a permit, license
132 or employment. Agencies participating in the program shall
133 notify applicants and employees subject to a criminal history
134 check that their fingerprint shall be retained by the CIB and the
135 FBI. Notification shall also be given to the applicant and
136 employee subject to the Rap Back Program.

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



CHAPTER 205

(Com. Sub. for H. B. 2939 - By Delegate Hamilton)

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §15-2-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-2E-3 and §15-2E-5 of said code, all relating to the sale of items in the State Police Academy post exchange to the public.

Be it enacted by the Legislature of West Virginia:

That §15-2-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §15-2E-3 and §15-2E-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-17. Unauthorized use of uniform, badge or other insignia; impersonation of member; penalty.

1 Every person who is not a member of the department is
2 hereby forbidden to wear, use, order to be used or worn, copy
3 or imitate in any respect or manner the uniform, badge,
4 insignia and equipment prescribed for members of the West
5 Virginia State Police, and any person who shall violate the
6 provisions of this article, for which no other penalty is
7 expressly provided, and any person who shall falsely represent
8 himself or herself to be an officer or member of the West
9 Virginia State Police, or to be under the order or direction of
10 any officer or member of said department, or who shall, unless
11 an officer or member thereof, wear the uniform prescribed for
12 members of said department, or the badge or other insignia
13 adopted or used by said department, shall be guilty of a
14 misdemeanor, and, upon conviction thereof, shall be fined not
15 more than \$200, or confined in the county jail for not more
16 than six months, or both fined and confined: *Provided*, That
17 items sold at the State Police post exchange as outlined in
18 article two-e of this chapter do not qualify as agency issued
19 uniforms, badge, insignia or equipment.

ARTICLE 2E. STATE POLICE ACADEMY POST EXCHANGE.

§15-2E-3. Operation of post exchange.

- 1 (a) The State Police post exchange may offer items for
2 sale as approved by the superintendent.
- 3 (b) The post exchange may only be open at such times
4 as may be established by the superintendent.
- 5 (c) The superintendent shall appoint state police
6 employees to supervise the operation of the post exchange.

7 (d) The superintendent shall establish a system of
8 bookkeeping, accounting and auditing procedures for the
9 proper handling of funds derived from the operation of the
10 post exchange.

11 (e) The superintendent shall post a sign in the post
12 exchange which states: "In accordance with the provisions
13 of section seventeen, article two, chapter fifteen of the code,
14 it is unlawful for every person who is not a member of the
15 State Police to wear or use the State Police uniform, badge,
16 emblem or other insignia. Any person, who is not a member
17 of the State Police, who wears or uses the State Police
18 uniform, badge, emblem or other insignia shall be guilty of
19 a misdemeanor and, upon conviction thereof, shall be fined
20 or jailed or both fined and jailed".

§15-2E-5. Use of funds from post exchange revenue.

1 All proceeds derived from the operation of the post
2 exchange and any money derived from the operation of
3 vending machines, after the payment of operating expenses,
4 notwithstanding any provision of this code to the contrary,
5 must be used exclusively for the publication of the cadet
6 class yearbook, capital outlay, equipment and for repair and
7 alteration of the State Police academy.



CHAPTER 206

**(Com. Sub. for H. B. 2676 - By Delegates White,
Dean, Westfall, Blair, Paynter, Maynard, G. Foster,
Hill, Harshbarger, Phillips and Higginbotham)**

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §15-2D-3 of the Code of West Virginia, 1931, as amended, relating to transfer of the Director of Security and security officers who are employed by the

Division of Culture and History to the Division of Protective Services.

Be it enacted by the Legislature of West Virginia:

That §15-2D-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

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

1 (a) The director is responsible for the control and
2 supervision of the division. The director and any officer of
3 the division specified by the director may carry designated
4 weapons and have the same powers of arrest and law
5 enforcement in Kanawha County as members of the West
6 Virginia State Police as set forth in subsections (b) and (d),
7 section twelve, article two of this chapter: *Provided*, That
8 the director and designated members shall have such powers
9 throughout the State of West Virginia in investigating and
10 performing law-enforcement duties for offenses committed
11 on the Capitol Complex or related to the division's security
12 and protection duties at the Capitol Complex: *Provided*,
13 *however*, That the director and designated members shall
14 have said powers throughout the state relating to offenses
15 and activities occurring on any property owned, leased or
16 operated by the State of West Virginia when undertaken at
17 the request of the agency occupying the property: *Provided*
18 *further*, That nothing in this article shall be construed as to
19 obligate the director or the division to provide or be
20 responsible for providing security at state facilities outside
21 the Capitol Complex.

22 (b) Any officer of the division shall be certified as a law-
23 enforcement officer by the Governor's Committee on
24 Crime, Delinquency and Correction or may be conditionally
25 employed as a law-enforcement officer until certified in
26 accordance with the provisions of section five, article
27 twenty-nine, chapter thirty of this code.

28 (c) The director may:

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

34 (2) Contract for security and other services;

35 (3) Purchase equipment as necessary to maintain
36 security at the Capitol Complex and other state facilities as
37 may be determined by the Secretary of the Department of
38 Military Affairs and Public Safety;

39 (4) Establish and provide standard uniforms, arms,
40 weapons and other enforcement equipment authorized for
41 use by members of the division and shall provide for the
42 periodic inspection of the uniforms and equipment. All
43 uniforms, arms, weapons and other property furnished to
44 members of the division by the State of West Virginia is and
45 remains the property of the state;

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

48 (6) Upon request by the Superintendent of the West
49 Virginia State Police, provide security for the Speaker of the
50 West Virginia House of Delegates, the President of the West
51 Virginia Senate, the Governor or a justice of the West
52 Virginia Supreme Court of Appeals;

53 (7) Gather information from a broad base of employees
54 at and visitors to the Capitol Complex to determine their
55 security needs and develop a comprehensive plan to
56 maintain and improve security at the Capitol Complex
57 based upon those needs; and

58 (8) Assess safety and security needs and make
59 recommendations for safety and security at any proposed or
60 existing state facility as determined by the Secretary of the

61 Department of Military Affairs and Public Safety, upon
62 request of the secretary of the department to which the
63 facility is or will be assigned.

64 (d) The director shall:

65 (1) On or before July 1, 1999, propose legislative rules
66 for promulgation in accordance with the provisions of
67 article three, chapter twenty-nine-a of this code. The rules
68 shall, at a minimum, establish ranks and the duties of
69 officers within the membership of the division.

70 (2) On or before July 1, 1999, enter into an interagency
71 agreement with the Secretary of the Department of Military
72 Affairs and Public Safety and the Secretary of the
73 Department of Administration, which delineates their
74 respective rights and authorities under any contracts or
75 subcontracts for security personnel. A copy of the
76 interagency agreement shall be delivered to the Governor,
77 the President of the West Virginia Senate and the Speaker
78 of the West Virginia House of Delegates and a copy shall
79 be filed in the office of the Secretary of State and shall be a
80 public record.

81 (3) Deliver a monthly status report to the Speaker of the
82 West Virginia House of Delegates and the President of the
83 West Virginia Senate.

84 (e) Require any service provider whose employees are
85 regularly employed on the grounds or in the buildings of the
86 Capitol Complex or who have access to sensitive or critical
87 information submit to a fingerprint-based state and federal
88 background inquiry through the state repository, and require
89 a new employee who is employed to provide services on the
90 grounds or in the building of the Capitol Complex to submit
91 to an employment eligibility check through E-verify.

92 (1) After the contract for such services has been
93 approved, but before any such employees are permitted to
94 be on the grounds or in the buildings of the Capitol Complex

95 or have access to sensitive or critical information, the
96 service provider shall submit a list of all persons who will
97 be physically present and working at the Capitol Complex
98 for purposes of verifying compliance with this section.

99 (2) All current service providers shall, within ninety
100 days of the amendment and reenactment of this section by
101 the eightieth Legislature, ensure that all of its employees
102 who are providing services on the grounds or in the
103 buildings of the Capitol Complex or who have access to
104 sensitive or critical information submit to a fingerprint-
105 based state and federal background inquiry through the state
106 repository.

107 (3) Any contract entered into, amended or renewed by
108 an agency or entity of state government with a service
109 provider shall contain a provision reserving the right to
110 prohibit specific employees thereof from accessing
111 sensitive or critical information or to be present at the
112 Capitol Complex based upon results addressed from a
113 criminal background check.

114 (4) For purposes of this section, the term “service
115 provider” means any person or company that provides
116 employees to a state agency or entity of state government to
117 work on the grounds or in the buildings that make-up the
118 Capitol Complex or who have access to sensitive or critical
119 information.

120 (5) In accordance with the provisions of Public Law 92-
121 544 the criminal background check information will be
122 released to the Director of the Division of Protective Services.

123 (f) Effective July 1, 2017, the Director of Security and
124 security officers of the Division of Culture and History shall
125 be made part of, and be under the supervision and direction
126 of the Division of Protective Services. Security for all
127 Capitol Complex properties of the Division of Culture and
128 History shall be the responsibility of the Division of
129 Protective Services.

CHAPTER 207

(Com. Sub. for H. B. 2167 - By Delegates Storch and Eldridge)

[Passed March 15, 2017; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2017.]

AN ACT to amend and reenact §15-3B-2, §15-3B-3, §15-3B-4, §15-3B-5 and §15-3B-6 of the Code of West Virginia, 1931, as amended, all relating to the Silver Alert Plan; providing for the Silver Alert program to be available for missing senior citizens; defining “senior citizen”; requiring the Silver Alert plan address missing senior citizens; and applying Silver Alert program procedures to missing senior citizens.

Be it enacted by the Legislature of West Virginia:

That §15-3B-2, §15-3B-3, §15-3B-4, §15-3B-5 and §15-3B-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3B. SILVER ALERT PLAN.

§15-3B-2. Findings and declarations relative to “Silver Alert Plan”.

- 1 (a) The Legislature finds that:
 - 2 (1) Public alerts can be one of the most effective tools
 - 3 in locating missing cognitively impaired persons or senior
 - 4 citizens;
 - 5 (2) Law-enforcement officers and other professionals
 - 6 specializing in the field of missing persons agree that the
 - 7 most critical moments in the search for a missing person are
 - 8 the first few hours immediately following the discovery that
 - 9 the individual is missing, asserting that if he or she is not

10 found within twenty-four hours, it is unlikely that he or she
11 will be found alive or without serious injury. The rapid
12 dissemination of information, including a description of the
13 missing cognitively impaired person or senior citizen,
14 details of how he or she became missing, and of any vehicle
15 involved, to the citizens of the affected community and
16 region is, therefore, critical;

17 (3) Alerted to the situation, the citizenry become an
18 extensive network of eyes and ears serving to assist law
19 enforcement in quickly locating and safely recovering a
20 missing cognitively impaired person or senior citizen;

21 (4) The most effective method of immediately notifying
22 the public of a missing cognitively impaired person or
23 senior citizen is through the broadcast media; and

24 (5) All forms of developing technologies are required to
25 assist law enforcement in rapidly responding to these alerts
26 and are an additional tool for assuring the well being and
27 safety of our cognitively impaired citizenry. Thus, the use
28 of traffic video recording and monitoring devices for the
29 purpose of surveillance of a suspect vehicle adds yet another
30 set of eyes to assist law enforcement and aid in the safe
31 recovery of the cognitively impaired person or senior
32 citizen.

33 (b) The Legislature declares that given the successes
34 other states and regions have experienced in using broadcast
35 media alerts to quickly locate and safely recover missing
36 persons, and, with the recent development of highway video
37 recording and monitoring systems, it is altogether fitting and
38 proper, and within the public interest, to establish these
39 programs for West Virginia.

§15-3B-3. Establishment of “Silver Alert” program.

1 (a) The Secretary of the Department of Military Affairs
2 and Public Safety shall establish a “Silver Alert” program
3 authorizing the broadcast media, upon notice from the State
4 Police, to broadcast an alert to inform the public of a missing

5 cognitively impaired person or a missing senior citizen,
6 subject to the criteria established in section four of this
7 article. The program shall be a voluntary, cooperative effort
8 between state law-enforcement and the broadcast media.

9 (b) As used in this article:

10 (1) "Cognitively impaired" means a person having a
11 deficiency in his or her short-term or long-term memory,
12 orientation as to person, place, and time, deductive or
13 abstract reasoning, or judgment as it relates to safety:
14 *Provided*, That the cognitive impairment is not caused by
15 the use of alcohol or drugs not legally prescribed by a
16 physician; and

17 (2) "Senior citizen" means a person over sixty-five
18 years of age.

19 (c) The secretary shall notify the broadcast media
20 serving the State of West Virginia of the establishment of
21 "Silver Alert" program and invite their voluntary
22 participation.

23 (d) The secretary shall submit a plan to the Joint
24 Committee on Government and Finance no later than
25 December 1, 2009. The plan shall include "Silver Alert"
26 activation protocols, evaluation of first responder training
27 requirements and needs as related to cognitively impaired
28 persons and senior citizens, coordination and utilization of
29 established programs and analysis of any costs. The
30 secretary shall also make recommendations for any
31 additional legislation or actions necessary to further
32 facilitate the implementation of the "Silver Alert" program.

§15-3B-4. Activation of Silver Alert.

1 The following criteria shall be met before the State
2 Police activate the Silver Alert:

3 (1) The person is believed to be cognitively impaired or
4 is a senior citizen;

5 (2) The person is believed to be missing, regardless of
6 circumstance;

7 (3) A person who has knowledge that the person is
8 missing has submitted a missing person's report to the State
9 Police or other appropriate law-enforcement agency;

10 (4) The missing person may be in danger of death or
11 serious bodily injury;

12 (5) The missing person is domiciled or believed to be
13 located in the State of West Virginia;

14 (6) The missing person is, or is believed to be, at a
15 location that cannot be determined by an individual familiar
16 with the missing person, and the missing person is incapable
17 of returning to the missing person's residence without
18 assistance; and

19 (7) There is sufficient information available to indicate
20 that a Silver Alert would assist in locating the missing
21 person.

§15-3B-5. Notice to participating media; broadcast of alert.

1 (a) To participate, the media may agree, upon notice
2 from the State Police via email or facsimile, to transmit
3 information to the public about a missing cognitively
4 impaired person or senior citizen that has occurred within
5 their broadcast service region.

6 (b) The alerts shall include a description of the missing
7 cognitively impaired person or senior citizen, such details
8 of the circumstance surrounding him or her becoming
9 missing, as may be known, and such other information as
10 the State Police may deem pertinent and appropriate. The
11 State Police shall in a timely manner update the broadcast
12 media with new information when appropriate concerning
13 the missing cognitively impaired person or senior citizen.

14 (c) The alerts also shall provide information concerning
15 how those members of the public who have information
16 relating to the missing cognitively impaired person or senior
17 citizen may contact the State Police or other appropriate
18 law-enforcement agency.

19 (d) Concurrent with the notice provided to the broadcast
20 media, the State Police shall also notify the Department of
21 Transportation, the Division of Highways and the West
22 Virginia Turnpike Commission of the "Silver Alert" so that
23 the department and the affected authorities may, if possible,
24 through the use of their variable message signs, inform the
25 motoring public that a "Silver Alert" is in progress and may
26 provide information relating to the missing cognitively
27 impaired person or senior citizen and how motorists may
28 report any information they have to the State Police or other
29 appropriate law-enforcement agency.

30 (e) The alerts shall terminate upon notice from the State
31 Police.

32 (f) The secretary shall develop and undertake a
33 campaign to inform law-enforcement agencies about the
34 "Silver Alert" program established under this article.

§15-3B-6. Aid to missing cognitively impaired adult or senior citizen; immunity from civil or criminal liability.

1 No person or entity who in good faith follows and
2 abides by the provisions of this article is liable for any civil
3 or criminal penalty as the result of any act or omission in the
4 furtherance thereof unless it is alleged and proven that the
5 information disclosed was false and disclosed with the
6 knowledge that the information was false.

CHAPTER 208

**(Com. Sub. for S. B. 636 - By Senators Boso,
Stollings, Maroney, Sypolt and Cline)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §29-3-5d of the Code of West Virginia, 1931, as amended, relating to authorizing the State Fire Commission to establish and administrate a pilot project program to address problems facing volunteer fire departments; and requiring annual reports.

Be it enacted by the Legislature of West Virginia:

That §29-3-5d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5d. Volunteer firefighters' training.

1 (a) On or before July 30, 2012, the State Fire
2 Commission shall propose rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code to establish training requirements
5 for firefighters which:

6 (1) Provide for:

7 (A) Minimum training levels for rescue and firefighting;

8 (B) Minimum levels of equipment needed to protect life
9 and property within fire service areas;

10 (C) Minimum performance standards the departments
11 must meet in response times, communications, levels of
12 water flow and pressure; and

13 (D) Other performance measures as considered
14 necessary to meet the overall goals of improved fire
15 prevention and control;

16 (2) Allow the training to be offered in segments, blocks
17 or modules: *Provided*, That no firefighter may engage in
18 firefighting activities, except in response to wildland fires,
19 until he or she has completed all firefighter one training:
20 *Provided, however*, That support members may provide
21 ancillary assistance to firefighters as defined by the rule;

22 (3) Provide for online training;

23 (4) Allow testing to be done in person or online; and

24 (5) Establish the testing requirements which include:

25 (A) If the individual is required to test in person, then
26 the tests must be given regionally at various times
27 throughout the year; or

28 (B) If the individual is authorized to test online, then the
29 requirements for online testing must be established.

30 (b) The State Fire Commission may promulgate
31 emergency rules pursuant to the provisions of section
32 fifteen, article three, chapter twenty-nine-a of this code to
33 effectuate the provisions of this section.

34 (c) The training policies in effect as of the effective date
35 of the enactment of this section during the regular session
36 of 2012 will remain in effect until superseded by the
37 emergency rule or legislative rule promulgated pursuant to
38 this section.

39 (d) Notwithstanding any provision of this code to the
40 contrary, the State Fire Commission may establish a pilot
41 project program which implements changes to standards
42 imposed on volunteer firefighting that address problems
43 facing volunteer fire departments in the state, including
44 issues related to training, recruitment and retention.

45 (1) The State Fire Commission may limit the number of
46 participating volunteer fire departments in the pilot project
47 program.

48 (2) The State Fire Commission shall set the rules and
49 conditions for participating volunteer fire departments by
50 policies adopted and ratified by the commission.

51 (3) Commencing July 1, 2018, and each year thereafter,
52 the State Fire Commission shall annually provide a full
53 summary report of the status of the program to the Joint
54 Committee on Government and Finance.



CHAPTER 209

(Com. Sub. for S. B. 180 - By Senator Blair)

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to Internet protocol-enabled service and voice-over Internet protocol-enabled service; prohibiting Public Service Commission jurisdiction of Internet protocol-enabled service and voice-over Internet protocol-enabled service; and limiting Public Service Commission jurisdiction of certain telephone company transactions.

Be it enacted by the Legislature of West Virginia:

That §24-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.***§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

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

4 Common carriage of passengers or goods, whether by
5 air, railroad, street railroad, motor or otherwise, by express
6 or otherwise, by land, water or air, whether wholly or partly
7 by land, water or air; transportation of oil, gas or water by
8 pipeline; transportation of coal and its derivatives and all
9 mixtures and combinations thereof with other substances by
10 pipeline; sleeping car or parlor car services; transmission of
11 messages by telephone, telegraph or radio; generation and
12 transmission of electrical energy by hydroelectric or other
13 utilities for service to the public, whether directly or through
14 a distributing utility; supplying water, gas or electricity by
15 municipalities or others; sewer systems servicing twenty-
16 five or more persons or firms other than the owner of the
17 sewer systems: *Provided*, That if a public utility other than
18 a political subdivision intends to provide sewer service by
19 an innovative, alternative method, as defined by the federal
20 Environmental Protection Agency, the innovative,
21 alternative method is a public utility function and subject to
22 the jurisdiction of the Public Service Commission
23 regardless of the number of customers served by the
24 innovative, alternative method; any public service district
25 created under the provisions of article thirteen-a, chapter
26 sixteen of this code; toll bridges, wharves, ferries; solid
27 waste facilities; and any other public service: *Provided*,
28 *however*, That natural gas producers who provide natural
29 gas service to not more than twenty-five residential

*NOTE: This section was also amended by H. B. 3096 (Chapter 161),
which passed subsequent to this act.

30 customers are exempt from the jurisdiction of the
31 commission with regard to the provisions of such residential
32 service: *Provided further*, That upon request of any of the
33 customers of such natural gas producers, the commission
34 may, upon good cause being shown, exercise such authority
35 as the commission may deem appropriate over the
36 operation, rates and charges of such producer and for such
37 length of time as the commission may consider to be proper.

38 (b) The jurisdiction of the commission over political
39 subdivisions of this state providing separate or combined
40 services and having at least four thousand five hundred
41 customers and annual combined gross revenues of \$3
42 million or more that are political subdivisions of the state is
43 limited to:

44 (1) General supervision of public utilities, as granted
45 and described in section five of this article;

46 (2) Regulation of measurements, practices, acts or
47 services, as granted and described in section seven of this
48 article;

49 (3) Regulation of a system of accounts to be kept by a
50 public utility that is a political subdivision of the state, as
51 granted and described in section eight of this article;

52 (4) Submission of information to the commission
53 regarding rates, tolls, charges or practices, as granted and
54 described in section nine of this article;

55 (5) Authority to subpoena witnesses, take testimony and
56 administer oaths to any witness in any proceeding before, or
57 conducted by, the commission, as granted and described in
58 section ten of this article; and

59 (6) Investigation and resolution of disputes involving
60 political subdivisions of the state regarding inter-utility
61 agreements, rates, fees and charges, service areas and
62 contested utility combinations.

63 (7) Customers of water and sewer utilities operated by a
64 political subdivision of the state and customers of
65 stormwater utilities operated by a public service district may
66 bring formal or informal complaints regarding the
67 commission's exercise of the powers enumerated in this
68 section and the commission shall resolve these complaints.

69 (8) In the event that a political subdivision has a
70 deficiency in either its bond revenue or bond reserve
71 accounts, or is otherwise in breach of a bond covenant, the
72 bond holder may petition the Public Service Commission
73 for such redress as will bring the accounts to current status
74 or otherwise resolve the breached covenant, and the
75 commission shall have jurisdiction to fully resolve the
76 alleged deficiency or breach.

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

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

83 (2) Said area can be provided with utility service by a
84 utility which operates in a state adjoining West Virginia;

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

88 (4) The number of customers to be served is not
89 substantial. The rates the out-of-state utility charges West
90 Virginia customers shall be the same as the rate the utility is
91 duly authorized to charge in the adjoining jurisdiction. The
92 commission, in the case of any such utility, may revoke its
93 waiver of jurisdiction for good cause.

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

96 (1) An owner or operator of an electric-generating
97 facility located, or to be located, in this state that has been
98 designated as an exempt wholesale generator under
99 applicable federal law, or will be so designated prior to
100 commercial operation of the facility, and for which such
101 facility the owner or operator holds a certificate of public
102 convenience and necessity issued by the commission on or
103 before July 1, 2003, shall be subject to subsections (e), (f),
104 (g), (h), (i) and (j), section eleven-c of this article as if the
105 certificate of public convenience and necessity for such
106 facility were a siting certificate issued under said section
107 and shall not otherwise be subject to the jurisdiction of the
108 commission or to the provisions of this chapter with respect
109 to such facility except for the making or constructing of a
110 material modification thereof as provided in subdivision (5)
111 of this subsection.

112 (2) Any person, corporation or other entity that intends
113 to construct, or construct and operate, an electric-generating
114 facility to be located in this state that has been designated as
115 an exempt wholesale generator under applicable federal
116 law, or will be so designated prior to commercial operation
117 of the facility, and for which facility the owner or operator
118 does not hold a certificate of public convenience and
119 necessity issued by the commission on or before July 1,
120 2003, shall, prior to commencement of construction of the
121 facility, obtain a siting certificate from the commission
122 pursuant to the provisions of section eleven-c of this article
123 in lieu of a certificate of public convenience and necessity
124 pursuant to the provisions of section eleven of this article.
125 An owner or operator of an electric-generating facility as is
126 described in this subdivision for which a siting certificate
127 has been issued by the commission shall be subject to
128 subsections (e), (f), (g), (h), (i) and (j), section eleven-c of
129 this article and shall not otherwise be subject to the
130 jurisdiction of the commission or to the provisions of this
131 chapter with respect to such facility except for the making
132 or constructing of a material modification thereof as
133 provided in subdivision (5) of this subsection.

134 (3) An owner or operator of an electric-generating
135 facility located in this state that has not been designated as
136 an exempt wholesale generator under applicable federal law
137 prior to commercial operation of the facility that generates
138 electric energy solely for sale at retail outside this state or
139 solely for sale at wholesale in accordance with any
140 applicable federal law that preempts state law or solely for
141 both such sales at retail and such sales at wholesale and that
142 had been constructed and had engaged in commercial
143 operation on or before July 1, 2003, shall not be subject to
144 the jurisdiction of the commission or to the provisions of
145 this chapter with respect to such facility, regardless of
146 whether such facility subsequent to its construction has been
147 or will be designated as an exempt wholesale generator
148 under applicable federal law: *Provided*, That such owner or
149 operator shall be subject to subdivision (5) of this subsection
150 if a material modification of such facility is made or
151 constructed.

152 (4) Any person, corporation or other entity that intends
153 to construct, or construct and operate, an electric-generating
154 facility to be located in this state that has not been or will
155 not be designated as an exempt wholesale generator under
156 applicable federal law prior to commercial operation of the
157 facility that will generate electric energy solely for sale at
158 retail outside this state or solely for sale at wholesale in
159 accordance with any applicable federal law that preempts
160 state law or solely for both such sales at retail and such sales
161 at wholesale and that had not been constructed and had not
162 been engaged in commercial operation on or before July 1,
163 2003, shall, prior to commencement of construction of the
164 facility, obtain a siting certificate from the commission
165 pursuant to the provisions of section eleven-c of this article
166 in lieu of a certificate of public convenience and necessity
167 pursuant to the provisions of section eleven of this article.
168 An owner or operator of an electric-generating facility as is
169 described in this subdivision for which a siting certificate
170 has been issued by the commission shall be subject to
171 subsections (e), (f), (g), (h), (i) and (j), section eleven-c of

172 this article and shall not otherwise be subject to the
173 jurisdiction of the commission or to the provisions of this
174 chapter with respect to such facility except for the making
175 or constructing of a material modification thereof as
176 provided in subdivision (5) of this subsection.

177 (5) An owner or operator of an electric-generating
178 facility described in this subsection shall, before making or
179 constructing a material modification of the facility that is
180 not within the terms of any certificate of public convenience
181 and necessity or siting certificate previously issued for the
182 facility or an earlier material modification thereof, obtain a
183 siting certificate for the modification from the commission
184 pursuant to the provisions of section eleven-c of this article
185 in lieu of a certificate of public convenience and necessity
186 for the modification pursuant to the provisions of section
187 eleven of this article and, except for the provisions of
188 section eleven-c of this article, shall not otherwise be
189 subject to the jurisdiction of the commission or to the
190 provisions of this chapter with respect to such modification.

191 (6) The commission shall consider an application for a
192 certificate of public convenience and necessity filed
193 pursuant to section eleven of this article to construct an
194 electric-generating facility described in this subsection or to
195 make or construct a material modification of such electric-
196 generating facility as an application for a siting certificate
197 pursuant to section eleven-c of this article if the application
198 for the certificate of public convenience and necessity was
199 filed with the commission prior to July 1, 2003, and if the
200 commission has not issued a final order thereon as of that
201 date.

202 (7) The limitations on the jurisdiction of the commission
203 over, and on the applicability of the provisions of this
204 chapter to, the owner or operator of an electric-generating
205 facility as imposed by and described in this subsection shall
206 not be deemed to affect or limit the commission's
207 jurisdiction over contracts or arrangements between the

208 owner or operator of such facility and any affiliated public
209 utility subject to the provisions of this chapter.

210 (e) The commission shall not have jurisdiction of
211 Internet protocol-enabled service or voice-over Internet
212 protocol-enabled service. As used in this subsection:

213 (1) “Internet protocol-enabled service” means any
214 service, capability, functionality or application provided
215 using Internet protocol, or any successor protocol, that
216 enables an end user to send or receive a communication in
217 Internet protocol format, or any successor format, regardless
218 of whether the communication is voice, data or video.

219 (2) “Voice-over Internet protocol service” means any
220 service that:

221 (i) Enables real-time two-way voice communications
222 that originate or terminate from the user’s location using
223 Internet protocol or a successor protocol; and

224 (ii) Uses a broadband connection from the user’s
225 location.

226 (3) The term “voice-over Internet protocol service”
227 includes any service that permits users to receive calls
228 that originate on the public-switched telephone network
229 and to terminate calls on the public-switched telephone
230 network.

231 (f) Notwithstanding any other provisions of this
232 article, the commission shall not have jurisdiction to
233 review or approve any transaction involving a telephone
234 company otherwise subject to sections twelve and twelve-
235 a, article two, chapter twenty-four of this code if all
236 entities involved in the transaction are under common
237 ownership.

CHAPTER 210

(S. B. 174 - By Senators Blair and Rucker)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §24A-1-3 of the Code of West Virginia, 1931, as amended, all relating generally to the jurisdiction of the Public Service Commission over motor carriers; exempting vehicles engaged in nonemergency transportation of Medicaid members from permit requirements; and exempting the transportation of household goods from the jurisdiction of the Public Service Commission.

Be it enacted by the Legislature of West Virginia:

That §24A-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specifically
2 otherwise provided, do not apply to:

3 (1) Motor vehicles operated exclusively in the
4 transportation of United States mail or in the transportation
5 of newspapers: *Provided*, That the vehicles and their
6 operators are subject to the safety rules promulgated by the
7 commission;

8 (2) Motor vehicles owned and operated by the United
9 States of America, the State of West Virginia or any county,
10 municipality or county board of education, urban mass
11 transportation authority established and maintained
12 pursuant to article twenty-seven, chapter eight of this code

13 or by any of their departments, and any motor vehicles
14 operated under a contract with a county board of education
15 exclusively for the transportation of children to and from
16 school or other legitimate transportation for the schools as
17 the commission may specifically authorize;

18 (3) Motor vehicles used exclusively in the
19 transportation of agricultural or horticultural products,
20 livestock, poultry and dairy products from the farm or
21 orchard on which they are raised or produced to markets,
22 processing plants, packing houses, canneries, railway
23 shipping points and cold storage plants, and in the
24 transportation of agricultural or horticultural supplies to
25 farms or orchards where they are to be used: *Provided*, That
26 the vehicles that are exempted by this subdivision and are
27 also operated by common carriers by motor vehicle or
28 contract carriers by motor vehicle, and their operators are
29 subject to the safety and insurance rules promulgated by the
30 commission;

31 (4) Motor vehicles used exclusively in the
32 transportation of human or animal excreta;

33 (5) Motor vehicles used exclusively in ambulance
34 service or duly chartered rescue squad service;

35 (6) Motor vehicles used exclusively for volunteer fire
36 department service;

37 (7) Motor vehicles used exclusively in the
38 transportation of coal from mining operations to loading
39 facilities for further shipment by rail or water carriers:
40 *Provided*, That the vehicles and their operators are subject
41 to the safety rules promulgated by the commission and the
42 vehicles that are exempted by this subdivision and are also
43 operated by common carriers by motor vehicle or contract
44 carriers by motor vehicle, and their operators are subject to
45 the insurance rules promulgated by the commission;

46 (8) Motor vehicles used by petroleum commission
47 agents and oil distributors solely for the transportation of
48 petroleum products and related automotive products when
49 the transportation is incidental to the business of selling the
50 products: *Provided*, That the vehicles and their operators are
51 subject to the safety rules promulgated by the commission
52 and the vehicles that are exempted by this subdivision and
53 are also operated by common carriers by motor vehicle or
54 contract carriers by motor vehicle, and their operators are
55 subject to the insurance rules promulgated by the
56 commission;

57 (9) Motor vehicles owned, leased by or leased to any
58 person and used exclusively for the transportation of
59 processed source-separated recycled materials generated by
60 commercial, institutional and industrial customers,
61 transported free of charge or by a nonprofit recycling
62 cooperative association in accordance with subdivision (1),
63 subsection (d), section one, article four, chapter nineteen of
64 this code from the customers to a facility for further
65 processing: *Provided*, That the vehicles and their operators
66 shall be subject to the safety rules promulgated by the
67 commission and the vehicles that are exempted by this
68 subdivision and are also operated by common carriers by
69 motor vehicle or contract carriers by motor vehicle, and
70 their operators are subject to the insurance rules
71 promulgated by the commission;

72 (10) Motor vehicles specifically preempted from state
73 economic regulation of intrastate motor carrier operations
74 by the provisions of 49 U. S. C. §14501 as amended by Title
75 I, Section 103 of the federal Interstate Commerce
76 Commission Termination Act of 1995: *Provided*, That the
77 vehicles and their operators are subject to the safety
78 regulations promulgated by the commission and the
79 vehicles that are exempted by this subdivision and are also
80 operated by common carriers by motor vehicle or contract
81 carriers by motor vehicle, and their operators are subject to
82 the insurance rules promulgated by the commission;

83 (11) Motor vehicles designated by the West Virginia
84 Bureau of Senior Services for use and operation by local
85 county aging programs: *Provided*, That the vehicles and
86 their operators are subject to the safety rules promulgated
87 by the commission;

88 (12) Motor vehicles designated by the West Virginia
89 Division of Public Transit operated by organizations that
90 receive federal grants from the Federal Transit
91 Administration: *Provided*, That the vehicles and their
92 operators are subject to the safety and insurance rules
93 promulgated by the commission;

94 (13) Motor vehicles used exclusively in the
95 nonemergency medical transportation of Medicaid
96 members including those under contract with any broker
97 authorized by the Bureau for Medical Services: *Provided*,
98 That these vehicles and their operators shall be subject to
99 the safety rules promulgated by the commission; and

100 (14) Common carriers or contract carriers engaged in
101 the business of transporting household goods and motor
102 vehicles used exclusively in the transportation of household
103 goods.

CHAPTER 211

(H. B. 3022 - By Delegate Shott)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §7-1-16; to amend
said code by adding thereto a new section, designated §8-9-4;
and to amend said code by adding thereto a new section,
designated §30-1-5a, all relating to the reporting of fraud,

misappropriation of moneys, and other violations of law relating to the public trust to the commission on special investigations; requiring reporting when a county commission, or any of a county's boards, committees, or certain other county entities obtain certain information regarding misappropriation, fraud or violations of law relating to the public trust; requiring reporting when a municipality, or any of a municipality's boards, committees, or certain other municipal entities obtain certain information regarding misappropriation, fraud or violations of law relating to the public trust; requiring reporting when certain professional and occupational boards of the state obtain certain information regarding misappropriation, fraud or violations of law relating to the public trust; and clarifying that the reporting requirements do not prevent, relieve or replace a report to law-enforcement where appropriate or warranted.

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 §7-1-16, that said code be amended by adding thereto a new section, designated §8-9-4, and that said code be amended by adding thereto a new section, designated §30-1-5a, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-16. Reporting of fraud and misappropriation of funds.

1 (a) Whenever a county commission, or any of a county's
2 boards, committees, or any other entities of any kind or
3 nature authorized in this chapter, obtains information that an
4 employee, officer or member of the county commission, or
5 any of a county's boards, committees, or any other entities
6 of any kind or nature authorized in this chapter may have
7 misappropriated funds, engaged in fraud, or otherwise
8 violated a law relating to the public trust, the county
9 commission, or the county's board, committee, or other
10 entity authorized in this chapter shall timely report such

11 information or allegation in writing to the county
12 prosecutor's office.

13 (b) The reporting of such information under subsection (a)
14 of this section shall not prevent, relieve or replace a report to a
15 law-enforcement agency, if appropriate or warranted.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 9. PROCEEDINGS OF GOVERNING BODIES.

§8-9-4. Reporting of fraud and misappropriation of funds.

1 (a) Whenever a governing body of a municipality, or
2 any of a municipality's boards, committees, or any other
3 entities of any kind or nature authorized in this chapter,
4 obtains information that an employee, officer or member of
5 municipality, or any of a municipality's boards, committees,
6 or any other entities of any kind or nature authorized in this
7 chapter may have misappropriated funds, engaged in fraud,
8 or otherwise violated a law relating to the public trust,
9 municipality, or any of a municipality's board, committee,
10 or any other entity authorized in this chapter shall timely
11 report such information or allegation in writing to the
12 county prosecutor's office.

13 (b) The reporting of such information under subsection (a)
14 of this section shall not prevent, relieve or replace a report to a
15 law-enforcement agency, if appropriate or warranted.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-5a. Reporting of fraud and misappropriation of funds.

1 (a) Whenever a board referred to in this chapter obtains
2 information that an employee, officer or member of the
3 board may have misappropriated funds, engaged in fraud,
4 or otherwise violated a law relating to the public trust, the

5 board shall timely report such information or allegation in
6 writing to the commission on special investigations,
7 established in article five, chapter four of this code.

8 (b) The reporting of such information under subsection
9 (a) of this section shall not prevent, relieve or replace a
10 report to a law-enforcement agency, if appropriate or
11 warranted.



CHAPTER 212

(Com. Sub. for S. B. 214 - By Senator Trump)

[Passed April 3, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §39-6-1, §39-6-2, §39-6-3, §39-6-4, §39-6-5, §39-6-6, §39-6-7, §39-6-8, §39-6-9, §39-6-10 and §39-6-11, all relating to adopting the Uniform Electronic Legal Material Act; providing a short title; providing applicability to legal materials designated official; designating legal material in official records; providing for authentication of electronic records; addressing effects of authentication, providing for preservation and security of legal material in official electronic record; providing for public access to legal materials in electronic records; creating standards for preservation and authentication; providing uniformity of application and construction; and addressing its effect on the Electronic Signatures in Global and National Commerce 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 §39-6-1,

§39-6-2, §39-6-3, §39-6-4, §39-6-5, §39-6-6, §39-6-7, §39-6-8, §39-6-9, §39-6-10 and §39-6-11, all to read as follows:

ARTICLE 6. UNIFORM ELECTRONIC LEGAL MATERIAL ACT.

§39-6-1. Short title.

1 This article may be cited as the Uniform Electronic
2 Legal Material Act.

§39-6-2. Definitions.

1 In this article:

2 (1) "Electronic" means relating to technology having
3 electrical, digital, magnetic, wireless, optical,
4 electromagnetic or similar capabilities.

5 (2) "Legal material" means, whether or not in effect:

6 (A) The West Virginia Constitution;

7 (B) The Acts of the Legislature;

8 (C) The Code of West Virginia;

9 (D) All rules and other materials filed in the State
10 Register; or

11 (E) The state administrative agency decisions made
12 pursuant to articles four and five, chapter twenty-nine-a of
13 this code.

14 (3) "Official publisher" means:

15 (A) For the Constitution of West Virginia, the State
16 Legislature;

17 (B) For the Acts of the Legislature, the Clerk of the
18 House of Delegates;

19 (C) For the Code of West Virginia, the State
20 Legislature;

21 (D) For a rule published in the State Register, the
22 Secretary of State; or

23 (E) For a state administrative agency decision, that state
24 agency.

25 (4) "Publish" means to display, present or release to the
26 public, or cause to be displayed, presented or released to the
27 public, by the official publisher.

28 (5) "Record" means information that is inscribed on a
29 tangible medium or that is stored in an electronic or other
30 medium and is retrievable in perceivable form.

31 (6) "State" means a state of the United States, the
32 District of Columbia, Puerto Rico, the United States Virgin
33 Islands or any territory or insular possession subject to the
34 jurisdiction of the United States.

§39-6-3. Applicability.

1 This article applies to all legal material in an electronic
2 record that is designated as official under section four of this
3 article and is first published electronically on or after the
4 effective date of this article.

§39-6-4. Legal material in official electronic record.

1 (a) If an official publisher publishes legal material only
2 in an electronic record, the publisher shall:

3 (1) Designate the electronic record as official; and

4 (2) Comply with sections five, seven and eight of this
5 article.

6 (b) An official publisher that publishes legal material in
7 an electronic record and also publishes the material in a
8 record other than an electronic record may designate the

9 electronic record as official if the publisher complies with
10 sections five, seven and eight of this article.

§39-6-5. Authentication of official electronic record.

1 An official publisher of legal material in an electronic
2 record that is designated as official under section four of this
3 article shall authenticate the record. To authenticate an
4 electronic record, the publisher shall provide a method for a
5 user to determine that the record received by the user from
6 the publisher is unaltered from the official record published
7 by the publisher.

§39-6-6. Effect of authentication.

1 (a) Legal material in an electronic record that is
2 authenticated under section five of this article is presumed
3 to be an accurate copy of the legal material.

4 (b) If another state has adopted a law substantially
5 similar to this article, legal material in an electronic record
6 that is designated as official and authenticated by the official
7 publisher in that state is presumed to be an accurate copy of
8 the legal material.

9 (c) A party contesting the authentication of legal
10 material in an electronic record authenticated under section
11 five of this article has the burden of proving by a
12 preponderance of the evidence that the record is not
13 authentic.

§39-6-7. Preservation and security of legal material in official electronic record.

1 (a) An official publisher of legal material in an
2 electronic record that is or was designated as official under
3 section four shall provide for the preservation and security
4 of the record in an electronic form or a form that is not
5 electronic.

6 (b) If legal material is preserved under subsection (a) in
7 an electronic record, the official publisher shall:

8 (1) Ensure the integrity of the record;

9 (2) Provide for backup and disaster recovery of the
10 record; and

11 (3) Ensure the continuing usability of the material.

§39-6-8. Public access to legal material in official electronic record.

1 An official publisher of legal material in an electronic
2 record that is required to be preserved under section seven of
3 this article shall ensure that the material is reasonably available
4 for use by the public on a permanent basis at no cost.

§39-6-9. Standards.

1 In implementing this article, an official publisher of
2 legal material in an electronic record shall consider:

3 (1) Standards and practices of other jurisdictions;

4 (2) The most recent standards regarding authentication
5 of, preservation and security of, and public access to, legal
6 material in an electronic record and other electronic records,
7 as promulgated by national standard-setting bodies;

8 (3) The needs of users of legal material in an electronic
9 record;

10 (4) The views of governmental officials and entities and
11 other interested persons; and

12 (5) To the extent practicable, methods and technologies
13 for the authentication of, preservation and security of, and
14 public access to, legal material which are compatible with
15 the methods and technologies used by other official
16 publishers in this state and in other states that have adopted
17 a law substantially similar to this article.

§39-6-10. Uniformity of application and construction.

1 In applying and construing this uniform act,
2 consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter
4 among states that enact it.

§39-6-11. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits and supersedes the
2 Electronic Signatures in Global and National Commerce
3 Act, 15 U. S. C. Section 7001, *et seq.*, but does not modify,
4 limit or supersede Section 101(c) of that act, 15 U. S. C.
5 Section 7001(c), or authorize electronic delivery of any of
6 the notices described in Section 103(b) of that act, 15 U. S.
7 C. Section 7003(b).

CHAPTER 213

(Com. Sub. for S. B. 602 - By Senator Blair)

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §47-8-2 and §47-8-3 of the Code of West Virginia, 1931, as amended, all relating to registering and indexing of fictitious names used by sole proprietors, individuals, or general partnerships; striking exemptions; and providing that the Secretary of State shall keep a searchable database for all persons filing forms to register and index fictitious names.

Be it enacted by the Legislature of West Virginia:

That §47-8-2 and §47-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. TRADE NAMES.**§47-8-2. Business not to be conducted under assumed name without filing certificate of true name.**

1 No individual, sole proprietorship or general partnership
2 may carry on, conduct or transact any business in this state
3 under any assumed name, or under any designation, name or
4 style, corporate or otherwise, other than the real name or names
5 of the individual or individuals owning, conducting or
6 transacting such business, unless that person or persons shall
7 file with the Secretary of State a form setting forth the name
8 under which such business is, or is to be, conducted or
9 transacted, and the true or real full name or names of the person
10 or persons owning, conducting or transacting the same, with
11 the home and post office address or addresses of such person
12 or persons. Such form shall be executed and duly
13 acknowledged by the person or persons so owning, conducting
14 or intending to conduct such business.

§47-8-3. Indexing of forms filed with Secretary of State.

1 The Secretary of State shall keep a searchable database
2 of all persons filing forms provided for in this article.

CHAPTER 214

**(Com. Sub. for S. B. 402 - By Senators Takubo,
Stollings and Romano)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §47-11E-1, §47-
11E-2, §47-11E-3, §47-11E-4 and §47-11E-5, all relating to
covenants not to compete between physicians and hospitals;

defining terms; setting forth limitation on contractual provisions; providing for enforceability of other contract terms; providing for exemptions; and setting forth an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §47-11E-1, §47-11E-2, §47-11E-3, §47-11E-4 and §47-11E-5, all to read as follows:

ARTICLE 11E. PHYSICIANS FREEDOM OF PRACTICE ACT.

§47-11E-1. Definitions.

1 As used in this article:

2 “Contract” means a written agreement between a
3 physician and an employer.

4 “Covenant not to compete” means any contract that
5 restricts the right of a physician to practice medicine in any
6 geographic area of the state for any period of time following
7 the expiration of the physician’s contract with his or her
8 employer, or upon the termination of the physician’s
9 contract by the physician’s employer.

10 “Employer” means any person employing at least one
11 individual in the state or any agent of an employer
12 employing at least one individual in the state.

13 “Person” means any individual, proprietorship, partnership,
14 firm, association, corporation, labor organization, limited
15 liability corporation or any other legal entity.

16 “Physician” means a doctor of allopathic or osteopathic
17 medicine who is fully licensed to practice medicine and
18 surgery pursuant to the provisions of either article three or
19 fourteen, chapter thirty of this code.

§47-11E-2. Limitation on contractual provisions in physician employment contract.

1 (a) A covenant not to compete contained in a contract
2 between a physician and an employer shall be limited to not
3 more than:

4 (1) One year in duration; and

5 (2) Thirty road miles from the physician's primary place
6 of practice with the employer.

7 (b) A covenant not to compete shall be void and
8 unenforceable upon the termination of the physician's
9 employment by the employer.

§47-11E-3. Enforceability of other provisions.

1 Provided that the contract does not state otherwise,
2 nothing in this article limits the enforceability of:

3 (1) Provisions prohibiting a physician from taking any
4 property, patient lists or records of the employer with him
5 or her upon the termination or expiration of the contract;

6 (2) Provisions requiring a physician to repay an
7 employer all or a portion of:

8 (A) A loan;

9 (B) Relocation expenses;

10 (C) A signing bonus;

11 (D) Remuneration to induce the physician to relocate or
12 establish a physician practice in a specific geographic area; or

13 (E) Recruiting, education and training expenses;

14 (3) A nondisclosure provision relating to confidential
15 information and trade secrets;

16 (4) A nonsolicitation provision with respect to patients
17 and employees of the employer;

18 (5) A provision for liquidated damages; or

19 (6) Any other provision of a contract that is not in
20 violation of law.

§47-11E-4. Exemptions to limitations.

1 The limitations set forth in this article do not apply to any
2 of the following unless the contract terms provide otherwise:

3 (1) In the case where the physician has sold his or her
4 business or practice in the form of a sale of assets, stock,
5 membership interests or otherwise to his or her employer; or

6 (2) To contracts between physicians who are
7 shareholders, owners, partners, members or directors of a
8 health care practice.

§47-11E-5. Applicability.

1 This article applies to any contract between a physician
2 and his or her employer entered into, modified, renewed or
3 extended on or after July 1, 2017: *Provided*, That the
4 provisions of this article do not otherwise apply to or
5 abrogate any contract in effect on or before June 30, 2017.

CHAPTER 215

**(Com. Sub. for H. B. 2961 - By Delegates Nelson and Boggs)
[By Request of the Tax and Revenue Department]**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §47-20-23 and §47-20-31 of the
Code of West Virginia, 1931, as amended; and to amend and

reenact §47-21-21 and §47-21-30 of said code, all relating to creating a process by which parties may appeal certain administrative actions taken by the Tax Commissioner, affecting certain charitable bingo or charitable raffle licensees, to the Office of Tax Appeals.

Be it enacted by the Legislature of West Virginia:

That §47-20-23 and §47-20-31 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §47-21-21 and §47-21-30 of said code be amended and reenacted, all to read as follows:

ARTICLE 20. CHARITABLE BINGO.

§47-20-23. Administration; Rules and Regulations.

1 (a) The Tax Commissioner shall administer the
2 provisions of this article in accordance with the provisions
3 of this article and chapter twenty- nine-a of this code.

4 (b) The commissioner shall deny an application for a
5 license if he finds that the issuance thereof would be in
6 violation of the provisions of this article.

7 (c) The commissioner may revoke, suspend or refuse to
8 renew a license if the licensee or any member of a licensee
9 organization has been convicted pursuant to section
10 eighteen or nineteen of this article and the commissioner
11 finds that it would be in the public interest to do so; or if the
12 licensee has violated any of the provisions of this article:
13 *Provided*, That before revoking or suspending a license
14 issued under the authority of this article, the commissioner
15 shall give at least ten days, three days for a limited occasion
16 or state fair license, notice to the licensee. Notice shall be in
17 writing, shall state the reason for revocation or suspension
18 and shall inform the licensee of its right to petition the
19 Office of Tax Appeals for a hearing at which the licensee
20 may show cause why the license should not be revoked or
21 suspended. Notice shall be sent by certified mail to the
22 address of the licensee or served by certified mail or by

23 personal or substituted service on the person who applied
24 for the license on behalf of the licensee. The licensee may,
25 at the time designated for the hearing, produce evidence in
26 its behalf and be represented by counsel. A decision of the
27 Office of Tax Appeals upholding, in whole or in part, the
28 revoking or suspending of a license is subject to judicial
29 review as provided in section nineteen, article ten-a, chapter
30 eleven of this code.

31 (d) The commissioner may suspend, revoke or refuse to
32 renew any license issued hereunder for a material failure to
33 maintain the records or file the reports required by this
34 article if the commissioner finds that said failure will
35 substantially impair the commissioner's ability to
36 administer the provisions of this article with regard to said
37 licensee.

38 (e) The commissioner shall promulgate reasonable rules
39 and regulations necessary to the administration of this
40 article.

41 (f) The provisions of article five, chapter twenty-nine-a
42 of this code apply to the denial, revocation, suspension of or
43 refusal to renew a license hereunder.

44 (g) The burden of proof in any administrative or court
45 proceeding is on the applicant to show cause why a bingo
46 license should be issued or renewed and on the licensee to
47 show cause why its license should not be revoked or
48 suspended.

49 (h) Notwithstanding any other provision of this article,
50 the commissioner may issue an emergency order
51 suspending a bingo license in the following manner:

52 (1) An emergency order may be issued only when the
53 commissioner believes that:

54 (a) There has been a criminal violation of this article;

55 (b) Such action is necessary to prevent a criminal
56 violation of this article; or

57 (c) Such action is necessary for the immediate
58 preservation of the public peace, health, safety, morals,
59 good order or general welfare.

60 (2) The emergency order shall set forth the grounds
61 upon which it is issued, including a statement of facts
62 constituting the alleged emergency necessitating such
63 action. This order shall be served by personal or substituted
64 service on the licensee or the person who applied for the
65 license on behalf of the licensee.

66 (3) The emergency order is effective immediately upon
67 issuance and service upon the licensee.

68 (4) Within five days after issuance of an emergency
69 order, the licensee may petition the Office of Tax Appeals
70 to set a time and place for a hearing wherein the licensee
71 may appear and show cause why its license should not be
72 revoked.

**§47-20-31. Additional remedies for the commissioner;
administrative procedures; deposit of money penalties.**

1 (a) *Additional remedies.* — Notwithstanding any
2 provision of this article to the contrary, the commissioner
3 may:

4 (1) Revoke or refuse to renew any license issued under
5 this article for any material violation of the provisions of
6 this article or legislative rules of the commissioner
7 promulgated for this article;

8 (2) Suspend the license of any licensee for the period of
9 time the commissioner deems appropriate, not to be less
10 than one week nor more than twelve months, for any
11 material violation of the provisions of this article or
12 legislative rule of the commissioner promulgated for this
13 article;

14 (3) Place a licensee on probation for not less than six
15 months nor more than five years: *Provided*, That in the
16 event a licensee is placed on probation, as a condition of the
17 probation, the licensee shall pay to the commissioner a
18 probation supervision fee in an amount equal to two percent
19 of the gross proceeds derived by the licensee from the
20 conduct of bingo occasions during the period of the
21 suspension, but, in no event, may the probation supervision
22 fee be less than \$2,000. All probation supervision fee
23 revenue shall be placed in a special account and used by the
24 commissioner, after appropriation by the Legislature, to
25 offset the expenses and costs incurred by the Tax Division
26 to supervise the licensee;

27 (4) Require a licensee to replace any officer who knew
28 or should have known of a material violation of the
29 provisions of this article or legislative rules of the
30 commissioner promulgated for this article;

31 (5) Require a licensee to prohibit one or more members,
32 supporters, volunteers or employees of the licensee
33 involved in acts of material violation of the provisions of
34 this article or legislative rules of the commissioner
35 promulgated for this article, from all future bingo occasions
36 held under the license, or for the period of time specified by
37 the commissioner;

38 (6) Impose a civil money penalty in an amount not less
39 than \$100 nor more than two times the annual gross
40 proceeds derived by the licensee, for each material violation
41 of the provisions of this article or legislative rules of the
42 commissioner: *Provided*, That in setting any monetary
43 penalty for a first offense, the commissioner shall take into
44 consideration the ability of the licensee to continue to exist
45 and operate. For each material violation which is a second
46 or subsequent offense, the amount of the civil penalty that
47 may be imposed may not be less than \$500 and may not
48 exceed two times the annual gross proceeds of the licensee.
49 Application of this subdivision and the amount of civil
50 money penalty levied shall be determined in accordance

51 with a legislative rule promulgated by the commissioner
52 pursuant to article three, chapter twenty-nine-a of this code.
53 The commissioner may file this rule as an emergency rule.
54 Any licensee aggrieved by the amount of the civil penalty
55 may surrender its license, or, after exhausting all
56 administrative remedies, have the matter reviewed in the
57 circuit court of the county where the offense giving rise to
58 the civil penalty occurred; or

59 (7) Order any one or more, or any combination, of the
60 penalties provided for in subdivisions (1) through (6) of this
61 subsection: *Provided*, That no sanctions or other remedy
62 shall be imposed under this article on a licensee which is
63 exempt or qualified to be exempt from federal income
64 taxation under subsection 501(c)(3) or 501(c)(4) of the
65 Internal Revenue Code of 1986, as amended, but does not
66 have bona fide members, due to failure to operate bingo
67 occasions with members if the occasions are or were
68 operated by residents of this state who have been employed
69 by the licensee or been meaningfully associated with the
70 licensee for one or more years before the date of the
71 licensee's application for a license under this article, or its
72 last application for renewal of a license under this article.

73 (b) *Administrative procedures.*

74 (1) An order issued under this section shall be served by
75 certified mail or in the manner provided in rule 4(d) of the
76 West Virginia rules of civil procedure for trial courts of
77 record, as amended.

78 (2) A licensee may appeal an order of the commissioner
79 issued under this section by petitioning the Office of Tax
80 Appeals within twenty days after the licensee is served with
81 a copy of the order.

82 (3) When a petition is filed timely, the provisions of
83 article ten-a, chapter eleven of this code shall apply.

84 (4) The burden of proof in any administrative or court
85 proceeding is on the licensee to show cause why the order
86 of the commissioner under this section should be modified,
87 in whole or in part, or set aside.

88 (c) *Deposit of money penalties.* — All fines, money
89 penalties and fees imposed pursuant to this section, except
90 the probation supervision fee imposed by subdivision (3),
91 subsection (a) of this section, shall be deposited into the
92 General Revenue Fund of this state.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-21. Administration; rules and regulations.

1 (a) The commissioner shall promulgate rules and
2 regulations to administer the provisions of this article in
3 accordance with the provisions of chapter twenty-nine-a of
4 this code.

5 (b) The commissioner shall deny an application for a
6 license or modification thereof if he finds that the issuance
7 thereof would be in violation of the provisions of this article.

8 (c) The commissioner may revoke, suspend or refuse to
9 renew a license if the licensee or any member of a licensee
10 organization has been convicted pursuant to section
11 eighteen or nineteen of this article and the commissioner
12 finds that it would be in the public interest to do so; or if the
13 licensee has violated any of the provisions of this article:
14 *Provided,* That before revoking or suspending a license
15 issued under the authority of this article, the commissioner
16 shall give at least ten days, three days for a limited occasion
17 license, notice to the licensee. Notice shall be in writing,
18 state the reason for revocation or suspension and inform the
19 licensee of its right to petition the Office of Tax Appeals for
20 a hearing at which the licensee may show cause why the
21 license should not be revoked or suspended. The notice
22 required by this section shall be by personal or substituted
23 service, in accordance with the West Virginia rules of civil
24 procedure for trial courts of record, on the person who

25 applied for the license on behalf of the licensee. The
26 licensee may, at the time designated for the hearing, present
27 evidence in its behalf and be represented by counsel. A
28 decision of the Office of Tax Appeals upholding in whole
29 or in part the revoking or suspending a license is subject to
30 judicial review as provided in section nineteen, article ten-
31 a, chapter eleven of this code.

32 (d) The commissioner may suspend, revoke or refuse to
33 renew any license issued hereunder for a material failure to
34 maintain the records or file the reports required by this
35 article if the commissioner finds that said failure will
36 substantially impair the commissioner's ability to
37 administer the provisions of this article with regard to such
38 licensee.

39 (e) The commissioner shall promulgate reasonable rules
40 and regulations necessary to the administration of this
41 article.

42 (f) The provisions of article five, chapter twenty-nine-a
43 of this code apply to the denial, revocation, suspension of or
44 refusal to renew a license hereunder.

45 (g) The burden of proof in any administrative or court
46 proceeding is on the applicant to show cause why a raffle
47 license should be issued or renewed and on the licensee to
48 show cause why its license should not be revoked or
49 suspended.

50 (h) Notwithstanding any other provision of this article,
51 the commissioner may issue an emergency order
52 suspending a raffle license under the following
53 circumstances and in the following manner:

54 (1) An emergency order may be issued only when the
55 commissioner believes that:

56 (i) There has been a criminal violation of this article;

57 (ii) Such action is necessary to prevent a criminal
58 violation of this article; or

59 (iii) Such action is necessary for the immediate
60 preservation of the public peace, health, safety, morals,
61 good order or general welfare.

62 (2) The emergency order shall set forth the grounds
63 upon which it is issued, including a statement of facts
64 constituting the alleged emergency necessitating such
65 action. This order shall be served by personal or substituted
66 service on the licensee or the person who applied for the
67 license on behalf of the licensee.

68 (3) The emergency order is effective immediately upon
69 issuance and service upon the licensee.

70 (4) Within five days after issuance of an emergency
71 order, the licensee may petition the Office of Tax Appeals
72 to set a time and place for a hearing wherein the licensee
73 may appear and show cause why its license should not be
74 revoked.

**§47-21-30. Additional remedies for the commissioner;
administrative procedures; deposit of money penalties.**

1 (a) *Additional remedies.* — Notwithstanding any
2 provision of this article to the contrary, the commissioner
3 may:

4 (1) Revoke or refuse to renew any license issued under
5 this article for any material violation of the provisions of
6 this article or legislative rules of the commissioner
7 promulgated for this article;

8 (2) Suspend the license of any licensee for the period of
9 time the commissioner deems appropriate, not to be less
10 than one week nor more than twelve months, for any
11 material violation of the provisions of this article or
12 legislative rule of the commissioner promulgated for this
13 article;

14 (3) Place a licensee on probation for not less than six
15 months nor more than five years: *Provided*, That in the
16 event a licensee is placed on probation, as a condition of the
17 probation, the licensee shall pay to the commissioner a
18 probation supervision fee in an amount equal to two percent
19 of the gross proceeds derived by the licensee from the
20 conduct of raffle occasions during the period of the
21 suspension, but, in no event, may the probation supervision
22 fee be less than \$2,000. All probation supervision fee
23 revenue shall be placed in a special account and used by the
24 commissioner, after appropriation by the Legislature, to
25 offset the expenses and costs incurred by the Tax Division
26 to supervise the licensee;

27 (4) Require a licensee to replace any officer who knew
28 or should have known of a material violation of the
29 provisions of this article or legislative rules of the
30 commissioner promulgated for this article;

31 (5) Require a licensee to prohibit one or more members,
32 supporters, volunteers or employees of the licensee
33 involved in acts of material violation of the provisions of
34 this article or legislative rules of the commissioner
35 promulgated for this article, from all future raffle occasions
36 held under the license, or for the period of time specified by
37 the commissioner;

38 (6) Impose a civil money penalty in an amount not less
39 than \$100 nor more than two times the annual gross
40 proceeds derived by the licensee, for each material violation
41 of the provisions of this article or legislative rules of the
42 commissioner: *Provided*, That in setting any monetary
43 penalty for a first offense, the commissioner shall take into
44 consideration the ability of the licensee to continue to exist
45 and operate. For each material violation which is a second
46 or subsequent offense, the amount of the civil penalty that
47 may be imposed may not be less than \$500 and may not
48 exceed two times the annual gross proceeds of the licensee.
49 Application of this subdivision and the amount of civil
50 money penalty levied shall be determined in accordance

51 with a legislative rule promulgated by the commissioner
52 pursuant to article three, chapter twenty-nine-a of this code.
53 The commissioner may file this rule as an emergency rule.
54 Any licensee aggrieved by the amount of the civil penalty
55 may surrender its license, or, after exhausting all
56 administrative remedies, have the matter reviewed in the
57 circuit court of the county where the offense giving rise to
58 the civil penalty occurred; or

59 (7) Order any one or more, or any combination, of the
60 penalties provided for in subdivisions (1) through (6) of this
61 subsection: *Provided*, That no sanctions or other remedy
62 shall be imposed under this article on a licensee which is
63 exempt or qualified to be exempt from federal income
64 taxation under subsection 501(c)(3) or 501(c)(4) of the
65 Internal Revenue Code of 1986, as amended, but does not
66 have bona fide members, due to failure to operate raffle
67 occasions with members if the occasions are or were
68 operated by residents of this state who have been employed
69 by the licensee or been meaningfully associated with the
70 licensee for one or more years before the date of the
71 licensee's application for a license under this article, or its
72 last application for renewal of a license under this article.

73 (b) *Administrative procedures.*

74 (1) An order issued under this section shall be served by
75 certified mail or in the manner provided in rule 4(d) of the
76 West Virginia rules of civil procedure for trial courts of
77 record, as amended.

78 (2) A licensee may appeal an order of the commissioner
79 issued under this section by petitioning the Office of Tax
80 Appeals within twenty days after the licensee is served with
81 a copy of the order.

82 (3) When a petition is filed timely, the provisions of
83 article ten-a, chapter eleven of this code shall apply.

84 (4) The burden of proof in any administrative or court
85 proceeding is on the licensee to show cause why the order
86 of the commissioner under this section should be modified,
87 in whole or in part, or set aside.

88 (c) *Deposit of money penalties.* — All fines, money
89 penalties and fees imposed pursuant to this section, except
90 the probation supervision fee imposed by subdivision (3),
91 subsection (a) of this section, shall be deposited into the
92 General Revenue Fund of this state.

CHAPTER 216

**(Com. Sub. for H. B. 2586 - By Delegates Walters,
Folk, Anderson, Hamilton, O'Neal, E. Evans and
Pethtel)**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §5-10-27b of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-9b of said code; to amend and reenact §8-22A-11 of said code; to amend and reenact §15-2-45 of said code; to amend and reenact §15-2A-6b of said code; to amend and reenact §16-5V-13 of said code; to amend and reenact §18-7A-28b of said code; to amend and reenact §18-7B-12a of said code; and to amend and reenact §51-9-12b of said code, all relating to required minimum distribution of retirement benefits of plans administered by the Consolidated Public Retirement Board; providing for treatment of benefits in the event of a members death; and bringing code into conformity with federal law.

Be it enacted by the Legislature of West Virginia:

That §5-10-27b of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-9b of said code

be amended and reenacted; that §8-22A-11 of said code be amended and reenacted; that §15-2-45 of said code be amended and reenacted; that §15-2A-6b of said code be amended and reenacted; that §16-5V-13 of said code be amended and reenacted; that §18-7A-28b of said code be amended and reenacted; that §18-7B-12a of said code be amended and reenacted; and that §51-9-12b of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-27b. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this code.
4 This provision applies to plan years beginning after
5 December 31, 1986. Notwithstanding anything in this code
6 to the contrary, the payment of benefits under this article
7 shall be determined and made in accordance with Section
8 401(a)(9) of the Internal Revenue Code and the federal
9 regulations promulgated thereunder as applicable to
10 governmental plans. Any term used in this article has the
11 same meaning as when used in a comparable context in
12 Section 401(a)(9) of the Internal Revenue Code and the
13 federal regulations promulgated thereunder unless a
14 different meaning is clearly required by the context or
15 definition in this article. The following provisions apply to
16 payments of benefits required under this article:

17 (a) The payment of benefits under the retirement system
18 to any member shall be distributed to him or her not later
19 than the required beginning date, or be distributed to him or
20 her commencing not later than the required beginning date,

21 in accordance with regulations prescribed under Section
22 401(a)(9) of the Internal Revenue Code, over the life of the
23 member or over the lives of the member and his or her
24 beneficiary or over a period not extending beyond the life
25 expectancy of the member and his or her beneficiary:
26 *Provided*, That the requirements of this section shall not be
27 construed to grant a right to a form of benefit which is not
28 otherwise available to a particular member under this
29 retirement system. Benefit payments under this section shall
30 not be delayed pending, or contingent upon, receipt of an
31 application for retirement from the member.

32 (b) If a member dies after distribution to him or her has
33 commenced pursuant to this section but before his or her
34 entire interest in the retirement system has been distributed,
35 then the remaining portion of that interest shall be
36 distributed at least as rapidly as under the method of
37 distribution being used at the date of his or her death.

38 (c) If a member dies before distribution to him or her
39 has commenced, then his or her entire interest in the
40 retirement system is to be distributed by December 31 of the
41 calendar year containing the fifth anniversary of the
42 member's death, unless the provisions of subsection (d) of
43 this section apply.

44 (d) If a member dies before distribution to him or her
45 has commenced, and the member's interest is eligible to be
46 paid in the form of a survivor annuity to a designated
47 beneficiary, distributions are to be made over the life of that
48 beneficiary or over a period certain not greater than the life
49 expectancy of that beneficiary, commencing on or before
50 the following:

51 (1) December 31 of the calendar year immediately
52 following the calendar year in which the member died; or

53 (2) If the member's sole designated beneficiary is either
54 the surviving spouse or a former spouse who, as an alternate
55 payee under a Qualified Domestic Relations Order, is

56 receiving one hundred percent of the survivor benefit,
57 distributions are to commence on or before the later of:

58 (A) December 31 of the calendar year in which the
59 member would have attained age seventy and one-half; or

60 (B) December 31 of the calendar year immediately
61 following the calendar year in which the member died.

62 (e) If a member dies before distribution to him or her
63 has commenced and the survivor annuity provisions of
64 subsection (d) of this section are not applicable, any
65 designated beneficiary who is eligible to receive a
66 distribution pursuant to the provisions of subsection (c) of
67 this section may elect to have life expectancy treatment
68 apply to the distribution for purposes of determining
69 whether any portion of the distribution is an eligible rollover
70 distribution: *Provided*, That any such election shall not
71 delay the required distribution of the deceased member's
72 entire interest in the retirement system beyond December 31
73 of the calendar year containing the fifth anniversary of the
74 member's death as required by subsection (c) of this section:
75 *Provided, however*, That the election is timely made in a
76 form acceptable to the board on or before the following:

77 (1) December 31 of the calendar year immediately
78 following the calendar year in which the member died; or

79 (2) If the member's sole designated beneficiary is either
80 the surviving spouse or a former spouse who, as an alternate
81 payee under a Qualified Domestic Relations Order, is
82 receiving one hundred percent of the survivor benefit,
83 election of life expectancy treatment must be made on or
84 before the earlier of (A) or (B) below:

85 (A) The later of: (i) December 31 of the calendar year
86 immediately following the calendar year in which the
87 member died; or (ii) December 31 of the calendar year in
88 which the member would have attained age seventy and
89 one-half; or

90 (B) October 31 of the calendar year containing the fifth
91 anniversary of the member's death.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-9b. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this plan.
4 This section applies to plan years beginning after December
5 31, 1986. Notwithstanding anything in the plan to the
6 contrary, the payment of benefits under this article shall be
7 determined and made in accordance with Section 401(a)(9)
8 of the Internal Revenue Code and the federal regulations
9 promulgated thereunder as applicable to governmental
10 plans. Any term used in this article has the same meaning as
11 when used in a comparable context in Section 401(a)(9) of
12 the Internal Revenue Code and the federal regulations
13 promulgated thereunder unless a different meaning is
14 clearly required by the context or definition in this article.
15 The following provisions apply to payments of benefits
16 required under this article:

17 (a) The payment of benefits under the plan to any
18 member shall be distributed to him or her not later than
19 the required beginning date, or be distributed to him or
20 her commencing not later than the required beginning
21 date, in accordance with regulations prescribed under
22 Section 401(a)(9) of the Internal Revenue Code, over the
23 life of the member or over the lives of the member and
24 his or her beneficiary or over a period not extending
25 beyond the life expectancy of the member and his or her
26 beneficiary: *Provided*, That the requirements of this
27 section shall not be construed to grant a right to a form of
28 benefit which is not otherwise available to a particular
29 member under this retirement system. Benefit payments

30 under this section shall not be delayed pending, or
31 contingent upon, receipt of an application for retirement
32 from the member.

33 (b) If a member dies after distribution to him or her has
34 commenced pursuant to this section but before his or her
35 entire interest in the plan has been distributed, then the
36 remaining portion of that interest shall be distributed at least
37 as rapidly as under the method of distribution being used at
38 the date of his or her death.

39 (c) If a member dies before distribution to him or her
40 has commenced, then his or her entire interest in the
41 retirement system is to be distributed by December 31 of the
42 calendar year containing the fifth anniversary of the
43 member's death, unless the provisions of subsection (d) of
44 this section apply.

45 (d) If a member dies before distribution to him or her
46 has commenced, and the member's interest is eligible to be
47 paid in the form of a survivor annuity to a designated
48 beneficiary, distributions are to be made over the life of that
49 beneficiary or over a period certain not greater than the life
50 expectancy of that beneficiary, commencing on or before
51 the following:

52 (1) December 31 of the calendar year immediately
53 following the calendar year in which the member died; or

54 (2) If the member's sole designated beneficiary is
55 either the surviving spouse or a former spouse who, as an
56 alternate payee under a Qualified Domestic Relations
57 Order, is receiving one hundred percent of the survivor
58 benefit, distributions are to commence on or before the
59 later of:

60 (A) December 31 of the calendar year in which the
61 member would have attained age seventy and one-half; or

62 (B) December 31 of the calendar year immediately
63 following the calendar year in which the member died.

64 (e) If a member dies before distribution to him or her
65 has commenced and the survivor annuity provisions of
66 subsection (d) of this section are not applicable, any
67 designated beneficiary who is eligible to receive a
68 distribution pursuant to the provisions of subsection (c)
69 of this section may elect to have life expectancy treatment
70 apply to the distribution for purposes of determining
71 whether any portion of the distribution is an eligible
72 rollover distribution: *Provided*, That any such election
73 shall not delay the required distribution of the deceased
74 member's entire interest in the retirement system beyond
75 December 31 of the calendar year containing the fifth
76 anniversary of the member's death as required by
77 subsection (c) of this section: *Provided, however*, That
78 the election is timely made in a form acceptable to the
79 board on or before the following:

80 (1) December 31 of the calendar year immediately
81 following the calendar year in which the member died; or

82 (2) If the member's sole designated beneficiary is either
83 the surviving spouse or a former spouse who, as an alternate
84 payee under a Qualified Domestic Relations Order, is
85 receiving one hundred percent of the survivor benefit,
86 election of life expectancy treatment must be made on or
87 before the earlier of (A) or (B) below:

88 (A) The later of: (i) December 31 of the calendar year
89 immediately following the calendar year in which the
90 member died; or (ii) December 31 of the calendar year in
91 which the member would have attained age seventy and
92 one-half; or

93 (B) October 31 of the calendar year containing the fifth
94 anniversary of the member's death.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A - WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-11. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this plan.
4 This section applies to plan years beginning after December
5 31, 1986. Notwithstanding anything in the plan to the
6 contrary, the payment of benefits under this article shall be
7 determined and made in accordance with Section 401(a)(9)
8 of the Internal Revenue Code and the federal regulations
9 promulgated thereunder as applicable to governmental
10 plans. Any term used in this article has the same meaning as
11 when used in a comparable context in Section 401(a)(9) of
12 the Internal Revenue Code and the federal regulations
13 promulgated thereunder unless a different meaning is
14 clearly required by the context or definition in this article.
15 The following provisions apply to payments of benefits
16 required under this article:

17 (a) The payment of benefits under the plan to any
18 member shall be distributed to him or her not later than the
19 required beginning date, or be distributed to him or her
20 commencing not later than the required beginning date, in
21 accordance with regulations prescribed under Section
22 401(a)(9) of the Internal Revenue Code, over the life of the
23 member or over the lives of the member and his or her
24 beneficiary or over a period not extending beyond the life
25 expectancy of the member and his or her beneficiary:
26 *Provided*, That the requirements of this section shall not be
27 construed to grant a right to a form of benefit which is not
28 otherwise available to a particular member under this
29 retirement system. Benefit payments under this section shall
30 not be delayed pending, or contingent on, receipt of an
31 application for retirement from the member.

32 (b) If a member dies after distribution to him or her has
33 commenced pursuant to this section but before his or her
34 entire interest in the plan has been distributed, then the
35 remaining portion of that interest shall be distributed at least
36 as rapidly as under the method of distribution being used at
37 the date of his or her death.

38 (c) If a member dies before distribution to him or her
39 has commenced, then his or her entire interest in the plan is
40 to be distributed by December 31 of the calendar year
41 containing the fifth anniversary of the member's death,
42 unless the provisions of subsection (d) of this section apply.

43 (d) If a member dies before distribution to him or her
44 has commenced, and the member's interest is eligible to be
45 paid in the form of a survivor annuity to a designated
46 beneficiary, distributions are to be made over the life of that
47 beneficiary or over a period certain not greater than the life
48 expectancy of that beneficiary, commencing on or before
49 the following:

50 (1) December 31 of the calendar year immediately
51 following the calendar year in which the member died; or

52 (2) If the member's sole designated beneficiary is either
53 the surviving spouse or a former spouse who, as an alternate
54 payee under a Qualified Domestic Relations Order, is
55 receiving one hundred percent of the survivor benefit,
56 distributions are to commence on or before the later of:

57 (A) December 31 of the calendar year in which the
58 member would have attained age seventy and one-half; or

59 (B) December 31 of the calendar year immediately
60 following the calendar year in which the member died.

61 (e) If a member dies before distribution to him or her
62 has commenced and the survivor annuity provisions of
63 subsection (d) of this section are not applicable, any
64 designated beneficiary who is eligible to receive a

65 distribution pursuant to the provisions of subsection (c) of
66 this section may elect to have life expectancy treatment
67 apply to the distribution for purposes of determining
68 whether any portion of the distribution is an eligible rollover
69 distribution: *Provided*, That any such election shall not
70 delay the required distribution of the deceased member's
71 entire interest in the retirement system beyond December 31
72 of the calendar year containing the fifth anniversary of the
73 member's death as required by subsection (c) of this section:
74 *Provided, however*, That the election is timely made in a
75 form acceptable to the board on or before the following:

76 (1) December 31 of the calendar year immediately
77 following the calendar year in which the member died; or

78 (2) If the member's sole designated beneficiary is either
79 the surviving spouse or a former spouse who, as an alternate
80 payee under a Qualified Domestic Relations Order, is
81 receiving one hundred percent of the survivor benefit,
82 election of life expectancy treatment must be made on or
83 before the earlier of (A) or (B) below:

84 (A) The later of: (i) December 31 of the calendar year
85 immediately following the calendar year in which the
86 member died; or (ii) December 31 of the calendar year in
87 which the member would have attained age seventy and
88 one-half; or

89 (B) October 31 of the calendar year containing the fifth
90 anniversary of the member's death.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-45. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this code.

4 This section applies to plan years beginning after December
5 31, 1986. Notwithstanding anything in the retirement
6 system to the contrary, the payment of benefits under this
7 article shall be determined and made in accordance with
8 Section 401(a)(9) of the Internal Revenue Code and the
9 federal regulations promulgated thereunder as applicable to
10 governmental plans. Any term used in this article has the
11 same meaning as when used in a comparable context in
12 Section 401(a)(9) of the Internal Revenue Code and the
13 federal regulations promulgated thereunder unless a
14 different meaning is clearly required by the context or
15 definition in this article. The following provisions apply to
16 payments of benefits required under this article:

17 (a) The payment of benefits under the fund to any
18 member shall be distributed to him or her not later than the
19 required beginning date, or be distributed to him or her
20 commencing not later than the required beginning date, in
21 accordance with regulations prescribed under Section
22 401(a)(9) of the Internal Revenue Code, over the life of the
23 member or over the lives of the member and his or her
24 beneficiary, or over a period not extending beyond the life
25 expectancy of the member and his or her beneficiary:
26 *Provided*, That the requirements of this section may not be
27 construed to grant a right to a form of benefit which is not
28 otherwise available to a particular member under this
29 retirement system. For purposes of this section, the term
30 “required beginning date” means April 1 of the calendar
31 year following the later of: (i) The calendar year in which
32 the member attains age seventy and one-half; or (ii) the
33 calendar year in which the member retires or otherwise
34 ceases providing covered service under this fund. Benefit
35 payments under this section shall not be delayed pending,
36 or contingent upon, receipt of an application for retirement
37 from the member.

38 (b) If a member dies after distribution to him or her has
39 commenced pursuant to this section but before his or her
40 entire interest in the retirement system has been distributed,
41 then the remaining portion of that interest shall be

42 distributed at least as rapidly as under the method of
43 distribution being used at the date of his or her death.

44 (c) If a member dies before distribution to him or her
45 has commenced, then his or her entire interest in the fund is
46 to be distributed by December 31 of the calendar year
47 containing the fifth anniversary of the member's death,
48 unless the provisions of subsection (d) of this section apply.

49 (d) If a member dies before distribution to him or her
50 has commenced, and the member's interest is eligible to be
51 paid in the form of a survivor annuity to a designated
52 beneficiary, distributions are to be made over the life of that
53 beneficiary or over a period certain not greater than the life
54 expectancy of that beneficiary, commencing on or before
55 the following:

56 (1) December 31 of the calendar year immediately
57 following the calendar year in which the member died; or

58 (2) If the member's sole designated beneficiary is either
59 the surviving spouse or a former spouse who, as an alternate
60 payee under a Qualified Domestic Relations Order, is
61 receiving one hundred percent of the survivor benefit,
62 distributions are to commence on or before the later of:

63 (A) December 31 of the calendar year in which the
64 member would have attained age seventy and one-half; or

65 (B) December 31 of the calendar year immediately
66 following the calendar year in which the member died.

67 (e) If a member dies before distribution to him or her
68 has commenced and the survivor annuity provisions of
69 subsection (d) of this section are not applicable, any
70 designated beneficiary who is eligible to receive a
71 distribution pursuant to the provisions of subsection (c) of
72 this section may elect to have life expectancy treatment
73 apply to the distribution for purposes of determining
74 whether any portion of the distribution is an eligible rollover
75 distribution: *Provided*, That any such election shall not

76 delay the required distribution of the deceased member's
77 entire interest in the retirement system beyond December 31
78 of the calendar year containing the fifth anniversary of the
79 member's death as required by subsection (c) of this section:
80 *Provided, however,* That the election is timely made in a
81 form acceptable to the board on or before the following:

82 (1) December 31 of the calendar year immediately
83 following the calendar year in which the member died; or

84 (2) If the member's sole designated beneficiary is either
85 the surviving spouse or a former spouse who, as an alternate
86 payee under a Qualified Domestic Relations Order, is
87 receiving one hundred percent of the survivor benefit,
88 election of life expectancy treatment must be made on or
89 before the earlier of (A) or (B) below:

90 (A) The later of: (i) December 31 of the calendar year
91 immediately following the calendar year in which the
92 member died; or (ii) December 31 of the calendar year in
93 which the member would have attained age seventy and
94 one-half; or

95 (B) October 31 of the calendar year containing the fifth
96 anniversary of the member's death.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-6b. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's interest and take precedence over
3 any inconsistent provisions of this retirement system. This
4 section applies to plan years beginning after December 31,
5 1986. Notwithstanding anything in the retirement system to
6 the contrary, the payment of benefits under this article shall
7 be determined and made in accordance with Section
8 401(a)(9) of the Internal Revenue Code and the federal
9 regulations promulgated thereunder as applicable to
10 governmental plans. Any term used in this article has the

11 same meaning as when used in a comparable context in
12 Section 401(a)(9) of the Internal Revenue Code and the
13 federal regulations promulgated thereunder unless a
14 different meaning is clearly required by the context or
15 definition in this article. The following provisions apply to
16 payments of benefits required under this article:

17 (a) The payment of benefits under the retirement system
18 to any member shall be distributed to him or her not later
19 than the required beginning date, or be distributed to him or
20 her commencing not later than the required beginning date,
21 in accordance with regulations prescribed under Section
22 401(a)(9) of the Internal Revenue Code, over the life of the
23 member or over the lives of the member and his or her
24 beneficiary or over a period not extending beyond the life
25 expectancy of the member and his or her beneficiary:
26 *Provided*, That the requirements of this section may not be
27 construed to grant a right to a form of benefit which is not
28 otherwise available to a particular member under this
29 retirement system. Benefit payments under this section shall
30 not be delayed pending, or contingent upon, receipt of an
31 application for retirement from the member.

32 (b) If a member dies after distribution to him or her has
33 commenced pursuant to this section but before his or her
34 entire interest in the retirement system has been distributed,
35 then the remaining portion of that interest shall be
36 distributed at least as rapidly as under the method of
37 distribution being used at the date of his or her death.

38 (c) If a member dies before distribution to him or her
39 has commenced, then his or her entire interest in the
40 retirement system is to be distributed by December 31 of the
41 calendar year containing the fifth anniversary of the
42 member's death, unless the provisions of subsection (d) of
43 this section apply.

44 (d) If a member dies before distribution to him or her
45 has commenced, and the member's interest is eligible to be
46 paid in the form of a survivor annuity to a designated

47 beneficiary, distributions are to be made over the life of that
48 beneficiary or over a period certain not greater than the life
49 expectancy of that beneficiary, commencing on or before
50 the following:

51 (1) December 31 of the calendar year immediately
52 following the calendar year in which the member died; or

53 (2) If the member's sole designated beneficiary is either
54 the surviving spouse or a former spouse who, as an alternate
55 payee under a Qualified Domestic Relations Order, is
56 receiving one hundred percent of the survivor benefit,
57 distributions are to commence on or before the later of:

58 (A) December 31 of the calendar year in which the
59 member would have attained age seventy and one-half; or

60 (B) December 31 of the calendar year immediately
61 following the calendar year in which the member died.

62 (e) If a member dies before distribution to him or her
63 has commenced and the survivor annuity provisions of
64 subsection (d) of this section are not applicable, any
65 designated beneficiary who is eligible to receive a
66 distribution pursuant to the provisions of subsection (c) of
67 this section may elect to have life expectancy treatment
68 apply to the distribution for purposes of determining
69 whether any portion of the distribution is an eligible rollover
70 distribution: *Provided*, That any such election shall not
71 delay the required distribution of the deceased member's
72 entire interest in the retirement system beyond December 31
73 of the calendar year containing the fifth anniversary of the
74 member's death as required by subsection (c) of this section:
75 *Provided, however*, That the election is timely made in a
76 form acceptable to the board on or before the following:

77 (1) December 31 of the calendar year immediately
78 following the calendar year in which the member died; or

79 (2) If the member's sole designated beneficiary is either
80 the surviving spouse or a former spouse who, as an alternate

81 payee under a Qualified Domestic Relations Order, is
82 receiving one hundred percent of the survivor benefit,
83 election of life expectancy treatment must be made on or
84 before the earlier of (A) or (B) below:

85 (A) The later of: (i) December 31 of the calendar year
86 immediately following the calendar year in which the
87 member died; or (ii) December 31 of the calendar year in
88 which the member would have attained age seventy and
89 one-half; or

90 (B) October 31 of the calendar year containing the fifth
91 anniversary of the member's death.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-13. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this plan.
4 This section applies to plan years beginning after December
5 31, 1986. Notwithstanding anything in the plan to the
6 contrary, the payment of benefits under this article shall be
7 determined and made in accordance with Section 401(a)(9)
8 of the Internal Revenue Code and federal regulations
9 promulgated thereunder as applicable to governmental
10 plans. Any term used in this article has the same meaning as
11 when used in a comparable context in Section 401(a)(9) of
12 the Internal Revenue Code and the federal regulations
13 promulgated thereunder unless a different meaning is
14 clearly required by the context or definition in this article.
15 The following provisions apply to payments of benefits
16 required under this article:

17 (a) The payment of benefits under the plan to any
18 member shall be distributed to him or her not later than the
19 required beginning date, or be distributed to him or her

20 commencing not later than the required beginning date, in
21 accordance with regulations prescribed under Section
22 401(a)(9) of the Internal Revenue Code, over the life of the
23 member or over the lives of the member and his or her
24 beneficiary or over a period not extending beyond the life
25 expectancy of the member and his or her beneficiary:
26 *Provided*, That the requirements of this section may not be
27 construed to grant a right to a form of benefit which is not
28 otherwise available to a particular member under this
29 retirement system. Benefit payments under this section shall
30 not be delayed pending, or contingent upon, receipt of an
31 application for retirement from the member.

32 (b) If a member dies after distribution to him or her has
33 commenced pursuant to this section but before his or her
34 entire interest in the plan has been distributed, then the
35 remaining portion of that interest shall be distributed at least
36 as rapidly as under the method of distribution being used at
37 the date of his or her death.

38 (c) If a member dies before distribution to him or her
39 has commenced, then his or her entire interest in the plan is
40 to be distributed by December 31 of the calendar year
41 containing the fifth anniversary of the member's death,
42 unless the provisions of subsection (d) of this section apply.

43 (d) If a member dies before distribution to him or her
44 has commenced, and the member's interest is eligible to be
45 paid in the form of a survivor annuity to a designated
46 beneficiary, distributions are to be made over the life of that
47 beneficiary or over a period certain not greater than the life
48 expectancy of that beneficiary, commencing on or before
49 the following:

50 (1) December 31 of the calendar year immediately
51 following the calendar year in which the member died; or

52 (2) If the member's sole designated beneficiary is either
53 the surviving spouse or a former spouse who, as an alternate
54 payee under a Qualified Domestic Relations Order, is

55 receiving one hundred percent of the survivor benefit,
56 distributions are to commence on or before the later of:

57 (A) December 31 of the calendar year in which the
58 member would have attained age seventy and one-half; or

59 (B) December 31 of the calendar year immediately
60 following the calendar year in which the member died.

61 (e) If a member dies before distribution to him or her
62 has commenced and the survivor annuity provisions of
63 subsection (d) of this section are not applicable, any
64 designated beneficiary who is eligible to receive a
65 distribution pursuant to the provisions of subsection (c) of
66 this section may elect to have life expectancy treatment
67 apply to the distribution for purposes of determining
68 whether any portion of the distribution is an eligible rollover
69 distribution: *Provided*, That any such election shall not
70 delay the required distribution of the deceased member's
71 entire interest in the retirement system beyond December 31
72 of the calendar year containing the fifth anniversary of the
73 member's death as required by subsection (c) of this section:
74 *Provided, however*, That the election is timely made in a
75 form acceptable to the board on or before the following:

76 (1) December 31 of the calendar year immediately
77 following the calendar year in which the member died; or

78 (2) If the member's sole designated beneficiary is either
79 the surviving spouse or a former spouse who, as an alternate
80 payee under a Qualified Domestic Relations Order, is
81 receiving one hundred percent of the survivor benefit,
82 election of life expectancy treatment must be made on or
83 before the earlier of (A) or (B) below:

84 (A) The later of: (i) December 31 of the calendar year
85 immediately following the calendar year in which the
86 member died; or (ii) December 31 of the calendar year in
87 which the member would have attained age seventy and
88 one-half; or

89 (B) October 31 of the calendar year containing the fifth
90 anniversary of the member's death.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-28b. Federal law minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this
4 retirement system. This section applies to plan years
5 beginning after December 31, 1986. Notwithstanding
6 anything in the retirement system to the contrary, the
7 payment of benefits under this article shall be determined
8 and made in accordance with Section 401(a)(9) of the
9 Internal Revenue Code and the regulations promulgated
10 thereunder as applicable to governmental plans. Any term
11 used in this article has the same meaning as when used in a
12 comparable context in Section 401(a)(9) of the Internal
13 Revenue Code and the federal regulations promulgated
14 thereunder unless a different meaning is clearly required by
15 the context or definition in this article. The following
16 provisions apply to payments of benefits required under this
17 article:

18 (a) The payment of benefits under the retirement system
19 to any member shall be distributed to him or her not later
20 than the required beginning date, or be distributed to him or
21 her commencing not later than the required beginning date,
22 in accordance with regulations prescribed under Section
23 401(a)(9) of the Internal Revenue Code, over the life of the
24 member or over the lives of the member and his or her
25 beneficiary or over a period not extending beyond the life
26 expectancy of the member and his or her beneficiary:
27 *Provided*, That the requirements of this section may not be
28 construed to grant a right to a form of benefit which is not
29 otherwise available to a particular member under this
30 retirement system. Benefit payments under this section shall

31 not be delayed pending, or contingent upon, receipt of an
32 application for retirement from the member.

33 (b) If a member dies after distribution to him or her has
34 commenced pursuant to this section but before his or her
35 entire interest in the retirement system has been distributed,
36 then the remaining portion of that interest shall be
37 distributed at least as rapidly as under the method of
38 distribution being used at the date of his or her death.

39 (c) If a member dies before distribution to him or her
40 has commenced, then his or her entire interest in the
41 retirement system is to be distributed by December 31 of the
42 calendar year containing the fifth anniversary of the
43 member's death, unless the provisions of subsection (d) of
44 this section apply.

45 (d) If a member dies before distribution to him or her
46 has commenced, and the member's interest is eligible to be
47 paid in the form of a survivor annuity to a designated
48 beneficiary, distributions are to be made over the life of that
49 beneficiary or over a period certain not greater than the life
50 expectancy of that beneficiary, commencing on or before
51 the following:

52 (1) December 31 of the calendar year immediately
53 following the calendar year in which the member died; or

54 (2) If the member's sole designated beneficiary is either
55 the surviving spouse or a former spouse who, as an alternate
56 payee under a Qualified Domestic Relations Order, is
57 receiving one hundred percent of the survivor benefit,
58 distributions are to commence on or before the later of:

59 (A) December 31 of the calendar year in which the
60 member would have attained age seventy and one-half; or

61 (B) December 31 of the calendar year immediately
62 following the calendar year in which the member died.

63 (e) If a member dies before distribution to him or her
64 has commenced and the survivor annuity provisions of
65 subsection (d) of this section are not applicable, any
66 designated beneficiary who is eligible to receive a
67 distribution pursuant to the provisions of subsection (c) of
68 this section may elect to have life expectancy treatment
69 apply to the distribution for purposes of determining
70 whether any portion of the distribution is an eligible rollover
71 distribution: *Provided*, That any such election shall not
72 delay the required distribution of the deceased member's
73 entire interest in the retirement system beyond December 31
74 of the calendar year containing the fifth anniversary of the
75 member's death as required by subsection (c) of this section:
76 *Provided, however*, That the election is timely made in a
77 form acceptable to the board on or before the following:

78 (1) December 31 of the calendar year immediately
79 following the calendar year in which the member died; or

80 (2) If the member's sole designated beneficiary is either
81 the surviving spouse or a former spouse who, as an alternate
82 payee under a Qualified Domestic Relations Order, is
83 receiving one hundred percent of the survivor benefit,
84 election of life expectancy treatment must be made on or
85 before the earlier of (A) or (B) below:

86 (A) The later of: (i) December 31 of the calendar year
87 immediately following the calendar year in which the
88 member died; or (ii) December 31 of the calendar year in
89 which the member would have attained age seventy and
90 one-half; or

91 (B) October 31 of the calendar year containing the fifth
92 anniversary of the member's death.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-12a. Federal minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiary's interest and take
3 precedence over any inconsistent provisions of this defined
4 contribution system. This section applies to plan years
5 beginning after December 31, 1986. Notwithstanding
6 anything in this system to the contrary, the payment of
7 benefits under this article shall be determined and made in
8 accordance with Section 401(a)(9) of the Internal Revenue
9 Code and the federal regulations promulgated thereunder as
10 applicable to governmental plans, including without
11 limitation the incidental death benefit provisions of Section
12 401(a)(9)(G) of the Internal Revenue Code and the
13 regulations thereunder. Any term used in this article has the
14 same meaning as when used in a comparable context in
15 Section 401(a)(9) of the Internal Revenue Code and the
16 federal regulations promulgated thereunder unless a
17 different meaning is clearly required by the context or
18 definition in this article. The following provisions apply to
19 payments of benefits required under this article:

20 (a) The payment of benefits under the defined
21 contribution system to any member shall be distributed to
22 him or her not later than the required beginning date, or be
23 distributed to him or her commencing not later than the
24 required beginning date, in accordance with regulations
25 prescribed under Section 401(a)(9) of the Internal Revenue
26 Code, over the life of the member or over the lives of the
27 member and his or her beneficiary or over a period not
28 extending beyond the life expectancy of the member and his
29 or her beneficiary: *Provided*, That the requirements of this
30 section may not be construed to grant a right to a form of
31 benefit which are not otherwise available to a particular
32 member under this retirement system. Benefit payments
33 under this section shall not be delayed pending, or
34 contingent upon, receipt of an application for retirement
35 from the member.

36 (b) If a member dies after distribution to him or her has
37 commenced pursuant to this section but before his or her
38 entire interest in the system has been distributed, then the

39 remaining portion of that interest shall be distributed at least
40 as rapidly as under the method of distribution being used at
41 the date of his or her death.

42 (c) If a member dies before distribution to him or her
43 has commenced, then his or her entire interest in the
44 retirement system is to be distributed by December 31 of the
45 calendar year containing the fifth anniversary of the
46 member's death, unless the provisions of subsection (d) of
47 this section apply.

48 (d) If a member dies before distribution to him or her
49 has commenced, and the member's interest is eligible to be
50 paid in the form of a survivor annuity to a designated
51 beneficiary, distributions are to be made over the life of that
52 beneficiary or over a period certain not greater than the life
53 expectancy of that beneficiary, commencing on or before
54 the following:

55 (1) December 31 of the calendar year immediately
56 following the calendar year in which the member died; or

57 (2) If the member's sole designated beneficiary is either
58 the surviving spouse or a former spouse who, as an alternate
59 payee under a Qualified Domestic Relations Order, is
60 receiving one hundred percent of the survivor benefit,
61 distributions are to commence on or before the later of:

62 (A) December 31 of the calendar year in which the
63 member would have attained age seventy and one-half; or

64 (B) December 31 of the calendar year immediately
65 following the calendar year in which the member died.

66 (e) If a member dies before distribution to him or her
67 has commenced and the survivor annuity provisions of
68 subsection (d) of this section are not applicable, any
69 designated beneficiary who is eligible to receive a
70 distribution pursuant to the provisions of subsection (c) of
71 this section may elect to have life expectancy treatment
72 apply to the distribution for purposes of determining

73 whether any portion of the distribution is an eligible rollover
74 distribution: *Provided*, That any such election shall not
75 delay the required distribution of the deceased member's
76 entire interest in the retirement system beyond December 31
77 of the calendar year containing the fifth anniversary of the
78 member's death as required by subsection (c) of this section:
79 *Provided, however*, That the election is timely made in a
80 form acceptable to the board on or before the following:

81 (1) December 31 of the calendar year immediately
82 following the calendar year in which the member died; or

83 (2) If the member's sole designated beneficiary is either
84 the surviving spouse or a former spouse who, as an alternate
85 payee under a Qualified Domestic Relations Order, is
86 receiving one hundred percent of the survivor benefit,
87 election of life expectancy treatment must be made on or
88 before the earlier of (A) or (B) below:

89 (A) The later of: (i) December 31 of the calendar year
90 immediately following the calendar year in which the
91 member died; or (ii) December 31 of the calendar year in
92 which the member would have attained age seventy and
93 one-half; or

94 (B) October 31 of the calendar year containing the fifth
95 anniversary of the member's death.

96 (f) For purposes of this section, any amount paid to a
97 child of a member will be treated as if it had been paid to
98 the surviving spouse of the member if the remaining amount
99 becomes payable to the surviving spouse when the child
100 reaches the age of majority.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-12b. Federal minimum required distributions.

1 The requirements of this section apply to any
2 distribution of a member's or beneficiaries' interest and take
3 precedence over any inconsistent provisions of this
4 retirement system. This section applies to plan years
5 beginning after December 31, 1986. Notwithstanding
6 anything in the retirement system to the contrary, the
7 payment of benefits under this article shall be determined
8 and made in accordance with Section 401(a)(9) of the
9 Internal Revenue Code and the federal regulations
10 promulgated thereunder as applicable to governmental
11 plans. Any term used in this article has the same meaning as
12 when used in a comparable context in Section 401(a)(9) of
13 the Internal Revenue Code and the federal regulations
14 promulgated thereunder unless a different meaning is
15 clearly required by the context or definition in this article.
16 The following provisions apply to payments of benefits
17 required under this article:

18 (a) The payment of benefits under the retirement system
19 to any member shall be distributed to him or her not later
20 than the required beginning date, or be distributed to him or
21 her commencing not later than the required beginning date,
22 in accordance with regulations prescribed under Section
23 401(a)(9) of the Internal Revenue Code, over the life of the
24 member or over the lives of the member and his or her
25 beneficiary or over a period not extending beyond the life
26 expectancy of the member and his or her beneficiary:
27 *Provided*, That the requirements of this section may not be
28 construed to grant a right to a form of benefit which is not
29 otherwise available to a particular member under this
30 retirement system. Benefit payments under this section shall
31 not be delayed pending, or contingent upon, receipt of an
32 application for retirement from the member.

33 (b) If a member dies after distribution to him or her has
34 commenced pursuant to this section but before his or her entire
35 interest in the retirement system has been distributed, then the
36 remaining portion of that interest shall be distributed at least as
37 rapidly as under the method of distribution being used at the
38 date of his or her death.

39 (c) If a member dies before distribution to him or her has
40 commenced, then his or her entire interest in the retirement
41 system is to be distributed by December 31 of the calendar year
42 containing the fifth anniversary of the member's death, unless
43 the provisions of subsection (d) of this section apply.

44 (d) If a member dies before distribution to him or her has
45 commenced, and the member's interest is eligible to be paid in
46 the form of a survivor annuity to a designated beneficiary,
47 distributions are to be made over the life of that beneficiary or
48 over a period certain not greater than the life expectancy of that
49 beneficiary, commencing on or before the following:

50 (1) December 31 of the calendar year immediately
51 following the calendar year in which the member died; or

52 (2) If the member's sole designated beneficiary is either
53 the surviving spouse or a former spouse who, as an alternate
54 payee under a Qualified Domestic Relations Order, is
55 receiving one hundred percent of the survivor benefit,
56 distributions are to commence on or before the later of:

57 (A) December 31 of the calendar year in which the
58 member would have attained age seventy and one-half; or

59 (B) December 31 of the calendar year immediately
60 following the calendar year in which the member died.

61 (e) If a member dies before distribution to him or her has
62 commenced and the survivor annuity provisions of subsection
63 (d) of this section are not applicable, any designated
64 beneficiary who is eligible to receive a distribution pursuant to
65 the provisions of subsection (c) of this section may elect to
66 have life expectancy treatment apply to the distribution for
67 purposes of determining whether any portion of the
68 distribution is an eligible rollover distribution: *Provided*, That
69 any such election shall not delay the required distribution of
70 the deceased member's entire interest in the retirement system
71 beyond December 31 of the calendar year containing the fifth
72 anniversary of the member's death as required by subsection

73 (c) of this section: *Provided, however,* That the election is
74 timely made in a form acceptable to the board on or before the
75 following:

76 (1) December 31 of the calendar year immediately
77 following the calendar year in which the member died; or

78 (2) If the member's sole designated beneficiary is either
79 the surviving spouse or a former spouse who, as an alternate
80 payee under a Qualified Domestic Relations Order, is
81 receiving one hundred percent of the survivor benefit, election
82 of life expectancy treatment must be made on or before the
83 earlier of (A) or (B) below:

84 (A) The later of: (i) December 31 of the calendar year
85 immediately following the calendar year in which the member
86 died; or (ii) December 31 of the calendar year in which the
87 member would have attained age seventy and one-half; or

88 (B) October 31 of the calendar year containing the fifth
89 anniversary of the member's death.

CHAPTER 217

(S. B. 321 - By Senator Gaunch)

[Passed April 5, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-12, relating to employee information reported to the Consolidated Public Retirement Board; requiring employers to report all individuals employed; and specifying required minimum reporting requirements.

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 §5-10D-12, to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-12. Employer reporting requirements.

1 Pursuant to its responsibility as a regulatory body, the
2 Consolidated Public Retirement Board shall collect all
3 information regarding individuals employed with a
4 participating public employer of a retirement system
5 administered pursuant to this article necessary to ensure
6 compliance with retirement plan provisions. All
7 participating public employers of a public retirement system
8 administered pursuant to this article shall promptly report
9 all individuals employed with the participating public
10 employer to the board and include information regarding the
11 individual including, but not limited to, the individual's
12 name, social security number, gross salary or compensation,
13 rate of pay, hours or days worked or paid, type of pay
14 (salary, hourly or per diem), employment contract period,
15 job title, permanent or temporary employment, full-time or
16 part-time employment, scheduled hours and benefit
17 eligibility.

CHAPTER 218

**(Com. Sub. for H. B. 2722 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §17-2D-2 of the Code of West Virginia, 1931, as amended, relating to highway construction using the design-build program; changing maximum amounts that may be expended for projects using the design-build program for highway construction and making certain exceptions to expenditure limits.

Be it enacted by the Legislature of West Virginia:

That §17-2D-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2D. HIGHWAY DESIGN-BUILD PILOT PROGRAM.

§17-2D-2. Highway Design-Build Program.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the Commissioner of the West Virginia Division
3 of Highways may expedite the construction of projects by
4 combining the design and construction elements of a
5 highway or bridge project into a single contract as provided
6 in this article.

7 (b) The Division of Highways may expend no more
8 than \$50 million in each year in the program: *Provided,*
9 That if any of the \$50 million is unused in one year, the

10 remaining amount may be applied to the following year's
11 amount: *Provided, however,* That the total aggregate
12 amount to be expended may not exceed \$150 million in
13 any one year: *Provided further,* That for fiscal years
14 beginning after June 30, 2017, the Division of Highways
15 may expend no more than \$200 million on any one
16 project: *And provided further,* That for fiscal years
17 beginning after June 30, 2017, the Division of Highways
18 may expend no more than \$400 million in each year in
19 the program: *And provided further,* That for fiscal years
20 beginning after June 30, 2017, if any of the \$400 million
21 is unused in any year, the remaining amount may be
22 applied to the following year's amount: *And provided*
23 *further,* That for fiscal years beginning after June 30,
24 2017, the total aggregate amount to be expended may not
25 exceed \$500 million in any one year: *And provided*
26 *further,* That expenditures made for projects that are
27 necessitated by a declared state of emergency within a
28 county that the Governor has included in a declaration of
29 emergency are not to be included against the expenditure
30 limits provided in this subsection.

31 (c) A design-build project may be let to contract only in
32 accordance with the commissioner's established policies
33 and procedures concerning design-build projects.

34 (d) Projects receiving funding above the amount of
35 federal core funding as appropriated to the state by formula
36 in a federal highway authorization, currently titled MAP-21,
37 may utilize the program, but shall not be included in
38 expenditure limits provided by subsection (b) of this
39 section.

CHAPTER 219**(H. B. 2878 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed April 1, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 10, 2017.]

AN ACT to amend and reenact §17-17A-1 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of authorized Federal Grant Anticipation Notes the Division of Highways may apply for from \$200 million to \$500 million.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 17A. CONSTRUCTION FINANCING FOR
SURFACE TRANSPORTATION IMPROVEMENTS.****§17-17A-1. Purpose and scope.**

1 This article is intended to facilitate the acquisition of
2 right-of-way for, the construction of, the reconstruction of
3 and the improvement or repair of any interstate or other
4 highway, secondary road, bridge and toll road to be funded
5 wholly or in part by amounts to be made available pursuant
6 to the Federal Surface Transportation Assistance Act of one
7 thousand nine hundred eighty-two, or from amounts to be
8 made available pursuant to any other federal legislation, or
9 from amounts specifically appropriated or dedicated
10 therefor by the state, or from amounts which may be
11 properly expended from the State Road Fund under article
12 three, chapter seventeen of this code. This article authorizes
13 notes, in an aggregate amount of outstanding notes not to

14 exceed \$500 million, to be issued to provide financing for
15 such projects in anticipation of reimbursement from such
16 sources, but such notes will be special obligations of the
17 state only, and will not be general obligations of the state or
18 secured by any claim on the general credit or taxing powers
19 of the state.

CHAPTER 220

**(Com. Sub. for H. B. 2721 - By Mr. Speaker (Mr.
Armstead) and Delegate Miley)
[By Request of the Executive]**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, all relating to the public-private transportation facilities act; reducing the cost threshold limitation on projects completed by the Division of Highways that are eligible for funding from the state road fund; and extending the time limitation by which agreements must be made.

Be it enacted by the Legislature of West Virginia:

That §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.

§17-27-5. Submission and review of conceptual proposals; approval by the Commissioner of Highways.

1 (a) A private entity may submit in writing a solicited
2 conceptual proposal for a transportation facility to the

3 division for consideration. The conceptual proposal shall
4 include the following:

5 (1) A statement of the private entity's qualifications and
6 experience;

7 (2) A description of the proposed transportation facility;

8 (3) A description of the financing for the transportation
9 facility; and

10 (4) A statement setting forth the degree of public
11 support for the proposed transportation facility, including a
12 statement of the benefits of the proposed transportation
13 facility to the public and its compatibility with existing
14 transportation facilities.

15 (b) Following review by the division, the division shall
16 submit to the Commissioner of Highways the conceptual
17 proposals and priority ranking for review for final selection.

18 (c) The conceptual proposal shall be accompanied by
19 the following material and information unless waived by the
20 division with respect to the transportation facility or
21 facilities that the private entity proposes to develop as a
22 qualifying transportation facility:

23 (1) A topographic map (1:2,000 or other appropriate
24 scale) indicating the location of the transportation facility or
25 facilities;

26 (2) A description of the transportation facility or
27 facilities, including the conceptual design of the facility or
28 facilities and all proposed interconnections with other
29 transportation facilities;

30 (3) The projected total life-cycle cost of the
31 transportation facility or facilities and the proposed date for
32 acquisition of or the beginning of construction of, or
33 improvements to, the transportation facility or facilities;

34 (4) A statement setting forth the method by which the
35 developer proposes to secure all property interests required
36 for the transportation facility or facilities: *Provided*, That
37 with the approval of the division, the private entity may
38 request that the comprehensive agreement assign the
39 division with responsibility for securing all property
40 interests, including public utility facilities, with all costs,
41 including costs of acquiring the property, to be reimbursed
42 to the division by the private entity. The statement shall
43 include the following information regarding the property
44 interests or rights, including, but not limited to, rights to
45 extract mineable minerals:

46 (A) The names and addresses, if known, of the current
47 owners of the property needed for the transportation facility
48 or facilities;

49 (B) The nature of the property interests to be acquired;

50 (C) Any property that the division may expect to
51 condemn; and

52 (D) The extent to which the property has been or will be
53 subjected to the extraction of mineable minerals.

54 (5) Information relating to the current transportation
55 plans, if any, of each affected local jurisdiction;

56 (6) A list of all permits and approvals required for
57 acquisition or construction of or improvements to the
58 transportation facility or facilities from local, state or federal
59 agencies and a projected schedule for obtaining the permits
60 and approvals: *Provided*, That the acquisition, construction,
61 improvement or operation of a qualifying transportation
62 facility that includes the extraction of mineable minerals is
63 required to obtain all necessary permits or approvals from
64 all applicable authorities in the same manner as if it were
65 not a qualifying transportation facility under this article;

66 (7) A list of public utility facilities, if any, that will be
67 crossed or affected by or as the result of the construction or

68 improvement of the public port transportation facility or
69 facilities and a statement of the plans of the developer to
70 accommodate the crossings or relocations;

71 (8) A statement setting forth the developer's general
72 plans for financing and operating the transportation facility
73 or facilities;

74 (9) The names and addresses of the persons who may be
75 contacted for further information concerning the request;

76 (10) Information about the developer, including, but not
77 limited to, an organizational chart of the developer,
78 capitalization of the developer, experience in the operation
79 of transportation facilities and references and certificates of
80 good standing from the Tax Commissioner, Insurance
81 Commissioner and the Division of Unemployment
82 Compensation evidencing that the developer is in good
83 standing with state tax, workers' compensation and
84 unemployment compensation laws, respectively; and

85 (11) Any additional material and information requested
86 by the Commissioner of Highways.

87 (d) The division, with approval of the Commissioner of
88 Highways, may solicit proposals from private entities for
89 the acquisition, construction or improvement of
90 transportation facilities in a form and with the content
91 determined by the division.

92 (e) The division may solicit any proposal for the
93 acquisition, construction or improvement of the
94 transportation facility or facilities as a qualifying
95 transportation facility if it is determined that it serves the
96 public purpose of this article. The division may determine
97 that the acquisition, construction or improvement of the
98 transportation facility or facilities as a qualifying
99 transportation facility serves a public purpose if:

100 (1) There is a public need for the transportation facility
101 of the type the private entity proposes to operate as a
102 qualifying transportation facility;

103 (2) The transportation facility and the proposed
104 interconnections with existing transportation facilities and
105 the developer's plans for development of the qualifying
106 transportation facility are reasonable and compatible with
107 the state transportation plan and with the local
108 comprehensive plan or plans;

109 (3) The estimated cost of the transportation facility or
110 facilities is reasonable in relation to similar facilities;

111 (4) The acquisition, construction, improvement or the
112 financing of the transportation facility or facilities does not
113 involve any moneys from the State Road Fund: *Provided,*
114 That moneys from the State Road Fund may be used if the
115 project is constructed by the division: is in excess of \$10
116 million and is contained in the division's six-year plan:
117 *Provided, however,* That the moneys from the General
118 Revenue Fund may also be used if so designated and
119 approved by the Legislature.

120 (5) The use of federal funds in connection with the
121 financing of a qualifying transportation facility has been
122 determined by the division to be compatible with the state
123 transportation plan and with the local comprehensive plan
124 or plans; and

125 (6) The private entity's plans will result in the timely
126 acquisition or construction of or improvements to the
127 transportation facility for their more efficient operation and
128 that the private entity's plans will result in a more timely
129 and economical delivery of the transportation facility than
130 otherwise available under existing delivery systems.

131 (f) Notwithstanding any provision of this article to the
132 contrary, the recommendation of the division to the
133 Commissioner of Highways is subject to:

134 (1) The private entity's entering into a comprehensive
135 agreement with the division; and

136 (2) With respect to transportation facilities, the
137 requirement that public information dissemination with
138 regard to any proposal under consideration comply with the
139 division's policy on the public involvement process, as
140 revised.

141 (g) In connection with its approval of the development
142 of the transportation facility as a qualifying transportation
143 facility, the division shall establish a date for the acquisition
144 of or the beginning of construction of or improvements to
145 the qualifying transportation facility. The division may
146 extend that date.

147 (h) Selection by the Commissioner of Highways:

148 (1) Upon presentations of proposals received by the
149 division, the commissioner shall make his or her decision
150 for the project.

151 (2) The commissioner shall notify the division and the
152 public of the final selection for the project.

§17-27-9. Comprehensive agreement.

1 (a) Prior to acquiring, constructing or improving the
2 qualifying transportation facility, the developer shall enter
3 into a comprehensive agreement with the division. The
4 comprehensive agreement shall provide for:

5 (1) Delivery of performance or payment bonds in
6 connection with the construction of or improvements to the
7 qualifying transportation facility, in the forms and amounts
8 satisfactory to the division;

9 (2) Review and approval of the final plans and
10 specifications for the qualifying transportation facility by
11 the division;

12 (3) Inspection of the construction of or improvements to
13 the qualifying transportation facility to ensure that they
14 conform to the engineering standards acceptable to the
15 division;

16 (4) Maintenance of a policy or policies of public liability
17 insurance or self insurance, in a form and amount
18 satisfactory to the division and reasonably sufficient to
19 insure coverage of tort liability to the public and employees
20 and to enable the continued operation of the qualifying
21 transportation facility: *Provided*, That in no event may the
22 insurance impose any pecuniary liability on the state, its
23 agencies or any political subdivision of the state. Copies of
24 the policies shall be filed with the division accompanied by
25 proofs of coverage;

26 (5) Monitoring of the maintenance and operating
27 practices of the developer by the division and the taking of
28 any actions the division finds appropriate to ensure that the
29 qualifying transportation facility is properly maintained and
30 operated;

31 (6) Itemization and reimbursement to be paid to the
32 division for the review and any services provided by the
33 division;

34 (7) Filing of appropriate financial statements on a
35 periodic basis;

36 (8) A reasonable maximum rate of return on investment
37 for the developer;

38 (9) The date of termination of the developer's duties
39 under this article and dedication to the division; and

40 (10) That a transportation facility shall accommodate all
41 public utilities on a reasonable, nondiscriminatory and
42 completely neutral basis and in compliance with the
43 provisions of section seventeen-b, article four, chapter
44 seventeen of this code.

45 (b) The comprehensive agreement may require user fees
46 established by agreement of the parties. Any user fees shall
47 be set at a level that, taking into account any service
48 payments, allows the developer the rate of return on its
49 investment specified in the comprehensive agreement:
50 *Provided*, That the schedule and amount of the initial user
51 fees to be imposed and any increase of the user fees must be
52 approved by the Commissioner of the Division of
53 Highways. A copy of any service contract shall be filed with
54 the division. A schedule of the current user fees shall be
55 made available by the developer to any member of the
56 public upon request. In negotiating user fees under this
57 section, the parties shall establish fees that are the same for
58 persons using the facility under like conditions and that will
59 not unreasonably discourage use of the qualifying
60 transportation facility. The execution of the comprehensive
61 agreement or any amendment to the comprehensive
62 agreement constitutes conclusive evidence that the user fees
63 provided in the comprehensive agreement comply with this
64 article. User fees established in the comprehensive
65 agreement as a source of revenues may be in addition to, or
66 in lieu of, service payments.

67 (c) In the comprehensive agreement, the division may
68 agree to accept grants or loans from the developer, from
69 time to time, from amounts received from the state or
70 federal government or any agency or instrumentality of the
71 state or federal government.

72 (d) The comprehensive agreement shall incorporate the
73 duties of the developer under this article and may contain any
74 other terms and conditions that the division determines serve
75 the public purpose of this chapter. Without limitation, the
76 comprehensive agreement may contain provisions under
77 which the division agrees to provide notice of default and cure
78 rights for the benefit of the developer and the persons specified
79 in the comprehensive agreement as providing financing for the
80 qualifying transportation facility. The comprehensive
81 agreement may contain any other lawful terms and conditions

82 to which the developer and the division mutually agree,
83 including, without limitation, provisions regarding
84 unavoidable delays or provisions providing for a loan of public
85 funds to the developer to acquire, construct or improve one or
86 more qualifying transportation facilities.

87 (e) The comprehensive agreement shall require the deposit
88 of any earnings in excess of the maximum rate of return as
89 negotiated in the comprehensive agreement in the State Road
90 Fund established pursuant to section one, article three, chapter
91 seventeen of this code.

92 (f) Any changes in the terms of the comprehensive
93 agreement, agreed upon by the parties, shall be added to the
94 comprehensive agreement by written amendment.

95 (g) Notwithstanding any provision of this article to the
96 contrary, the division may not enter any comprehensive
97 agreements with a developer after June 30, 2023.

98 (h) Notwithstanding any provision of this article to the
99 contrary, at least thirty days prior to execution, the
100 commissioner shall provide a copy of a comprehensive
101 agreement to the Joint Committee on Government and
102 Finance.

CHAPTER 221

**(Com. Sub. for H. B. 2637 - By Delegates Espinosa,
Statler, Upson, Blair, Wilson, Westfall, R. Romine,
Higginbotham, Harshbarger, Cooper and Folk)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to employment of retired

teachers and prospective employable professional personnel in areas of critical need and shortage; including speech pathologists and school nurses in definition of teacher or substitute teacher for purposes of employment of retired teachers beyond the post-retirement limit; establishing uniform date retirement must become effective to determine status of retirement benefits during employment as critical needs substitute teacher; restating reporting requirement to legislative committees; extending date for expiration of provisions related to employment of retired teacher as substitute teach beyond the post-retirement limit; eliminating requirement that county policy for employment of prospective employable professional personnel be based on areas of critical need and shortage identified by state board; requiring posting of notice of critical need and shortage area positions prior to making offers of employment and options for posting; limiting employment of prospective employable professional personnel to certain candidates at job fair who will commence employment at the next employment term; changing limit on number of prospective employable professional personnel that may be employed to number required to fill positions posted; clarifying action required for prospective employable professional personnel to obtain regular employment status; clarifying that provisions relating to prospective employable professional personnel do not prevent filling posted vacancy at any time in accordance with other provisions; eliminating any requirement for successive postings where there were no qualified applicants in response to the initial posting; clarifying that no additional faculty senate involvement is required after initial faculty senate involvement; and allowing financial incentives for purposes of recruiting professional personnel in critical needs areas and to attract professional personnel in a critical need or shortage area.

Be it enacted by the Legislature of West Virginia:

That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§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
3 any of the following duties:

4 (1) Fill the temporary absence of any teacher or an
5 unexpired school term made vacant by resignation, death,
6 suspension or dismissal;

7 (2) Fill a teaching position of a regular teacher on leave
8 of absence; and

9 (3) Perform the instructional services of any teacher
10 who is authorized by law to be absent from class without
11 loss of pay, providing the absence is approved by the board
12 of education in accordance with the law.

13 The substitute shall be a duly certified teacher.

14 (b) Notwithstanding any other provision of this code to
15 the contrary, a substitute teacher who has been assigned as
16 a classroom teacher in the same classroom continuously for
17 more than one half of a grading period and whose
18 assignment remains in effect two weeks prior to the end of
19 the grading period, shall remain in the assignment until the
20 grading period has ended, unless the principal of the school
21 certifies that the regularly employed teacher has
22 communicated with and assisted the substitute with the
23 preparation of lesson plans and monitoring student progress
24 or has been approved to return to work by his or her
25 physician. For the purposes of this section, teacher and
26 substitute teacher, in the singular or plural, mean
27 professional educator as defined in section one, article one
28 of this chapter.

29 (c) (1) The Legislature hereby finds and declares that
30 due to a shortage of qualified substitute teachers, a

31 compelling state interest exists in expanding the use of
32 retired teachers to provide service as substitute teachers in
33 areas of critical need and shortage. The Legislature further
34 finds that diverse circumstances exist among the counties
35 for the expanded use of retired teachers as substitutes.

36 (2) For the purposes of this subsection:

37 (A) “Area of critical need and shortage for substitute
38 teachers” means an area of certification and training in
39 which the number of available substitute teachers in the
40 county who hold certification and training in that area and
41 who are not retired is insufficient to meet the projected need
42 for substitute teachers; and

43 (B) “Teacher or substitute teacher” includes speech
44 pathologists and school nurses.

45 (3) A person receiving retirement benefits under article
46 seven-a, chapter eighteen of this code or who is entitled to
47 retirement benefits during the fiscal year in which that
48 person retired may accept employment as a critical needs
49 substitute teacher for an unlimited number of days each
50 fiscal year without affecting the monthly retirement benefit
51 to which the retirant is otherwise entitled if the following
52 conditions are satisfied:

53 (A) The county board adopts a policy recommended by
54 the superintendent to address areas of critical need and
55 shortage for substitute teachers;

56 (B) The policy sets forth the areas of critical need and
57 shortage for substitute teachers in the county in accordance
58 with the definition of area of critical need and shortage for
59 substitute teachers set forth in subdivision (2) of this
60 subsection;

61 (C) The policy provides for the employment of retired
62 teachers as critical needs substitute teachers during the
63 school year on an expanded basis in areas of critical need

64 and shortage for substitute teachers as provided in this
65 subsection;

66 (D) The policy provides that a retired teacher may be
67 employed as a substitute teacher in an area of critical need
68 and shortage for substitute teachers on an expanded basis as
69 provided in this subsection only when no other teacher who
70 holds certification and training in the area and who is not
71 retired is available and accepts the substitute assignment;

72 (E) The policy is effective for one school year only and
73 is subject to annual renewal by the county board;

74 (F) The state board approves the policy and the use of
75 retired teachers as substitute teachers on an expanded basis
76 in areas of critical need and shortage for substitute teachers
77 as provided in this subsection; and

78 (G) Prior to employment of a retired teacher as a critical
79 needs substitute teacher beyond the post-retirement
80 employment limitations established by the Consolidated
81 Public Retirement Board, the superintendent of the affected
82 county submits to the state board in a form approved by the
83 Consolidated Public Retirement Board and the state board,
84 an affidavit signed by the superintendent stating the name
85 of the county, the fact that the county has adopted a policy
86 to employ retired teachers as substitutes to address areas of
87 critical need and shortage, the name or names of the person
88 or persons to be employed as a critical needs substitute
89 pursuant to the policy, the critical need and shortage area
90 position filled by each person, the date that the person gave
91 notice to the county board of the person's intent to retire,
92 and the effective date of the person's retirement. Upon
93 verification of compliance with this section and the
94 eligibility of the critical needs substitute teacher for
95 employment beyond the post-retirement limit, the state
96 board shall submit the affidavit to the Consolidated Public
97 Retirement Board.

98 (4) Any person who retires and begins work as a critical
99 needs substitute teacher within the same fiscal year in which
100 that person retired shall lose those retirement benefits
101 attributed to the annuity reserve, effective from the first day
102 of employment as a retiree critical needs substitute teacher
103 in that fiscal year and ending with the month following the
104 date the retiree ceases to perform service as a critical needs
105 substitute teacher.

106 (5) Retired teachers employed to perform expanded
107 substitute service pursuant to this subsection are considered
108 day-to-day, temporary, part-time employees. The
109 substitutes are not eligible for additional pension or other
110 benefits paid to regularly employed employees and may not
111 accrue seniority.

112 (6) A retired teacher is eligible to be employed as a
113 critical needs substitute teacher to fill a vacant position
114 without any loss of retirement benefits attributed to the
115 annuity reserve only if the retired teacher's retirement
116 became effective before the first day of July preceding at
117 least the fiscal year during which he or she is employed as a
118 critical needs substitute teacher.

119 (7) When a retired teacher is employed as a critical
120 needs substitute to fill a vacant position, the county board
121 shall continue to post the vacant position until it is filled
122 with a regularly employed teacher who is fully certified or
123 permitted for the position.

124 (8) When a retired teacher is employed as a critical
125 needs substitute to fill a vacant position, the position
126 vacancy shall be posted electronically and easily accessible
127 to prospective employees as determined by the state board.

128 (9) Until this subsection is expired pursuant to
129 subdivision (10) of this subsection, the state board shall
130 report to the Joint Committee on Government and Finance,
131 prior to February 1 of each year, information indicating the
132 effectiveness of the provisions of this subsection on

133 reducing the critical need and shortage of substitute teachers
134 including, but not limited to, the number of retired teachers,
135 by critical need and shortage area position filled and by
136 county, employed beyond the post-retirement employment
137 limit established by the Consolidated Public Retirement
138 Board, the date that each person gave notice to the county
139 board of the person's intent to retire, and the effective date
140 of the person's retirement. A copy of the report shall also
141 be provided to the Legislative Oversight Commission on
142 Education Accountability.

143 (10) The provisions of this subsection shall expire on
144 June 30, 2020.

145 (d) (1) Notwithstanding any other provision of this code
146 to the contrary, each year a county superintendent may
147 employ prospective employable professional personnel on a
148 reserve list at the county level subject to the following
149 conditions:

150 (A) The county board adopts a policy authorizing the
151 employment of prospective employable professional
152 personnel to address areas of critical need and shortage;

153 (B) The county board posts a notice of the critical need
154 and shortage area positions in the county in a conspicuous
155 place in each school or on the county website for at least ten
156 working days prior to making offers of employment to
157 prospective candidates; and

158 (C) There are not any potentially qualified applicants
159 available and willing to fill the position.

160 (2) Prospective employable professional personnel may
161 only be employed from candidates at a job fair who have or
162 will graduate from college in the current school year and
163 will commence employment at the next employment term.

164 (3) The number of prospective employable professional
165 personnel employed is limited to the number required to fill

166 the critical need and shortage area positions posted in
167 accordance with subdivision (1) of this subsection.

168 (4) Prospective employable professional personnel shall
169 be granted benefits at a cost to the county board and as a
170 condition of the employment contract as approved by the
171 county board.

172 (5) Regular employment status for prospective
173 employable professional personnel may be obtained only
174 upon recommendation by the superintendent and approval
175 by the county board following consideration of the
176 qualifications of the candidate in accordance with the
177 applicable provisions of section seven-a, article four of this
178 chapter. Upon board approval, prospective employable
179 professional personnel may be placed into a critical needs
180 position if the job has been posted at least once in
181 accordance with paragraph (B), subdivision (1) of this
182 subsection resulting in no qualified applicants. Employment
183 of the prospective employable professional personnel
184 pursuant to this subsection may occur without the need for
185 additional postings and without the need for additional
186 faculty senate involvement other than the initial faculty
187 senate involvement required in the case of a classroom
188 teaching position pursuant to section seven-a, article four of
189 this chapter.

190 (6) Nothing in this subsection prevents a county board
191 from filling a posted vacancy in an established, existing or
192 newly created position at any time in accordance with the
193 other provisions of this chapter.

194 (7) For the purpose of recruiting professional personnel
195 in critical needs areas and to attract professional personnel
196 in a critical need or shortage area, county boards of
197 education may from local funds pay prospective employable
198 professional personnel a one-time financial incentive such
199 as, but not limited to, a signing bonus or moving expenses,
200 after a contract of employment has been signed.

●

CHAPTER 222

**(Com. Sub. for H. B. 2771 - By Delegates Upson,
Espinosa, Statler, Blair, Cooper, Ambler,
Householder, Moore, Butler, Kessinger and Lewis)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §18A-3-2a of the Code of West Virginia, 1931, as amended, relating to teaching certificates for teachers whose spouses are members of the Armed Forces who are on active duty stationed in this state or within fifty air miles of the West Virginia border.

Be it enacted by the Legislature of West Virginia:

That §18A-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

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

1 In accordance with state board rules for the education of
2 professional educators adopted pursuant to section one of
3 this article and subject to the limitations and conditions of
4 that section, the state superintendent may issue the
5 following certificates valid in the public schools of the state:

6 (a) *Professional teaching certificates.* —

7 (1) A professional teaching certificate for teaching in
8 the public schools may be issued to a person who meets the
9 following conditions:

10 (A) Holds at least a bachelor's degree from a regionally
11 accredited institution of higher education, and

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

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

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

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

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

26 (B) Holds at least a bachelor's degree from an
27 accredited institution of higher education; and

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

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

32 (iii) Is recommended for a certificate in accordance with
33 the provisions of section one-i of this article relating to the
34 program; and

35 (iv) Is recommended by the state superintendent based
36 on documentation submitted.

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

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

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

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

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

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

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

59 (c) *Professional administrative certificate.* —

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

66 (A) Holds at least a master's degree from an institution
67 of higher education accredited to offer a master's degree;
68 and

69 (i) Has successfully completed an approved program for
70 administrative certification developed by the state board in
71 cooperation with the chancellor for higher education, and

72 (ii) Has successfully completed education and training
73 in evaluation skills through the center for professional
74 development, or equivalent education and training in
75 evaluation skills approved by the state board, and

76 (iii) Possesses three years of management level
77 experience.

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

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

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

89 (1) Has completed thirty-six semester hours of post-
90 secondary education or its equivalent in subjects directly
91 related to performance of the job, all approved by the state
92 board; and

93 (2) Demonstrates the proficiencies to perform duties as
94 required of a paraprofessional as defined in section eight,
95 article four of this chapter.

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

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

100 (2) A certificate or permit may not be given permanent
101 status and a person holding one of these credentials shall
102 meet renewal requirements provided by law and by
103 regulation, unless the state board declares certain of these

104 certificates to be the equivalent of the professional
105 certificate.

106 (3) Within the category of other certificates and permits,
107 the state superintendent may issue certificates for persons to
108 serve in the public schools as athletic coaches or coaches of
109 other extracurricular activities, whose duties may include
110 the supervision of students, subject to the following
111 limitations:

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

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

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

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

124 (f) *Teacher-In-Residence Permit.* —

125 (1) A teacher-in-residence permit may be issued to a
126 candidate who is enrolled in a teacher-in-residence program
127 in accordance with an agreement between an institution of
128 higher education and a county board. The agreement is
129 developed pursuant to subsection (e), section one of this
130 article and requires approval by the state board.

131 (2) The permit is valid only for the teacher-in-residence
132 program position in which the candidate is enrolled and is
133 subject to enrollment in the program. The permit is valid for
134 no more than one school year and may not be renewed.

135 (g) *Temporary teaching certificates for Armed Forces*
136 *spouses.* —

137 (1) A temporary teaching certificate for an Armed
138 Forces spouse may be issued to an individual who meets the
139 following criteria:

140 (A) He or she is married to a member of the Armed
141 Forces of the United States who is on active duty;

142 (B) He or she holds a current unencumbered teaching
143 certificate or license issued by an equivalent credentialing
144 department, board, or authority, as determined by the state
145 superintendent, in another state of the United States, the
146 District of Columbia, Puerto Rico, the United States Virgin
147 Islands, another territory or protectorate of the United States
148 or a foreign country; and

149 (C) He or she provides proof acceptable to the state
150 superintendent that his or her spouse is assigned to a duty
151 station in this state or at a military installation within fifty
152 air miles of the West Virginia border and that he or she is
153 also assigned to a duty station in this state or at a military
154 installation within fifty air miles of the West Virginia border
155 under his or her spouse's official active duty military orders.

156 (2) The state superintendent shall deny a temporary
157 teaching certificate to an individual described in (1)
158 above for fraud, material misrepresentation or
159 concealment in the person's application for a temporary
160 teaching certificate or for a conviction for which an
161 individual's teaching certificate may be revoked under
162 section six of this article.

163 (3) A temporary teaching certificate issued under (1)
164 above is valid for one year and may be renewed for
165 additional one year terms if the state superintendent
166 determines the individual holding the temporary teaching
167 certificate continues to meet the requirements of (1) above.
168 The state superintendent may revoke a temporary teaching

169 certificate for a conviction for which an individual's
170 teaching certificate may be revoked under section six of this
171 article.



CHAPTER 223

**(Com. Sub. for H. B. 2704 - By Delegates Espinosa,
Statler, Dean, Rohrbach, Wilson, Rowan,
Harshbarger, R. Romine, Wagner, Cooper and
Higginbotham)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §18A-3-6 and §18A-3-10 of the Code of West Virginia, 1931, as amended, all relating generally to the licensure or certification of teachers; providing for the automatic revocation of a certificate or license for a teacher convicted of an offense under chapter sixty-one, article eight-d, section five of the code; and permitting the West Virginia Department of Education to require that a licensee be fingerprinted for analysis by the West Virginia State Police for a state criminal history record check through the central abuse registry and by the Federal Bureau of Investigation for a national criminal history record check, when the licensee has lived outside of the state for one year or more since licensure, or when the department or school administrator reasonably believes the licensee has not disclosed a felony conviction, a conviction of an offense under chapter sixty-one, article eight-b of this code, or a conviction of an offense similar to those in chapter sixty-one, article eight-b of this code that have been established under the laws of any other state or the United States.

Be it enacted by the Legislature of West Virginia:

That §18A-3-6 and §18A-3-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

CHAPTER 18A. SCHOOL PERSONNEL.

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

§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

1 (a) The state superintendent may, after ten days' notice
2 and upon proper evidence, revoke the certificates of any
3 teacher for any of the following causes: Intemperance;
4 untruthfulness; cruelty; immorality; the conviction of a felony
5 or a guilty plea or a plea of no contest to a felony charge; the
6 conviction, guilty plea or plea of no contest to any charge
7 involving sexual misconduct with a minor or a student; or for
8 using fraudulent, unapproved or insufficient credit to obtain
9 the certificates: *Provided*, That the certificates of a teacher may
10 not be revoked for any matter for which the teacher was
11 disciplined, less than dismissal, by the county board that
12 employs the teacher, nor for which the teacher is meeting or
13 has met an improvement plan determined by the county board,
14 unless it can be proven by clear and convincing evidence that
15 the teacher has committed one of the offenses listed in this
16 subsection and his or her actions render him or her unfit to
17 teach: *Provided, however*, That in order for any conduct of a
18 teacher involving intemperance; cruelty; immorality; or using
19 fraudulent, unapproved or insufficient credit to obtain the
20 certificates to constitute grounds for the revocation of the
21 certificates of the teacher, there must be a rational nexus
22 between the conduct of the teacher and the performance of his
23 or her job. The state superintendent may designate the West
24 Virginia commission for professional teaching standards or
25 members thereof to conduct hearings on revocations or
26 certificate denials and make recommendations for action by
27 the state superintendent: *Provided further*, That a teacher
28 convicted under chapter sixty-one, article eight-d, section five
29 shall have his or her certificate or license automatically
30 revoked.

31 (b) It shall be the duty of any county superintendent who
32 knows of any acts on the part of any teacher for which a
33 certificate may be revoked in accordance with this section to
34 report the same, together with all the facts and evidence, to the
35 state superintendent for such action as in the state
36 superintendent's judgment may be proper.

37 (c) If a certificate has been granted through an error,
38 oversight, or misinformation, the state superintendent has
39 authority to recall the certificate and make such corrections as
40 will conform to the requirements of law and the state board.

**§18A-3-10. Criminal history check of applicants for licensure by
the state Department of Education.**

1 (a) Any applicant for an initial license issued by the West
2 Virginia Department of Education shall be fingerprinted by the
3 West Virginia State Police in accordance with state board
4 policy in order to determine the applicant's suitability for
5 licensure. The fingerprints shall be analyzed by the State
6 Police for a state criminal history record check through the
7 central abuse registry and then forwarded to the Federal
8 Bureau of Investigation for a national criminal history record
9 check.

10 (b) Information contained in either the central abuse
11 registry record or the Federal Bureau of Investigation record
12 may form the basis for the denial of a certificate for just cause.

13 (c) The applicant for initial certification pays for the cost
14 of obtaining the central abuse registry record and the Federal
15 Bureau of Investigation record.

16 (d) Upon written consent to the state department by the
17 applicant and within ninety days of the state fingerprint
18 analysis, the results of a state analysis may be provided to a
19 county board with which the applicant is applying for
20 employment without further cost to the applicant.

21 (e) Information maintained by the state department or a
22 county board which was obtained for the purpose of this

23 section is exempt from the disclosure provisions of chapter
24 twenty-nine-b of this code. Nothing in this section prohibits
25 disclosure or publication of information in a statistical or other
26 form which does not identify the individuals involved or
27 provide personal information.

28 (f) After an initial license has been issued by the West
29 Virginia Department of Education, the West Virginia
30 Department of Education may require any licensee to be
31 fingerprinted by the West Virginia State Police in accordance
32 with state board policy: *Provided*, That the licensee lived
33 outside of the State of West Virginia for a period of one year
34 or more since his or her licensure, or the West Virginia
35 Department of Education or the school administrator has a
36 reasonable belief that the licensee has not notified the school
37 administrator of any felony conviction, conviction of any
38 offense under chapter sixty-one, article eight-b of this code, or
39 offenses of similar nature to those in chapter sixty-one, article
40 eight-b of this code that have been established under any other
41 state or the United States. The fingerprints may be analyzed by
42 the West Virginia State Police for a state criminal history
43 record check through the central abuse registry and then
44 forwarded to the Federal Bureau of Investigation for a national
45 criminal history record check.



CHAPTER 224

**(S. B. 256 - By Senators Trump, Boso, Cline, Gaunch
and Woelfel)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §18A-4-22,
relating to prohibiting aiding and abetting of sexual abuse by

school personnel; prohibiting school personnel, contractors, agents or employees of any state, regional or local education agency from assisting school employees, contractors or agents in obtaining a new job with knowledge, or has probable cause to believe, that the person engaged in sexual misconduct with a minor or student; clarifying that routine transmission of administrative and personnel files is permissible; providing exceptions to prohibition on aiding those individuals from obtaining new jobs; and clarifying the relationship between prohibition and other statutes, regulations or policies.

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 §18A-4-22, to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-22. Prohibition on aiding and abetting sexual abuse.

1 (a) No school personnel, contractor or agent, or any
2 employee of any state, regional or local educational agency
3 including any employee of a public or private school, may
4 assist an individual employed as school personnel, a
5 contractor or an agent in obtaining a new job if the
6 individual or agency knows, or has probable cause to
7 believe, that such school employee, contractor or agent
8 engaged in sexual misconduct regarding a minor or student
9 in violation of the law: *Provided*, That nothing in this
10 section shall be construed to prohibit the routine
11 transmission of administrative and personnel files.

12 (b) The requirements of subsection (a) of this section
13 shall not apply if:

14 (1) The information giving rise to probable cause has been
15 properly reported to a law-enforcement agency with
16 jurisdiction over the alleged misconduct and reported to any
17 other authorities as required by federal, state or local law; and

18 (2) One of the following has happened:

19 (A) The matter has been officially closed, or the prosecutor
20 or police with jurisdiction over the alleged misconduct has
21 investigated the allegations and notified school officials that
22 there is insufficient information to establish probable cause
23 that the school personnel, contractor or agent engaged in
24 sexual misconduct regarding a minor or student in violation of
25 the law;

26 (B) The school personnel, contractor or agent has been
27 charged with and acquitted or otherwise exonerated of the
28 alleged misconduct; or

29 (C) The case or investigation remains open and there have
30 been no charges filed against, or indictment of, the school
31 personnel, contractor or agent within four years of the date on
32 which the information was reported to a law-enforcement
33 agency.

34 (c) Nothing in this section shall be construed to override a
35 statute, regulation or policy that provides greater or additional
36 protections to prohibit any individual who is school personnel,
37 contractor or agent, or any state, regional or local educational
38 agency from assisting a school employee who engaged in
39 sexual misconduct regarding a minor or student in violation of
40 the law in obtaining a new job.

CHAPTER 225

**(Com. Sub. for H. B. 2851 - By Delegates White,
Westfall, Moore, Dean, Lane, Ward and Frich)**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §32-2-202 of the Code of West Virginia, 1931, as amended; to amend and reenact §32-3-305 of said code; to amend and reenact §32-2-406 of said code;

and to amend and reenact §32-4-413 of said code, all relating to increasing fees assessed by the Auditor's Securities Division; and changing the threshold at which money in the Auditor's Security Division's special revenue fund becomes excess and transfers to the General Revenue Fund for the 2018 fiscal year.

Be it enacted by the Legislature of West Virginia:

That §32-2-202 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §32-3-305 of said code be amended and reenacted; that §32-2-406 of said code be amended and reenacted; and that §32-4-413 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS; REGISTRATION AND NOTICE FILING FOR INVESTMENT ADVISERS.

§32-2-202. Registration and notice filing procedure.

1 (a) A broker-dealer, agent or investment adviser may
2 obtain an initial or renewal registration by filing with the
3 commissioner an application, together with a consent to
4 service of process pursuant to subsection (g), section four
5 hundred fourteen, article four of this chapter. The
6 application shall contain whatever information the
7 commissioner by rule requires concerning matters such as:
8 (1) The applicant's firm and place of organization; (2) the
9 applicant's proposed method of doing business; (3) the
10 qualifications and business history of the applicant and in
11 the case of a broker-dealer or investment adviser, the
12 qualifications and business history of any partner, officer or
13 director, any person occupying a similar status or
14 performing similar functions or any person, directly or
15 indirectly, controlling the broker-dealer or investment
16 adviser and, in the case of an investment adviser, the
17 qualifications and business history of any employee; (4) any
18 injunction or administrative order or conviction of a
19 misdemeanor involving a security or any aspect of the

20 securities business and any conviction of a felony; and (5)
21 subject to the limitations of §15(h)(1) of the Securities
22 Exchange Act of 1934, the applicant's financial condition
23 and history. The commissioner may by rule or order require
24 an applicant for initial registration to publish an
25 announcement of the application as a Class I legal
26 advertisement in compliance with the provisions of article
27 three, chapter fifty-nine of this code and the publication area
28 or areas for the publication shall be specified by the
29 commissioner. If no denial order is in effect and no
30 proceeding is pending under section two hundred four of
31 this article, registration becomes effective at noon of the
32 thirtieth day after an application is filed. The commissioner
33 may by rule or order specify an earlier effective date and he
34 or she may by order defer the effective date until noon of
35 the thirtieth day after the filing of any amendment to an
36 application. Registration of a broker-dealer automatically
37 constitutes registration of any agent who is a partner, officer
38 or director, or a person occupying a similar status or
39 performing similar functions, as designated by the broker-
40 dealer in writing to the commissioner and approved in
41 writing by the commissioner. Registration of an investment
42 adviser automatically constitutes registration of any
43 investment adviser representative who is a partner, officer
44 or director or a person occupying a similar status or
45 performing similar functions as designated by the
46 investment adviser in writing to the commissioner and
47 approved in writing by the commissioner.

48 (b) Except with respect to federal-covered advisers
49 whose only clients are those described in paragraphs (A)
50 and (B), subdivision (3), subsection (c), section two hundred
51 one of this article, a federal-covered adviser shall file with
52 the commissioner, prior to acting as a federal-covered
53 adviser in this state, such documents as have been filed with
54 the securities and exchange commissioner as the
55 commissioner, by rule or order, may require along with
56 notice filing fees under subsection (c) of this section.

57 (c) Every applicant for initial or renewal registration
58 shall pay a filing fee of \$300 in the case of a broker-dealer
59 and the agent of an issuer, \$66 in the case of an agent, \$200
60 in the case of an investment adviser and \$75 for each
61 investment adviser representative. When an application is
62 denied or withdrawn, the commissioner shall retain all of
63 the fee.

64 (d) A registered broker-dealer or investment adviser
65 may file an application for registration of a successor,
66 whether or not the successor is then in existence, for the
67 unexpired portion of the year. A filing fee of \$24 shall be
68 paid.

69 (e) The commissioner may, by rule or order, require a
70 minimum capital for registered broker-dealers, subject to
71 the limitations of Section 15 of the Securities Exchange Act
72 of 1934 and establish minimum financial requirements for
73 investment advisers, subject to the limitations of Section
74 222 of the Investment Advisers Act of 1940, which may
75 include different requirements for those investment advisers
76 who maintain custody of clients' funds or securities or who
77 have discretionary authority over same and those
78 investment advisers who do not.

79 (f) The commissioner may, by rule or order, require
80 registered broker-dealers, agents and investment advisers
81 who have custody of or discretionary authority over client
82 funds or securities to post surety bonds in amounts as the
83 commissioner may prescribe, by rule or order, subject to the
84 limitations of Section 15 of the Securities Exchange Act of
85 1934 (for broker-dealers) and Section 222 of the Investment
86 Advisers Act of 1940 (for investment advisers), up to
87 \$25,000 and may determine their conditions. Any
88 appropriate deposit of cash or securities shall be accepted in
89 lieu of any bond so required. No bond may be required of
90 any registrant whose net capital or, in the case of an
91 investment adviser, whose minimum financial
92 requirements, which may be defined by rule, exceeds the
93 amounts required by the commissioner. Every bond shall

94 provide for suit thereon by any person who has a cause of
95 action under section four hundred ten, article four of this
96 chapter and, if the commissioner by rule or order requires,
97 by any person who has a cause of action not arising under
98 this chapter. Every bond shall provide that no suit may be
99 maintained to enforce any liability on the bond unless
100 brought within the time limitations set forth in subsection
101 (e), section four hundred ten, article four of this chapter.

102 (g) Every applicant whether registered under this
103 chapter or not, shall pay a \$60 fee for each name or address
104 change.

105 (h) Every broker-dealer and investment advisor
106 registered under this chapter shall pay an annual \$60 fee for
107 each branch office located in West Virginia.

108 (i) Each agent, representative and associated person of
109 a broker-dealer or investment advisor when applying for an
110 initial license under this section or changing employers shall
111 pay a compliance assessment of \$30. Each agent,
112 representative and associated person, when applying for a
113 renewal license under this section, shall pay a compliance
114 assessment of \$12. The West Virginia State Legislature
115 reserves the right to adjust the fees set forth in this section
116 once every four years in an amount reflecting the percentage
117 increase in the cost of administering this article from the
118 amount of such costs on the effective date of this article.

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-305. Provisions applicable to registration and notice filing generally.

1 (a) A registration or notice filing statement may be filed
2 by the issuer, any other person on whose behalf the offering
3 is to be made or a registered broker-dealer. A registration or
4 notice filing statement filed under this chapter registering or
5 noticing investment company shares shall cover only one
6 class, series or portfolio of investment company shares.

7 (b) Every person filing a registration or notice filing
8 statement shall pay a filing fee of one sixteenth of one
9 percent of the maximum aggregate offering price at which
10 the registered or noticed securities are to be offered in this
11 state, but the fee shall in no case be less than \$60 or more
12 than \$1800. When a registration or notice filing statement is
13 withdrawn before the effective date or a preeffective stop
14 order is entered under section three hundred six of this
15 article, the commissioner shall retain all of the fee.

16 (c) Every registration statement and notice filing shall
17 specify: (1) The amount of securities to be offered in this
18 state; (2) the states in which a registration statement or
19 similar document in connection with the offering has been
20 or is to be filed; and (3) any adverse order, judgment or
21 decree entered in connection with the offering by the
22 regulatory authorities in each state or by any court or the
23 securities and exchange commission.

24 (d) In any case where securities sold in this state are in
25 excess of the aggregate amount of securities specified under
26 subsection (c) of this section, the commissioner may require
27 payment of an oversale assessment which shall be three
28 times an amount which equals the difference between the
29 filing fee that would have been payable under subsection (b)
30 of this section based upon the total amount of securities sold
31 in this state and the total filing fees previously paid to the
32 commissioner with respect to such registration or notice
33 filing, but in no case shall the oversale assessment be less
34 than \$420 or be more than \$1800.

35 (e) Any document filed under this chapter or a
36 predecessor act within five years preceding the filing of a
37 registration statement may be incorporated by reference in
38 the registration statement to the extent that the document is
39 currently accurate.

40 (f) The commissioner may by rule or otherwise permit
41 the omission of any item of information or document from
42 any registration or notice filing statement.

43 (g) In the case of a nonissuer distribution, information
44 may not be required under section three hundred four of this
45 article or subsection (k) of this section unless it is known to
46 the person filing the registration statement or to the persons
47 on whose behalf the distribution is to be made, or can be
48 furnished by them without unreasonable effort or expense.

49 (h) The commissioner may by rule or order require as a
50 condition of registration by qualification or coordination:
51 (1) That any security issued within the past three years or to
52 be issued to a promoter for a consideration substantially
53 different from the public offering price, or to any person for
54 a consideration other than cash, be deposited in escrow; and
55 (2) that the proceeds from the sale of the registered security
56 in this state be impounded until the issuer receives a
57 specified amount from the sale of the security either in this
58 state or elsewhere. The commissioner may by rule or order
59 determine the conditions of any escrow or impounding
60 required under this subsection, but he or she may not reject
61 a depository solely because of location in another state.

62 (i) The commissioner may by rule or order require as a
63 condition of registration that any security registered by
64 qualification or coordination be sold only on a specified
65 form of subscription or sale contract and that a signed or
66 conformed copy of each contract be filed with the
67 commissioner or preserved for any period up to three years
68 specified in the rule or order.

69 (j) Every registration statement is effective for one year
70 from its effective date or any longer period during which the
71 security is being offered or distributed in a nonexempted
72 transaction by or for the account of the issuer or other person
73 on whose behalf the offering is being made or by any
74 underwriter or broker-dealer who is still offering part of an
75 unsold allotment or subscription taken by him or her as a
76 participant in the distribution, except during the time a stop
77 order is in effect under section three hundred six of this
78 article. All outstanding securities of the same class as a
79 registered security are considered to be registered for the

80 purpose of any nonissuer transaction: (1) So long as the
81 registration statement is effective; and (2) between the
82 thirtieth day after the entry of any stop order suspending or
83 revoking the effectiveness of the registration statement
84 under section three hundred six of this article (if the
85 registration statement did not relate, in whole or in part, to
86 a nonissuer distribution) and one year from the effective
87 date of the registration statement. A registration statement
88 may not be withdrawn for one year from its effective date if
89 any securities of the same class are outstanding. A
90 registration statement may be withdrawn otherwise only in
91 the discretion of the commissioner.

92 (k) So long as a registration statement is effective, the
93 commissioner may by rule or order require the person who
94 filed the registration statement to file reports, not more often
95 than quarterly, to keep reasonably current the information
96 contained in the registration statement and to disclose the
97 progress of the offering.

98 (l) A registration statement relating to a security issued
99 by a face amount certificate company or a redeemable
100 security issued by an open-end management company or
101 unit investment trust, as those terms are defined in the
102 Investment Company Act of 1940, may be amended after its
103 effective date so as to increase the securities specified as
104 proposed to be offered. The amendment becomes effective
105 when the commissioner so orders. Every person filing an
106 amendment shall pay a filing fee, calculated in the manner
107 specified in subsection (b) of this section, with respect to the
108 additional securities proposed to be offered.

109 (m) Every person changing the name or address of a
110 securities registration or notice filing shall pay a \$60 fee for
111 change.

112 (n) Every person amending a registration statement or
113 notice filing or offering a document without increasing the
114 dollar amount registered shall pay a \$60 fee for each
115 amended statement, notice filing or document.

116 (o) Every registered issuer or notice filing shall annually
117 file a sales report and shall pay a filing fee for that report of
118 one eighth of one percent of the maximum offering price at
119 which the registered or noticed securities are offered in this
120 state but the fee shall in no case be less than \$240 nor more
121 than \$1800.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-406. Administration of chapter; operating fund for securities department.

1 (a) This chapter shall be administered by the Auditor of
2 this state and he or she is hereby designated, and shall be,
3 the commissioner of securities of this state. He or she or she
4 has the power and authority to appoint or employ such
5 assistants as are necessary for the administration of this
6 chapter.

7 (b) The Auditor shall set up a special operating fund for
8 the securities division in his or her office. The Auditor shall
9 pay into the fund twenty percent of all fees collected as
10 provided for in this chapter. If, at the end of any fiscal year,
11 the balance in the special operating fund exceeds half of the
12 prior fiscal year's appropriation, the excess shall be
13 transferred to the General Revenue Fund: *Provided*, That at
14 the end of the 2018 fiscal year, if the balance in the special
15 operating fund exceeds twenty percent of the gross revenues
16 from the special operating fund operations, the auditor may
17 first use the fund to repay any transfers made during the
18 2017 fiscal year from the Revenue Shortfall Reserve Fund
19 to the West Virginia Enterprise Resource Planning Board
20 created in section one, article six-d, chapter twelve of this
21 code: *Provided, however*, That at the end of the 2018 fiscal
22 year, after any repayments made out of the special operating
23 fund to the Revenue Shortfall Reserve Fund, any balance in
24 the special operating fund that exceeds half of prior year's
25 appropriation shall be transferred to the General Revenue
26 Fund.

27 The special operating fund shall be used by the Auditor
28 to fund the operation of the securities division and the
29 general operations of the Auditor's office. The special
30 operating fund shall be appropriated by line item by the
31 Legislature.

32 (c) Moneys payable for assessments established by
33 section four hundred seven-a of this article shall be collected
34 by the commissioner and deposited into the General
35 Revenue Fund.

36 (d) It is unlawful for the commissioner or any of his or
37 her officers or employees to use for personal benefit any
38 information which is filed with or obtained by the
39 commissioner and which is not made public. No provision
40 of this chapter authorizes the commissioner or any of his or
41 her officers or employees to disclose any information except
42 among themselves or when necessary or appropriate in a
43 proceeding or investigation under this chapter. No provision
44 of the chapter either creates or derogates from any privilege
45 which exists at common law or otherwise when
46 documentary or other evidence is sought under a subpoena
47 directed to the commissioner or any of his or her officers or
48 employees.

§32-4-413. Administrative files and opinions.

1 (a) A document is filed when it is received by the
2 commissioner.

3 (b) The commissioner shall keep a register of all notice
4 filings and all applications for registration and registration
5 statements which are or have ever been effective under this
6 chapter and all denial, suspension or revocation orders
7 which have been entered under this chapter. The register
8 shall be open for public inspection.

9 (c) The information contained in or filed with any
10 registration statement, application or report may be made
11 available to the public under rules prescribed by the
12 commissioner.

13 (d) Upon request and at such reasonable charges as he
14 or she prescribes, the commissioner shall furnish to any
15 person photostatic or other copies (certified under his or her
16 seal of office if requested) of any entry in the register or any
17 document which is a matter of public record. In any
18 proceeding or prosecution under this chapter, any copy so
19 certified is prima facie evidence of the contents of the entry
20 or document certified.

21 (e) The commissioner in his or her discretion may honor
22 requests from interested persons for interpretative opinions.
23 Copies of the opinions shall be filed in a special file
24 maintained for that purpose and shall be public records
25 available for public inspection. The commissioner shall
26 charge a \$120 fee for each interpretative opinion.

CHAPTER 226

(S. B. 564 - By Senators Takubo and Stollings)

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend and reenact §18-10M-2, §18-10M-4, §18-10M-6, §18-10M-7 and §18-10M-8 of the Code of West Virginia, 1931, as amended, all relating to the Statewide Independent Living Council; making changes required by amendments to the federal Rehabilitation Act of 1973; updating definitions; modifying the functions and duties of the council; redesignating council relationships with centers for independent living and a designated state entity; providing for compensation and expense reimbursement for members engaged in official duties; requiring signatures for acceptance and approval of state plan; and making conforming amendments.

Be it enacted by the Legislature of West Virginia:

That §18-10M-2, §18-10M-4, §18-10M-6, §18-10M-7 and §18-10M-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10M. WEST VIRGINIA INDEPENDENT LIVING ACT.

§18-10M-2. Legislative findings and declarations.

1 The Legislature hereby finds and declares the following:

2 (1) The state recognizes the value of independent living
3 services in maximizing the ability of people with disabilities
4 to live more independently in their own homes and
5 communities.

6 (2) Persons with disabilities have the best capacity to
7 design, develop, manage and implement the programs and
8 services which are intended to assist them.

9 (3) The federal Rehabilitation Act, as amended, requires
10 this state to develop a state plan for independent living to
11 describe and direct independent living services in West
12 Virginia.

13 (4) The federal Rehabilitation Act, as amended, further
14 calls for the establishment and operation of a Statewide
15 Independent Living Council to monitor, review and
16 evaluate the implementation of the state's plan for
17 independent living services.

18 (5) Approximately twenty-three and one-half percent of
19 West Virginia's residents have one or more disabilities,
20 many of whom could benefit directly or indirectly from the
21 provision of independent living services by the Division of
22 Rehabilitation Services and the state's centers for
23 independent living.

24 (6) A need exists for a coordinated network of
25 consumer-controlled centers for independent living that

26 effectively reaches persons with disabilities in all fifty-five
27 counties of the state.

§18-10M-4. Definitions.

1 Terms used in this article have the same meanings as
2 those provided in the federal Rehabilitation Act, as
3 amended, as follows:

4 (a) “Consumer control” means circumstances in which
5 individuals with disabilities having decision-making
6 authority.

7 (b) “Council” means the Statewide Independent Living
8 Council.

9 (c) “Designated state entity” means the entity
10 designated in the state plan for independent living to receive
11 and administer federal funding as directed by the plan.

12 (d) “Federal Rehabilitation Act” or “federal act” means
13 the act codified at 29 U. S. C. §701, *et. seq.*

14 (e) “Independent living services” means advocacy;
15 independent living skills; training; information and referral;
16 peer counseling; peer support; transition, including services
17 that facilitate the transition of individuals with significant
18 disabilities from nursing homes and other institutions to
19 home and community-based residences, with the requisite
20 supports and services; provide assistance to individuals with
21 significant disabilities who are at risk of entering
22 institutions so that the individuals may remain in the
23 community; facilitate the transition of youth who are
24 individuals with significant disabilities, who were eligible
25 for individualized education programs pursuant to section
26 614(d) of the federal Individuals with Disabilities Education
27 Act (20 U. S. C. 1414(d)), and who have completed their
28 secondary education or otherwise left school, to post-
29 secondary life; and any other service directed by the state
30 plan which may include, but is not limited to, the following:

- 31 (1) Assistive devices and equipment;
- 32 (2) Communication services;
- 33 (3) Counseling and related services;
- 34 (4) Community awareness programs to enhance the
35 understanding and integration into society of individuals
36 with disabilities;
- 37 (5) Environmental modifications;
- 38 (6) Family services;
- 39 (7) Housing advocacy;
- 40 (8) Mobility training;
- 41 (9) Personal assistance services;
- 42 (10) Prostheses and other appliances and devices; and
- 43 (11) Rehabilitation technology.
- 44 (f) “Individual with a significant disability” means an
45 individual with a severe physical or mental impairment
46 whose ability to function independently in the family or
47 community or whose ability to obtain, maintain or advance
48 in employment is substantially limited and for whom the
49 delivery of independent living services will improve the
50 ability to function, continue functioning, or move toward
51 functioning independently in the family or community or to
52 continue in employment, respectively.
- 53 (g) “State plan” means the state plan for independent
54 living required by the federal Rehabilitation Act of 1973, as
55 amended.

§18-10M-6. Statewide Independent Living Council.

- 1 (a) The West Virginia Statewide Independent Living
2 Council is continued as a not-for-profit corporation which

3 has been organized to meet the requirements of the federal
4 Rehabilitation Act, as amended. The council may not be
5 established as an entity within any agency or political
6 subdivision of the state. The council shall be governed by a
7 board of directors, consisting of the voting members of the
8 council, as provided in this section. The composition of this
9 board of directors, as well as the composition of the full
10 council's membership, shall include a majority of members
11 who are persons with disabilities, as defined in the federal
12 Rehabilitation Act, as amended, who are not employed by
13 any agency of the state or center for independent living. The
14 council's membership shall reflect balanced geographical
15 representation, diverse backgrounds and a broad range of
16 disabilities, including, but not limited to, physical, mental,
17 cognitive, sensory and multiple.

18 (b) The council shall function as a partner with the
19 centers for independent living, in compliance with the
20 federal Rehabilitation Act, as amended, in the planning and
21 provision of independent living services in the state. In
22 conjunction with the centers for independent living, the
23 council shall develop, approve and submit to the proper
24 federal authorities the state plan for independent living, as
25 required by the federal act. The council shall monitor,
26 review and evaluate the effectiveness of the implementation
27 of the state plan.

28 (c) *Voting members.* — The council shall consist of
29 twenty-four voting members, including one director of an
30 independent living center chosen by the directors of the
31 independent living centers in the state. The Governor shall
32 select appointments from among the nominations submitted
33 by the council after having conducted a statewide
34 solicitation from organizations representing a wide range of
35 individuals with disabilities and other interested groups, as
36 coordinated by the council, by and with the advice and
37 consent of the Senate. These members may include
38 individuals with disabilities, other representatives from
39 centers for independent living, parents and guardians of
40 individuals with disabilities, advocates of individuals with

41 disabilities, representatives from the business and
42 educational sectors, representatives of organizations that
43 provide services for individuals with disabilities and other
44 interested individuals, as appropriate to the purpose of the
45 council.

46 (d) *Nonvoting members.* — The membership of the
47 council shall also include the following, nonvoting, ex
48 officio members or their designees who shall be appointed
49 by the Governor:

50 (1) A representative of the designated state entity;

51 (2) A representative of the Division of Intellectual and
52 Developmental Disabilities within the Department of
53 Health and Human Resources;

54 (3) A representative of the West Virginia Housing
55 Development Fund;

56 (4) A representative of the West Virginia Association of
57 Rehabilitation Facilities;

58 (5) A representative of the Bureau of Senior Services;
59 and

60 (6) A representative of the Office of Special Education
61 Programs and Assurance in the Department of Education.

62 (e) The nonvoting membership may also include
63 additional representatives of groups represented on the
64 board of directors as identified in the bylaws of the council.

65 (f) *Appointment.* — All council members are appointed
66 by the Governor. The Governor shall appoint from among
67 the nominations submitted by organizations representing a
68 wide range of individuals with disabilities and other
69 interested groups, as coordinated by the council.

70 (g) *Terms of appointment.* — All council members are
71 appointed to serve for a term of three years, except that a

72 member appointed to fill a vacancy occurring prior to the
73 expiration of the term for which a predecessor was
74 appointed shall be appointed for the remainder of the
75 unexpired term. No member of the council may serve more
76 than two consecutive full terms.

77 (h) *Vacancies.* — Any vacancy occurring in the
78 appointed membership of the council shall be filled in the
79 same manner as the original appointment. A vacancy does
80 not affect the power of the remaining members to execute
81 the duties of the council.

82 (i) *Delegation.* — The Governor may delegate the
83 authority to fill a vacancy to the remaining voting members
84 of the council after initial appointments have been made.

85 (j) *Duties.* — The council shall:

86 (1) In conjunction with the centers for independent
87 living, develop and sign the state plan for independent
88 living;

89 (2) Monitor, review and evaluate the implementation of
90 the state plan;

91 (3) Coordinate activities with other bodies that address
92 the needs of specific disability populations and issues under
93 other federal and state law;

94 (4) Ensure that all regularly scheduled meetings of the
95 council are open to the public and sufficient advance notice
96 is provided;

97 (5) Submit to the federal funding agency such periodic
98 reports as are required and keep such records and afford
99 access to such records, as may be necessary to verify such
100 reports; and

101 (6) Ensure that the state plan for independent living sets
102 forth the steps that will be taken to maximize the

103 cooperation, coordination and working relationships
104 among:

105 (A) The Independent Living Rehabilitation Service
106 Program, the Statewide Independent Living Council and
107 centers for independent living; and

108 (B) The designated state unit, other state agencies
109 represented on the council, other councils that address the
110 needs of specific disability populations and issues, and other
111 public and private entities determined to be appropriate by
112 the council.

113 (k) *Authorities.* — Unless prohibited by state law the
114 council may, consistent with the state plan described in
115 section seven of this article:

116 (1) Work with centers for independent living to
117 coordinate services with public and private entities to
118 improve services provided to individuals with disabilities;

119 (2) Conduct resource development activities to support
120 the activities described in this article to support the
121 provision of independent living services by centers for
122 independent living; and

123 (3) Perform other functions, consistent with the purpose
124 of this article and comparable to other functions described
125 in this subsection, as the council determines to be
126 appropriate.

127 (l) *Staffing and resources.* — The council may employ
128 staff as necessary to perform the functions of the council,
129 including an executive director and other staff as may be
130 determined necessary by the council. The council shall
131 supervise and evaluate the executive director. The council
132 shall prepare, in conjunction with the designated state
133 entity, a plan for the use of available resources as may be
134 necessary to carry out the functions and duties of the council
135 pursuant to this article, utilizing eligible federal funds
136 including innovation and expansion funds as directed by the

137 federal Rehabilitation Act, as amended, funds made
138 available under this article and funds from other public and
139 private sources. This resource plan shall, to the maximum
140 extent possible, rely on the use of existing resources during
141 the period of plan implementation.

142 (m) *Compensation and expenses.* — The council may
143 use available resources to reimburse members of the council
144 for reasonable and necessary expenses of attending council
145 meetings and performing council duties, such as personal
146 assistance services, and if the member is not employed or
147 must forfeit wages from other employment, to pay
148 compensation to the member for attending official meetings
149 or engaging in official duties not to exceed the amount paid
150 to members of the Legislature for their interim duties as
151 recommended by the Citizens Legislative Compensation
152 Commission and authorized by law.

§18-10M-7. State plan for independent living.

1 (a) The state plan shall direct the use of federal funds
2 provided to the state under the federal act and appropriated
3 by the Legislature to the designated state entity in a line item
4 for this purpose, in addition to any state funds that may be
5 appropriated to the designated state entity for the provision
6 of independent living services. The state plan, and each
7 subsequent plan or amendment thereto, shall address the
8 priorities set forth in the federal act for establishing a
9 statewide program of independent living services, including
10 a statewide network of centers for independent living. The
11 council chairperson, as authorized by the voting members
12 of the council, and a majority of the directors of the centers
13 for independent living in the state will sign the state plan
14 indicating agreement with the content. The director of the
15 designated state entity will sign the state plan indicating
16 agreement to serve as the designated state entity, to receive
17 the funding, distribute the funding in accordance to the state
18 plan and to fulfill all responsibilities of the designated state
19 entity as provided in the federal Rehabilitation Act, as
20 amended. The state plan may be amended at any time at the

21 agreement of the council and the centers for independent
22 living.

23 (b) The state plan, and each subsequent plan and any
24 amendments thereto shall be presented to the Legislative
25 Oversight Commission on Health and Human Resources
26 Accountability, created pursuant to article twenty-nine-e,
27 chapter sixteen of this code, for review and consultation.

§18-10M-8. Funding and grants.

1 (a) Funds appropriated to the designated state entity for
2 independent living services shall be administered by the
3 designated state entity and may be used to fund any service
4 or activity included in the state plan for independent living,
5 including funding centers for independent living. In order to
6 qualify for funding, a center for independent living shall
7 meet the definition and comply with the standards and
8 indicators therefor, as established in the federal act.

9 (b) Subject to availability, the state plan may designate
10 funds for purposes including, but not limited to, the
11 following:

12 (1) To provide independent living services to eligible
13 individuals with significant disabilities;

14 (2) To demonstrate ways to expand and improve
15 independent living services;

16 (3) To support the operation of centers for independent
17 living;

18 (4) To support activities to increase the capacities of
19 centers for independent living to develop comprehensive
20 approaches or systems for providing independent living
21 services;

22 (5) To conduct studies and analyses, gather information,
23 develop model policies and procedures and present
24 information, approaches, strategies, findings, conclusions

25 and recommendations to policymakers in order to enhance
26 independent living services for individuals with disabilities;

27 (6) To train individuals with disabilities and individuals
28 who provide services to them and other persons regarding
29 the independent living philosophy; and

30 (7) To provide outreach to populations that are unserved
31 or underserved by programs under this act, including
32 minority groups and urban and rural populations.

33 As provided in the state plan, funds appropriated for the
34 purposes of this article shall be utilized directly by the
35 designated state entity for the provision of independent
36 living services or through grants or contracts, with the
37 approval of the council, to agencies that meet the definition
38 of and comply with the standards and indicators for centers
39 for independent living set forth in the federal act.

CHAPTER 227

**(Com. Sub. for S. B. 533 - By Senators Hall and
Mullins)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §8-13-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3-9d of said code; and to amend and reenact §60-4-3b of said code, all relating to the collection of taxes on wine and intoxicating liquors; providing that no wine or liquor excise tax shall be collected on purchases of wine or intoxicating liquors in the original sealed package for the purpose of resale if the final purchase of such wine or intoxicating liquor is subject to the excise tax; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §8-13-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60-3-9d of said code be amended and reenacted; and that §60-4-3b of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.

1 (a) (1) Every municipality shall have plenary power and
2 authority to levy and collect a tax upon all purchases within
3 such municipality of intoxicating liquors from the Alcohol
4 Beverage Control Commissioner, from any person licensed
5 to sell wine at retail to the public under the provisions of
6 article eight, chapter sixty of this code, or from distributors
7 licensed to sell or distribute wine pursuant to said article:
8 *Provided*, That no municipality shall have authority to levy
9 or collect any such tax on the intoxicating liquors sold by or
10 purchased from holders of a license issued under the
11 provisions of article seven, chapter sixty of this code:
12 *Provided, however*, That no municipality shall have
13 authority to levy or collect any such tax on purchases within
14 such municipality of intoxicating liquors or wine in the
15 original sealed package for the purpose of resale in the
16 original sealed package if the final purchase of such
17 intoxicating liquors or wine is subject to the tax imposed
18 under this section, under section nine-d, article three,
19 chapter sixty of this code, or under section twenty-one,
20 article three-a of said chapter. This section shall not be
21 interpreted to authorize a purchase for resale exemption in
22 contravention of section nine-a, article fifteen, chapter
23 eleven of this code. The tax shall be levied upon the
24 purchaser and shall be added to and collected with the price
25 of purchase. The tax shall not exceed five percent of the
26 purchase price.

27 (2) A copy of any ordinance imposing the tax authorized
28 by this section shall be certified by the mayor of the
29 municipality to the West Virginia Alcohol Beverage
30 Control Commissioner and to the Tax Commissioner. The
31 West Virginia Alcohol Beverage Control Commissioner by
32 appropriate rules and regulations shall provide for the
33 collection of such tax upon all purchases within such
34 municipality of intoxicating liquors from the Alcohol
35 Beverage Control Commissioner, from any person licensed
36 to sell wine at retail pursuant to the provisions of article
37 eight, chapter sixty of this code, or from distributors
38 licensed to sell or distribute wine pursuant to said article,
39 and for distribution thereof to the respective municipalities
40 for which the same shall be collected. Such rules and
41 regulations shall provide that all such taxes shall be
42 deposited with the State Treasurer and distributed quarterly
43 by the Treasurer upon warrants of the Auditor payable to the
44 municipality.

45 (3) Every municipality shall have plenary power and
46 authority to levy and collect a fee from any private club
47 licensee whose premises are situate therein as authorized in
48 section seven, article seven, chapter sixty of this code.

49 (b) For purposes of this section:

50 (1) "Original sealed package" means an original
51 package, as defined in this article, bearing an unbroken seal,
52 as defined in this article. For purposes of this article, the
53 term "original sealed package" does not mean or include a
54 case, shipping box, carton, bottle caddy, cargo container, or
55 any other packaging or container that is not in immediate
56 physical contact with its liquid contents and which is not a
57 "container" as defined in this article;

58 (2) "Original package" means that container, as defined
59 in this article, into which the manufacturer or bottler of a
60 given liquor or wine first placed a given wine or liquor
61 immediately after it was produced, which is intended by the

62 manufacturer or bottler to be the container in which such
63 wine or liquor is to be sold;

64 (3) "Seal" means a piece of wax, foil, metal, plastic or
65 paper affixed to a container of liquor or wine in such a way
66 that the seal must be broken when the container is opened.
67 The purpose of a seal is to show evidence of opening,
68 tampering or alteration of the container. A seal bears some
69 combination of embossed, printed, engraved or impressed
70 emblems, figures, symbols, words, trademarks, stamps,
71 medallions, marks, or letters for attestation or evidence of
72 authenticity. A seal is typically affixed to a package or
73 container by the manufacturer or bottler of a given wine or
74 liquor. The term "seal" may include a seal provided by or
75 specified by this state and required by law to be affixed to a
76 container of liquor or wine; and

77 (4) "Container" means a bottle, boxed wine box
78 (including the liner, bag or bladder thereof), cask, can, jug
79 or other holder of liquor or wine, which is in immediate
80 physical contact with the liquid contents, and which is the
81 only means by which its liquid contents are prevented from
82 flowing or leaking out of the holder, and which is intended
83 to be the container in which such wine or liquor is to be sold
84 to final consumers.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.

1 (a) (1) For the purpose of providing financial assistance
2 to and for the use and benefit of the various counties and
3 municipalities of this state, there is hereby levied a tax upon
4 all purchases outside the corporate limits of any
5 municipality of intoxicating liquor from state stores or other
6 agencies of the Alcohol Beverage Control Commissioner,
7 of wine from any person licensed to sell wine at retail under

8 the provisions of article eight, chapter sixty of this code, and
9 of wine from distributors licensed to sell or distribute wine
10 under the provisions of said article. The tax shall be five
11 percent of the purchase price and shall be added to and
12 collected with the purchase price by the commissioner, by
13 the person licensed to sell wine at retail, or by the distributor
14 licensed to sell or distribute wine, as the case may be:
15 *Provided*, That no such tax shall be collected on the
16 intoxicating liquors sold by or purchased from holders of a
17 license issued under the provisions of article seven of this
18 chapter: *Provided, however*, That no such tax shall be
19 collected on purchases of intoxicating liquors or wine in the
20 original sealed package for the purpose of resale in the
21 original sealed package if the final purchase of such
22 intoxicating liquors or wine is subject to the tax imposed
23 under this section, under section seven, article thirteen,
24 chapter eight of this code, or under section twenty-one,
25 article three-a, chapter sixty of this code. This section shall
26 not be interpreted to authorize a purchase for resale
27 exemption in contravention of section nine-a, article fifteen,
28 chapter eleven of this code.

29 (2) All such tax collected within one mile of the
30 corporate limits of any municipality within the state shall be
31 remitted to such municipality; all other tax so collected shall
32 be remitted to the county wherein collected: *Provided*, That
33 where the corporate limits of more than one municipality be
34 within one mile of the place of collection of such tax, all
35 such tax collected shall be divided equally among each of
36 said municipalities: *Provided, however*, That such mile is
37 measured by the most direct hard surface road or access way
38 usually and customarily used as ingress and egress to the
39 place of tax collection.

40 (3) The West Virginia Alcohol Beverage Control
41 Commissioner by appropriate rules and regulations shall
42 provide for the collection of such tax upon all purchases
43 outside the corporate limits of any municipality of
44 intoxicating liquor from state stores or other agencies of the
45 Alcohol Beverage Control Commissioner, separation or

46 proration of the same and distribution thereof to the
47 respective counties and municipalities for which the same
48 shall be collected. The Tax Commissioner by appropriate
49 rules and regulations shall provide for the collection of such
50 tax upon all purchases outside the corporate limits of any
51 municipality of wine from any person licensed to sell wine
52 at retail under the provisions of article eight, chapter sixty
53 of this code, or from distributors licensed to sell or distribute
54 wine under the provisions of said article, and shall also
55 provide for separation or proration of the same and
56 distribution thereof to the respective counties and
57 municipalities for which the same shall be collected. Such
58 rules and regulations shall provide that all such taxes shall
59 be deposited with the State Treasurer and distributed
60 quarterly by the Treasurer upon warrants of the Auditor
61 payable to the counties and municipalities.

62 (b) For purposes of this section, terms will have the
63 same meaning as provided in subsection (b), section seven,
64 article thirteen, chapter eight of this code.

ARTICLE 4. LICENSES.

§60-4-3b. Winery and farm winery license to manufacture and sell.

1 (a) *Sales of wine.* — An operator of a winery or farm
2 winery may offer wine produced by the winery or farm
3 winery for retail sale to customers from the winery or farm
4 winery for consumption off the premises only. Except for
5 free complimentary samples offered pursuant to section
6 one, article six of this chapter, customers are prohibited
7 from consuming any wine on the premises of the winery or
8 farm winery unless such winery or farm winery has obtained
9 a multicapacity winery or farm winery license: *Provided,*
10 That a licensed winery or farm winery may offer
11 complimentary samples per this subsection of wine
12 manufactured by that licensed winery or farm winery for
13 consumption on the premises only on Sundays beginning at
14 10:00 a.m. in any county in which the same has been

15 approved as provided in section three-pp, article one,
16 chapter seven of this code.

17 (b) *Retail sales.* — Every licensed winery or farm
18 winery shall comply with the provisions of articles three,
19 four and eight of this chapter as applicable to wine retailers,
20 wineries and suppliers when properly licensed in such
21 capacities.

22 (c) *Payment of taxes and fees.* —

23 (1) The winery or farm winery shall pay all taxes and
24 fees required of licensed wine retailers and meet applicable
25 licensing provisions as required by this chapter and by rule
26 of the commissioner.

27 (2) Each winery or farm winery acting as its own
28 supplier shall submit to the Tax Commissioner the liter tax
29 for all sales at the winery or farm winery each month, as
30 provided in article eight of this chapter.

31 (3) The five percent wine excise tax, levied pursuant to
32 section nine-d, article three, chapter sixty of this code or
33 pursuant to section seven, article thirteen, chapter eight of
34 this code, may not be imposed or collected on purchases of
35 wine in the original sealed package for the purpose of resale
36 in the original sealed package if the final purchase of such
37 wine is subject to the excise tax or if the purchase is
38 delivered outside this state.

39 (4) No liter tax shall be collected on wine sold in the
40 original sealed package for the purpose of resale in the
41 original sealed package if a subsequent sale of such wine is
42 subject to the liter tax.

43 (5) This section shall not be interpreted to authorize a
44 purchase for resale exemption in contravention of section
45 nine-a, article fifteen, chapter eleven of this code.

46 (d) *Advertising.* — A winery or farm winery may
47 advertise a particular brand or brands of wine produced by

48 it and the price of the wine subject to federal requirements
49 or restrictions.

50 (e) *Limitations on licensees.* — A winery or farm
51 winery must maintain separate winery or farm winery
52 supplier, retailer and direct shipper licenses when acting in
53 one or more of those capacities and must pay all associated
54 license fees, unless such winery or farm winery holds a
55 license issued pursuant to the provisions of subdivision (12),
56 subsection (b), section three, article eight of this chapter. A
57 winery or farm winery, if holding the appropriate licenses
58 or a multicapacity winery or farm winery license, may act
59 as its own supplier; retailer for off-premises consumption of
60 its wine as specified in section two, article six of this
61 chapter; private wine restaurant; and direct shipper for wine
62 produced by the winery or farm winery. All wineries must
63 use a distributor to distribute and sell their wine in the state,
64 except for farm wineries. No more than one winery or farm
65 winery license may be issued to a single person or entity and
66 no person may hold both a winery and a farm winery
67 license.

68 (f) For purposes of this section, terms will have the same
69 meaning as provided in subsection (b), section seven, article
70 thirteen, chapter eight of this code.



CHAPTER 228

**(Com. Sub. for H. B. 2734 - By Delegates Boggs,
Westfall, Nelson and Frich)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-5-15, all

relating to authorizing dealers of heavy equipment rental inventory to collect a fee from renters for the purpose of paying the dealers' property taxes on rental equipment and establishing requirements for collection and remittance of such rental 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 §11-5-15, to read as follows:

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-15. Dealer collection of fees on heavy equipment rental inventory.

1 (a) *Definitions* – When used in this section, or in the
2 administration of this section, the terms defined in this
3 subsection shall have the meanings ascribed to them by this
4 subsection, unless a different meaning is clearly required by
5 the context in which the term is used or by specific
6 definition.

7 (1) “Dealer of heavy equipment rental inventory” means
8 a person or entity principally engaged in the business of
9 short-term rental of property as described under North
10 American Industrial Classification System code 532412, as
11 published by the Bureau of Census.

12 (2) “Heavy equipment rental inventory” means the
13 inventory of any construction, earthmoving or industrial
14 equipment that is mobile and rented by a dealer of heavy
15 equipment rental inventory including attachments for the
16 equipment or other ancillary equipment or tools. Qualified
17 heavy equipment property is mobile if it is not permanently
18 affixed to real property and is capable of being moved to
19 work sites.

20 (3) “Rental” or “renting” means the rental by a dealer of
21 heavy equipment rental inventory:

22 (A) For period of less than one (1) year or for an
23 undefined period; or

24 (B) Under a contract with unlimited terms.

25 (4) "Rental charge" means the total charge for the rental
26 of heavy equipment rental inventory.

27 (b) For the purpose of the collection and remittance of
28 property taxes on heavy equipment rental inventory, each
29 dealer of heavy equipment rental inventory may, with
30 respect to each rental of heavy equipment rental inventory,
31 assign a fee to each item of heavy equipment rental
32 inventory, state the amount of the fee assigned to the item
33 of heavy equipment rental inventory as a separate line item
34 on the invoice or other billing statement issued by the dealer
35 to the renter, and collect the fee from the renter at the time
36 the renter makes a rental payment to the dealer. The fee
37 shall be in any amount not greater than two and one-half
38 percent of the rental charge of each item of heavy equipment
39 rental inventory.

40 (c) Any dealer of equipment rental inventory collecting
41 the fee pursuant to subsection b of this section shall account
42 for and hold those amounts separately from all other
43 business receipts and shall use such amounts solely and
44 exclusively for purposes of paying the property taxes levied
45 upon its heavy equipment rental inventory.

46 (d) Any dealer collecting fees pursuant to subsection a
47 of this section shall remit such amounts annually to the
48 appropriate county sheriff on or before the thirtieth of
49 September immediately following receipt of annual tax
50 statements for the year in which the taxes collected pursuant
51 to subsection a of this section took place. Any such
52 remittances shall be credited against the dealer's property
53 taxes attributable to the heavy equipment rental inventory
54 for that year. Any fees remitted to any county in excess of
55 the dealer's actual property tax liability in the applicable tax
56 year attributable to the heavy equipment rental inventory in

57 that county shall be retained by the county having received
 58 the payments and no such excess shall be refunded to the
 59 dealer.

60 (e) Nothing in this section may be construed to exempt
 61 such heavy equipment rental inventory from property taxes.

62 (f) All fees collected from renters shall be excluded
 63 from any amounts subject to state or municipal sales or use
 64 taxes.

CHAPTER 229

**(H. B. 2774 - By Delegates Hamrick, Ward, Folk,
 Frich, Summers, Statler, Howell, Zatezalo, Queen,
 Iaquinta and Miley)**

[Passed March 28, 2017; in effect ninety days from passage.]
 [Approved by the Governor on April 8, 2017.]

AN ACT to amend and reenact §11-6H-2 of the Code of West Virginia, 1931, as amended, relating to defining “special aircraft property” to include certain parts, materials or items used in the construction or repair of aircraft, aircraft engines or components of aircraft.

Be it enacted by the Legislature of West Virginia:

That §11-6H-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6H. VALUATION OF SPECIAL AIRCRAFT PROPERTY.

§11-6H-2. Definitions.

1 (a) When used in this article, terms defined in
 2 subsection (b) of this section have the meanings ascribed to

3 them by this section, unless a different meaning is clearly
4 required by the context in which the term is used.

5 (b) *Terms defined.* —

6 (1) “Aircraft” means a weight-carrying structure for
7 navigation of the air that is supported by the dynamic action
8 of the air against its surfaces and includes, but is not limited
9 to, an airplane or helicopter. For the purposes of this article,
10 the term “aircraft” does not include dirigibles, balloons,
11 kites, rockets, gliders, ornithopters, fan wing vehicles,
12 autogyros and powered lift vehicles other than helicopters.

13 (2) “Airplane” means a fixed-wing aircraft heavier than
14 air that is driven by a propeller or by jet, turbojet, turbofan,
15 ram jet, pulse jet, scramjet or rocket engine and supported
16 by the dynamic reaction of air against its wings.

17 (3) “Commercial airline” means an air transportation
18 system used to transport people and tangible personal
19 property for profit and includes carriers that operate with
20 fixed routes and flight schedules as well as charter carriers.

21 (4) “Helicopter” means an aircraft whose support in the
22 air is derived chiefly from the aerodynamic forces acting on
23 one or more rotors turning about on substantially vertical
24 axes.

25 (5) “Private carrier” means any firm, partnership, joint
26 venture, joint stock company, any public or private
27 corporation, cooperative, trust, business trust or any other
28 group or combination acting as a unit that is engaged in a
29 primary business other than commercial air transportation
30 that operates an aircraft for the transportation of employees
31 or others for business purposes.

32 (6) “Salvage value” means the lower of fair market
33 salvage value or five percent of the original cost of the
34 property.

35 (7) “Special aircraft property” means all aircraft
36 owned or leased by commercial airlines or private
37 carriers, or any parts, materials or items used in the
38 construction, maintenance or repair of aircraft which are,
39 or are intended to become, affixed to or a part of an
40 aircraft or of an aircraft’s engine or of any other
41 component of an aircraft, used as such, by a repair station
42 as defined under Part 145 of Title 14 of the United States
43 Code of Federal Regulations, or any succeeding
44 regulations issued by the Federal Aviation
45 Administration or any successor agency.

CHAPTER 230

(H. B. 2963 - By Delegates Nelson and Boggs)
[By Request of the Revenue Department]

[Passed April 5, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §11-11-17a of the Code of West Virginia, 1931, as amended; relating to terminating on a certain date provisions by which domiciliary personal representatives of nonresident decedents may apply for certain releases.

Be it enacted by the Legislature of West Virginia:

That §11-11-17a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. ESTATE TAXES.

§11-11-17a. Discharge of nonresident decedent’s real property in absence of ancillary administration, termination.

1 (a) The domiciliary personal representative of a
2 nonresident decedent may apply to the Tax Commissioner
3 for a certificate releasing all real property situate in this state
4 included in decedent's gross estate from any lien imposed
5 by section seventeen of this article. In the absence of
6 ancillary administration in this state, the Tax Commissioner
7 may consider reliable and satisfactory evidence furnished
8 by the personal representative regarding the value of real
9 property and the amount of tax due under this article, or that
10 no tax liability exists under this article with respect to any
11 real property.

12 (b) If the Tax Commissioner determines that reliable
13 and satisfactory evidence exists, an affidavit of value
14 submitted by the personal representative made pursuant to
15 and in conjunction with the evidence shall be marked as
16 inspected by the commissioner and shall be filed by the
17 estate in the county or counties of this state where the real
18 property is situate.

19 (c) In determining tax liability, the Tax Commissioner
20 may also consider an appraisal of the real property
21 submitted in writing to the Tax Commissioner, paid for by
22 the personal representative and made at the personal
23 representative's request. The appraisal shall be performed
24 by a licensed real estate appraiser acceptable to the Tax
25 Commissioner and it shall be filed in the county or counties
26 where the real property is situate.

27 (d) If the Tax Commissioner is satisfied that no tax
28 liability exists, or that the tax liability of the estate has been
29 fully discharged, the Tax Commissioner may issue a
30 certificate under subsection (f), section seventeen of this
31 article.

32 (e) On and after July 1, 2017, the provisions of this
33 section have no force or effect.

CHAPTER 231

(Com. Sub. for H. B. 2555 - By Delegates G. Foster, Fast, Higginbotham, Howell, Frich, Zatezalo, Kelly, Summers, Cowles, Hamrick and Wilson)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §11-13W-1 of the Code of West Virginia, 1931, as amended, relating to tax credits for apprenticeship training in construction trades; removing requirement that eligibility is limited to programs jointly administered by labor and management trustees; conforming provisions to current law.

Be it enacted by the Legislature of West Virginia:

That §11-13W-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13W. APPRENTICESHIP TRAINING TAX CREDITS.

§11-13W-1. Tax credits for apprenticeship training in construction trades.

1 (a) *Credit allowed.* - For those tax years beginning on or
2 after January 1, 2008, there is allowed a credit for any
3 taxpayer against certain taxes imposed by this state as
4 described in subsection (d) of this section for wages paid to
5 apprentices in the construction trades who are registered
6 with the United States Department of Labor, Office of
7 Apprenticeship, West Virginia State Office, by the taxpayer
8 in the tax year that an apprentice and taxpayer participate in
9 a qualified apprenticeship training program, as described in
10 this section, which is:

11 (1) Administered pursuant to 29 U.S.C. Section 50; and

12 (2) Certified in accordance with regulations adopted by
13 the United States Bureau of Apprenticeship and Training or
14 the successor agency of that bureau.

15 (b) *Amount of credit.* - The tax credit equals \$2 per hour
16 multiplied by the total number of hours worked during the
17 tax year by an apprentice working for the participating
18 taxpayer, and the amount of credit allowed for any tax year
19 with respect to each apprentice may not exceed \$2,000, or
20 fifty percent of actual wages paid in that tax year for the
21 apprenticeship, whichever is less.

22 (c) *Qualified apprenticeship training program*
23 *requirements.* — In addition to the qualifications specified
24 in subsection (a) of this section, a qualified apprenticeship
25 training program consists of at least two thousand but not
26 more than ten thousand hours of on-the-job apprenticeship
27 training for certification of the apprenticeship by the United
28 States Bureau of Apprenticeship and Training or the
29 successor agency of the bureau.

30 (d) *Application of annual credit allowance.* - The
31 amount of credit as determined under subsection (b) of this
32 section is allowed as a credit against the taxpayer's state tax
33 liability applied as provided in subdivisions (1) through (2),
34 inclusive, of this subsection, and in that order.

35 (1) *Corporation net income taxes.* - The credit must first
36 be applied to reduce the taxes imposed by article twenty-
37 four of this chapter for the taxable year.

38 (2) *Personal income taxes.* — After application of
39 subdivision (1) of this subsection, any unused credit is next
40 applied as follows:

41 (A) If the person making the qualified investment is an
42 electing small business corporation (as defined in Section
43 1361 of the United States Internal Revenue Code of 1986,
44 as amended), a partnership, a limited liability company that

45 is treated as a partnership for federal income tax purposes,
46 or a sole proprietorship, then any unused credit (after
47 application of subdivision (1) of this subsection) is allowed
48 as a credit against the taxes imposed by article twenty-one
49 of this chapter on the income from business or other activity
50 on income of a sole proprietor attributable to the business.

51 (B) Electing small business corporations, limited
52 liability companies, partnerships and other unincorporated
53 organizations shall allocate the credit allowed by this article
54 among its members in the same manner as profits and losses
55 are allocated for the taxable year.

56 (3) A credit is not allowed under this section against any
57 employer withholding taxes imposed by article twenty-one
58 of this chapter.

59 (e) *Unused credit.* — If any credit remains after
60 application of subsection (d) of this section, that amount is
61 forfeited. A carryback to a prior taxable year is not allowed
62 for the amount of any unused portion of any annual credit
63 allowance.



CHAPTER 232

(S. B. 25 - By Senators Karnes, Rucker and Sypolt)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2017.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-13DD-6 and §11-13DD-7, all relating to creation of farm-to-food bank tax credit; defining terms; providing method for calculation of value of tax credit; limiting tax credit; providing for certification by Department of Agriculture; allowing

carryover of unused tax credits for four years; providing for rulemaking; and establishing effective date of tax credit.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-13DD-6 and §11-13DD-7, all to read as follows:

ARTICLE 13DD. WEST VIRGINIA FARM-TO-FOOD BANK TAX CREDIT.

§11-13DD-1. Findings and purpose.

1 The Legislature finds that it is an important public
2 policy to promote fresh, healthy and local agricultural
3 products for food banks and to provide an incentive for
4 farmers to donate to food banks in this state by providing a
5 tax credit for their donations.

§11-13DD-2. Definitions.

1 As used in this article:

2 (1) “Department” means the Department of Agriculture;

3 (2) “Donor” means a qualified taxpayer who provides
4 free of fee or charge edible agricultural products to a
5 nonprofit food program operating in West Virginia;

6 (3) “Edible agricultural products” means fruits,
7 vegetables, beef, poultry, pork, fish or any other edible
8 product raised or grown in West Virginia that is intended
9 for, and fit for, human consumption;

10 (4) “Farming taxpayer” means a West Virginia taxpayer
11 responsible for, and deriving income of, at least \$1,000 from
12 growing fruits, vegetables or other edible agricultural
13 products or from raising beef, poultry, pork, fish or other
14 edible agricultural products; and

15 (5) “Nonprofit food program” means a surplus food
16 collection and distribution program operated and
17 established to collect donated food for redistribution to
18 persons in need and is recognized as exempt from federal
19 taxation under Section 501(c)(3) of the Internal Revenue
20 Code.

§11-13DD-3. Amount of credit; limitation of credit.

1 (a) There is allowed to farming taxpayers who make
2 donations of edible agricultural products to one or more
3 nonprofit food programs in this state a credit against taxes
4 imposed by articles twenty-one and twenty-four of this
5 chapter in the amount set forth in subsection (b) of this
6 section.

7 (b) The amount of the credit is equal to ten percent of
8 the value of the donated edible agricultural products, but not
9 to exceed \$2,500 during a taxable year or the total amount
10 of tax imposed by article twenty-one or twenty-four of this
11 chapter, whichever is less, in the year of donations.

12 (c) If the amount of the credit exceeds the taxpayer’s tax
13 liability for the taxable year, the amount which exceeds the
14 tax liability may be carried over and applied as a credit
15 against the tax liability of the taxpayer pursuant to article
16 twenty-one or twenty-four of this chapter to each of the next
17 four taxable years unless sooner used.

18 (d) No more than \$200,000 of tax credits may be
19 allocated to the department in any fiscal year. The
20 department shall allocate the tax credits in the order the
21 donation forms are received.

§11-13DD-4. Determination of value of credit.

1 (a) The donor shall determine the value of the donated
2 edible agricultural products as follows:

3 (1) If there was a previous sale of the edible agricultural
4 products to a buyer, the donor should retain a copy of an

5 invoice or other statement identifying the price received by
6 the donor for the edible agricultural products of comparable
7 grade or quality; or

8 (2) If there is no previous sale to a buyer, the donor shall
9 on the date of the donation, determine the value of the
10 donated edible agricultural products based on the fair
11 market value as determined by average weekly regional
12 produce auction prices or United States Department of
13 Agriculture prices for meat, fish and dairy products.

14 (b) At the time of the donation, the donor shall provide
15 to the nonprofit food program the estimated value of the
16 donated edible agricultural products as determined herein.
17 The nonprofit food program shall provide to the donor a
18 signed and dated form prescribed by the department
19 containing at a minimum:

20 (1) The type and quantity of product donated;

21 (2) The name, address and taxpayer identification
22 number of the donor or donors;

23 (3) The name and address of the donee nonprofit food
24 program; and

25 (4) The estimated value of the donated edible
26 agricultural products, as provided by the donor.

27 (c) To claim the tax credit, a qualified farming taxpayer
28 shall send the donation form from the nonprofit food
29 program to the department for certification.

§11-13DD-5. Legislative rules.

1 (a) The Tax Commissioner shall propose rules for
2 legislative approval in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code as may be
4 necessary to carry out the purposes of this article.

5 (b) The Commissioner of Agriculture may propose rules
6 for legislative approval in accordance with the provisions of

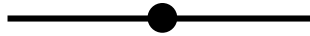
7 article three, chapter twenty-nine-a of this code as may be
8 necessary to carry out the purposes of this article.

§11-13DD-6. Tax credit review report.

1 Beginning on the first day of the second taxable year
2 after the passage of this article and every two years
3 thereafter, the department shall submit to the Governor, the
4 President of the Senate and the Speaker of the House of
5 Delegates a tax credit review and accountability report
6 evaluating the cost effectiveness of the tax credit and
7 donations during the most recent two-year period for which
8 information is available.

§11-13DD-7. Effective date.

1 The credit allowed by this article shall be allowed upon
2 donations occurring after December 31, 2017.



CHAPTER 233

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

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §11-15B-2a and §11-15B-32 of the Code of West Virginia, 1931, as amended, all relating to incorporating changes to the Streamlined Sales and Use Tax Agreement; and providing new effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-15B-2a and §11-15B-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15B. SALES AND USE TAX ADMINISTRATION.**§11-15B-2a. Streamlined Sales and Use Tax Agreement defined.**

1 As used in this article and articles fifteen and fifteen-a
2 of this chapter, the term “Streamlined Sales and Use Tax
3 Agreement” or “agreement” means the agreement adopted
4 November 12, 2002, by states that enacted authority to
5 engage in multistate discussions similar to that provided in
6 section four of this article, except when the context in which
7 the term is used clearly indicates that a different meaning is
8 intended by the Legislature. “Agreement” includes
9 amendments to the agreement adopted by the implementing
10 states in calendar years 2003, 2004, 2005, 2006, 2007, 2008,
11 2009, 2010, 2011, 2012 and amendments adopted by the
12 governing board on or before, January 31, 2017, but does
13 not include any substantive changes in the agreement
14 adopted after January 31, 2017.

§11-15B-32. Effective date.

1 (a) The provisions of this article, as amended or added
2 during the regular legislative session in the year 2003, shall
3 take effect January 1, 2004, and apply to all sales made on
4 or after that date and to all returns and payments due on or
5 after that day, except as otherwise expressly provided in
6 section five of this article.

7 (b) The provisions of this article, as amended or added
8 during the second extraordinary legislative session in the
9 year 2003, shall take effect January 1, 2004, and apply to all
10 sales made on or after that date.

11 (c) The provisions of this article, as amended or added
12 by act of the Legislature in the year 2004 shall apply to all
13 sales made on or after the date of passage in the year 2004.

14 (d) The provisions of this article, as amended or added
15 during the regular legislative session in the year 2008, shall
16 apply to all sales made on or after the date of passage and to
17 all returns and payments due on or after that day, except as
18 otherwise expressly provided in this article.

19 (e) The provisions of this article, as amended or added
20 during the 2009 regular legislative session, shall apply to all
21 sales made on or after the date of passage and to all returns
22 and payments due on or after that day, except as otherwise
23 expressly provided in this article.

24 (f) The provisions of this article, as amended or added
25 during the 2010 regular legislative session, shall apply to all
26 sales made on or after the date of passage and to all returns
27 and payments due on or after that day, except as otherwise
28 expressly provided in this article.

29 (g) The provisions of this article, as amended or added
30 during the 2012 regular legislative session, shall apply to all
31 sales made on or after the date of passage and to all returns
32 and payments due on or after that day, except as otherwise
33 expressly provided in this article.

34 (h) The provisions of this article, as amended or added
35 during the 2017 regular legislative session, shall apply to all
36 sales made on or after the date of passage and to all returns
37 and payments due on or after that day, except as otherwise
38 expressly provided in this article.

CHAPTER 234

**(H. B. 2594 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed March 14, 2017; in effect from passage.]
[Approved by the Governor on March 23, 2017.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in the West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. WEST VIRGINIA PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning
2 as when used in a comparable context in the laws of the
3 United States relating to income taxes, unless a different
4 meaning is clearly required. Any reference in this article to
5 the laws of the United States means the provisions of the
6 Internal Revenue Code of 1986, as amended, and any other
7 provisions of the laws of the United States that relate to the
8 determination of income for federal income tax purposes.
9 All amendments made to the laws of the United States after
10 December 31, 2015, but prior to January 1, 2017, shall be
11 given effect in determining the taxes imposed by this article
12 to the same extent those changes are allowed for federal
13 income tax purposes, whether the changes are retroactive or
14 prospective, but no amendment to the laws of the United
15 States made on or after January 1, 2017, may be given any
16 effect.

17 (b) *Medical savings accounts.* — The term “taxable
18 trust” does not include a medical savings account
19 established pursuant to section twenty, article fifteen,
20 chapter thirty-three of this code or section fifteen, article
21 sixteen of that chapter. Employer contributions to a medical
22 savings account established pursuant to those sections are
23 not wages for purposes of withholding under section
24 seventy-one of this article.

25 (c) *Surtax.* — The term “surtax” means the twenty
26 percent additional tax imposed on taxable withdrawals from
27 a medical savings account under section twenty, article
28 fifteen, chapter thirty-three of this code and the twenty
29 percent additional tax imposed on taxable withdrawals from

30 a medical savings account under section fifteen, article
31 sixteen of that chapter which are collected by the Tax
32 Commissioner as tax collected under this article.

33 (d) *Effective date.* — The amendments to this section
34 enacted in the year 2017 are retroactive to the extent
35 allowable under federal income tax law. With respect to
36 taxable years that began prior to January 1, 2017, the law in
37 effect for each of those years shall be fully preserved as to
38 that year, except as provided in this section.

39 (e) For purposes of the refundable credit allowed to a
40 low income senior citizen for property tax paid on his or her
41 homestead in this state, the term “laws of the United States”
42 as used in subsection (a) of this section means and includes
43 the term “low income” as defined in subsection (b), section
44 twenty-one of this article and as reflected in the poverty
45 guidelines updated periodically in the federal register by the
46 U.S. Department of Health and Human Services under the
47 authority of 42 U.S.C. § 9902(2).

CHAPTER 235

(S. B. 433 - By Senator Trump)

[Passed April 7, 2017; in effect ninety days from passage.]

[Approved by the Governor on April 24, 2017.]

AN ACT to amend and reenact §11-22-2 of the Code of West Virginia, 1931, as amended, relating to permitting counties to increase the excise tax on the privilege of transferring real property.

Be it enacted by the Legislature of West Virginia:

That §11-22-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.**§11-22-2. Rate of tax; when and by whom payable; additional county tax.**

1 (a) Every person who delivers, accepts or presents for
2 recording any document, or in whose behalf any document
3 is delivered, accepted or presented for recording, is subject
4 to pay for, and in respect to the transaction or any part
5 thereof, a state excise tax upon the privilege of transferring
6 title to real estate at the rate of \$1.10 for each \$500 value or
7 fraction thereof as represented by the document as defined
8 in section one of this article. The state tax is payable at the
9 time of delivery, acceptance or presenting for recording of
10 the document. In addition to the state excise tax described
11 in this subsection, there is assessed a fee of \$20 upon the
12 privilege of transferring real estate for consideration. The
13 clerk of the county commission shall collect the additional
14 \$20 fee before recording a transfer of title to real estate and
15 shall deposit the moneys from the additional fees into the
16 West Virginia Affordable Housing Trust Fund as provided
17 in article eighteen-d, chapter thirty-one of this code. The
18 moneys collected from this additional fee shall be
19 segregated from other funds in the West Virginia
20 Affordable Housing Trust Fund and shall be accounted for
21 separately. Not more than ten percent of these additional
22 moneys may be expended by the West Virginia Affordable
23 Housing Trust Fund to defray administrative and operating
24 costs and expenses actually incurred by the West Virginia
25 Affordable Housing Trust Fund. The Housing
26 Development Fund, as fiscal agent of the West Virginia
27 Affordable Housing Trust Fund, shall publish monthly on
28 the Internet site an accounting of all revenue deposited into
29 the fund during the month and a full disclosure of all
30 expenditures from the fund including the group receiving
31 funds, their location and any contractor awarded the
32 construction contract. Additionally, the West Virginia
33 Affordable Housing Trust Fund is to provide an annual

34 report to the Joint Committee on Government and Finance
35 before December 1, 2007, and each year thereafter.

36 (b) Effective January 1, 1968, and thereafter, there is
37 imposed an additional county excise tax for the privilege of
38 transferring title to real estate at the rate of 55 cents for each
39 \$500 value or fraction thereof as represented by such
40 document as defined in section one of this article, which
41 county tax shall be payable at the time of delivery,
42 acceptance or presenting for recording of such document:
43 *Provided*, That after July 1, 1989, the county may increase
44 said excise tax to an amount equal to the state excise tax.
45 The additional tax hereby imposed is declared to be a county
46 tax and to be used for county purposes: *Provided, however*,
47 That after July 1, 2017, the county may increase the excise
48 tax to an amount not to exceed \$1.65 for each \$500 value,
49 or fraction thereof, as represented by a document as defined
50 in section one of this article: *Provided further*, That only one
51 such state tax and one such county tax shall be paid on any
52 one document and shall be collected in the county where the
53 document is first admitted to record and the tax shall be paid
54 by the grantor therein unless the grantee accepts the
55 document without such tax having been paid, in which event
56 such tax shall be paid by the grantee: *And provided further*,
57 That on any transfer of real property from a trustee or a
58 county clerk transferring real estate sold for taxes, such tax
59 shall be paid by the grantee. The county excise tax imposed
60 under this section may not be increased in any county unless
61 the increase is approved by a majority vote of the members
62 of the county commission of such county. Any county
63 commission intending to increase the excise tax imposed in
64 its county shall publish a notice of its intention to increase
65 such tax not less than thirty days nor more than sixty days
66 prior to the meeting at which such increase will be
67 considered, such notice to be published as a Class I legal
68 advertisement in compliance with the provisions of article
69 three, chapter fifty-nine of this code and the publication area
70 shall be the county in which such county commission is
71 located.

●

CHAPTER 236

**(H. B. 2590 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed March 14, 2017; in effect from passage.]
[Approved by the Governor on March 23, 2017.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in
5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the
8 laws of the United States that relate to the determination of
9 income for federal income tax purposes. All amendments
10 made to the laws of the United States after December 31, 2015,
11 but prior to January 1, 2017, shall be given effect in
12 determining the taxes imposed by this article to the same extent
13 those changes are allowed for federal income tax purposes,
14 whether the changes are retroactive or prospective, but no

15 amendment to the laws of the United States made on or after
16 January 1, 2017, shall be given any effect.

17 (b) The term “Internal Revenue Code of 1986” means the
18 Internal Revenue Code of the United States enacted by the
19 federal Tax Reform Act of 1986 and includes the provisions of
20 law formerly known as the Internal Revenue Code of 1954, as
21 amended, and in effect when the federal Tax Reform Act of
22 1986 was enacted that were not amended or repealed by the
23 federal Tax Reform Act of 1986. Except when inappropriate,
24 any reference in any law, executive order or other document:

25 (1) To the Internal Revenue Code of 1954 includes a
26 reference to the Internal Revenue Code of 1986; and

27 (2) To the Internal Revenue Code of 1986 includes a
28 reference to the provisions of law formerly known as the
29 Internal Revenue Code of 1954.

30 (c) *Effective date.* — The amendments to this section
31 enacted in the year 2017 are retroactive to the extent allowable
32 under federal income tax law. With respect to taxable years
33 that began prior to January 1, 2017, the law in effect for each
34 of those years shall be fully preserved as to that year, except as
35 provided in this section.

CHAPTER 237

**(Com. Sub. for S. B. 486 - By Senators Takubo and
Stollings)**

[Passed April 7, 2017; in effect July 1, 2017.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating to health care provider taxes; making conforming amendments consistent with

federal law; changing the rate of tax on eligible acute care hospitals for fiscal year 2018; modifying eligibility criteria for “eligible acute care hospital”; removing conditions precedent for taxation; changing condition precedent for the automatic suspension of taxation; specifying purposes for which funds may be collected; providing for distribution of remaining funds at the end of fiscal year; providing for an effective date; and extending the expiration date for the tax.

Be it enacted by the Legislature of West Virginia:

That §11-27-38 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

1 (a) In addition to the rate of the tax imposed by sections
2 nine and fifteen of this article on providers of inpatient and
3 outpatient hospital services, there is imposed on certain
4 eligible acute care hospitals an additional tax of seventy-
5 five one-hundredths of one percent on the gross receipts
6 received or receivable by eligible acute care hospitals that
7 provide inpatient or outpatient hospital services in this state
8 through a directed payment program, or its successor, in
9 accordance with 42 C. F. R. 438.6.

10 (b) For purposes of this section, the term “eligible acute
11 care hospital” means any inpatient or outpatient hospital
12 conducting business in this state that is not:

13 (1) A state-owned or -designated facility;

14 (2) A critical access hospital, designated as a critical
15 access hospital after meeting all federal eligibility criteria;

16 (3) A licensed free-standing psychiatric or medical
17 rehabilitation hospital; or

18 (4) A licensed long-term acute care hospital.

19 (c) There is continued a special revenue account in the
20 State Treasury designated the Medicaid State Share Fund.
21 The amount of taxes collected under this section, including
22 any interest, additions to tax and penalties collected under
23 article ten of this chapter, less the amount of allowable
24 refunds, the amount of any interest payable with respect to
25 such refunds and costs of administration and collection,
26 shall be deposited into the Special Revenue Fund and may
27 not revert to general revenue. The Tax Commissioner shall
28 establish and maintain a separate account and accounting
29 for the funds collected under this section in an account to be
30 designated as the Eligible Acute Care Provider
31 Enhancement Account. The amounts collected shall be
32 deposited, within fifteen days after receipt by the Tax
33 Commissioner, into the Eligible Acute Care Provider
34 Enhancement Account. Disbursements from the Eligible
35 Acute Care Provider Enhancement Account within the
36 Medicaid State Share Fund may only be used to support
37 West Virginia Medicaid and the directed payment program,
38 or its successor, in accordance with 42 C. F. R. 438.6 and as
39 otherwise set forth in this section.

40 (d) The imposition and collection of taxes imposed by
41 this section is suspended immediately upon the occurrence
42 of any of the following:

43 (1) The effective date of any action by Congress that
44 would disqualify the taxes imposed by this section from
45 counting toward state Medicaid funds available to be used
46 to determine the federal financial participation;

47 (2) The effective date of any decision, enactment or
48 other determination by the Legislature or by any court,
49 officer, department, agency of office of state or federal
50 government that has the effect of disqualifying the tax from
51 counting toward state Medicaid funds available to be used
52 to determine federal financial participation for Medicaid
53 matching funds or creating for any reason a failure of the
54 state to use the assessment of the Medicaid program as
55 described in this section; and

56 (3) If the tax payments remitted by the eligible acute
57 care hospitals are not used to effectuate the provisions of
58 this article.

59 (e) Any funds remaining in the Eligible Acute Care
60 Provider Enhancement Account as of June 30, 2017, shall
61 be transferred to the West Virginia Medical Services Fund.
62 This transfer shall occur no later than September 30, 2017.
63 These funds shall be used during state fiscal year 2018 at
64 the discretion of the Bureau for Medical Services.

65 (f) The changes to the tax rate in this section enacted in
66 the 2017 regular session are effective July 1, 2017.

67 (g) The tax imposed by this section expires on and after
68 June 30, 2018, unless otherwise extended by the
69 Legislature.

CHAPTER 238

**(Com. Sub. for S. B. 535 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]**

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2017.]

AN ACT to repeal §5B-2-8, §5B-2-8a, §5B-2-9, §5B-2-11, §5B-2-12 and §5B-2-12a of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-1-2 of said code; and to amend said code by adding thereto a new article, designated §5B-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7 and §5B-2I-8, all relating generally to tourism promotion; continuing the West Virginia Division of Tourism Office; creating the West Virginia Tourism Act of 2017; creating the position of Executive Director of the West Virginia Tourism Office and setting forth the authority of the

executive director; authorizing the Governor to appoint the executive director and set his or her salary; clarifying that the executive director shall serve as Commissioner of Tourism until establishment of the West Virginia Tourism Office; making the position of executive director one of will and pleasure; establishing qualifications for the position of executive director; establishing powers and duties of the West Virginia Tourism Office; authorizing the West Virginia Tourism Office to enter into private-public agreements and to change and collect fees for goods and services it supplies; authorizing the West Virginia Tourism Office to retain services necessary to carry out its duties; establishing criteria for retaining services; authorizing the executive to employ necessary personnel and to contract for professional, technical and consulting services and purchase equipment and supplies; authorizing the executive director, at the consent of the Secretary of Commerce, to compile a list on classified service exempt positions; requiring the West Virginia Tourism Office to publish and disseminate an annual report; directing the West Virginia Tourism Office and its director to collaborate with the West Virginia Development Office; authorizing cancellation of contracts and joint venture agreements without further obligation of the state and setting the conditions precedent therefor; continuing the Tourism Promotion Fund in the State Treasury; directing that moneys in the fund be spent solely for tourism promotion; defining terms; exempting unspent moneys in fund from reverting to the General Revenue Fund; eliminating the Tourism Advertising Partnership Program effective July 1, 2017, with exceptions for resolution of outstanding obligations; directing the establishment of a cooperative advertising program within the West Virginia Tourism Office; authorizing the West Virginia Tourism Office to establish a fee schedule for participants in the cooperative advertising program; continuing an independent Tourism Commission within the Department of Commerce; establishing membership of Tourism Commission; requiring that gubernatorial appointments to the board be subject to the advice and consent of the Senate; setting forth qualifications of board members; establishing

duties of the commission; and providing that documents, data and other writings related to furnishing assistance to businesses, other than agreements entered into by the West Virginia Tourism Office or West Virginia Development Office which obligate public funds, are exempt from disclosure under the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

That §5B-2-8, §5B-2-8a, §5B-2-9, §5B-2-11, §5B-2-12 and §5B-2-12a of the Code of West Virginia, 1931, as amended, be repealed; that §5B-1-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §5B-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7 and §5B-2I-8, all to read as follows:

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.

1 The Department of Commerce consists of the following
2 agencies, boards, commissions, divisions and offices,
3 including all of the allied, advisory, affiliated or related
4 entities, which are incorporated in and administered as part
5 of the Department of Commerce:

6 (1) Division of Labor provided in article one, chapter
7 twenty-one of this code, which includes:

8 (A) Occupational Safety and Health Review
9 Commission provided in article three-a, chapter twenty-one
10 of this code; and

11 (B) Board of Manufactured Housing Construction and
12 Safety provided in article nine, chapter twenty-one of this
13 code;

14 (2) Office of Miners' Health, Safety and Training
15 provided in article one, chapter twenty-two-a of this code.
16 The following boards are transferred to the Office of
17 Miners' Health, Safety and Training for purposes of

18 administrative support and liaison with the Office of the
19 Governor:

20 (A) Board of Coal Mine Health and Safety and Coal
21 Mine Safety and Technical Review Committee provided in
22 article six, chapter twenty-two-a of this code;

23 (B) Board of Miner Training, Education and
24 Certification provided in article seven, chapter twenty-two-
25 a of this code; and

26 (C) Mine Inspectors' Examining Board provided in
27 article nine, chapter twenty-two-a of this code;

28 (3) The West Virginia Development Office provided in
29 article two, chapter five-b of this code;

30 (4) Division of Natural Resources and Natural
31 Resources Commission provided in article one, chapter
32 twenty of this code;

33 (5) Division of Forestry provided in article one-a,
34 chapter nineteen of this code;

35 (6) Geological and Economic Survey provided in article
36 two, chapter twenty-nine of this code;

37 (7) Workforce West Virginia provided in chapter
38 twenty-one-a of this code, which includes:

39 (A) Division of Unemployment Compensation;

40 (B) Division of Employment Service;

41 (C) Division of Workforce Development; and

42 (D) Division of Research, Information and Analysis;

43 (8) Division of Energy provided in article two-f, chapter
44 five-b of this code; and

45 (9) West Virginia Tourism Office and the Tourism
46 Commission provided in article two-i, chapter five-b of this
47 code.

ARTICLE 2I. WEST VIRGINIA TOURISM OFFICE.

§5B-2I-1. Short title.

1 This article shall be known and cited as the West
2 Virginia Tourism Act of 2017.

§5B-2I-2. West Virginia Tourism Office.

1 The Division of Tourism is continued within the
2 Department of Commerce but is hereafter designated and
3 shall be known as the West Virginia Tourism Office. All
4 references in this code to the Division of Tourism shall be
5 construed as references to the West Virginia Tourism
6 Office.

§5B-2I-3. Appointment and compensation of the Executive Director of the West Virginia Tourism Office.

1 (a) The West Virginia Tourism Office is under the
2 direction and charge of the Executive Director of the West
3 Virginia Tourism Office.

4 (b) The Executive Director shall be appointed by the
5 Governor: *Provided*, That the person serving as
6 Commissioner of Tourism at the time of enactment of this
7 section in 2017, shall be the Executive Director of the West
8 Virginia Tourism Office and serve at the will and pleasure
9 of the Governor. The executive director's salary shall be set
10 by the Governor. The executive director shall be a
11 competent person, having executive ability and knowledge
12 of publicity, advertising and tourism promotion.

§5B-2I-4. Powers and duties of the West Virginia Tourism Office.

1 (a) The West Virginia Tourism Office, under the
2 direction and charge of the Executive Director of the West
3 Virginia Tourism Office, shall develop and implement a

4 comprehensive tourism advertising, promotion and
5 development strategy for West Virginia. “Comprehensive
6 tourism advertising, promotion and development strategy”
7 means a plan that outlines strategies and activities designed
8 to continue, diversify and expand the tourism base of the
9 state as a whole; create tourism jobs; develop a highly
10 skilled tourism workforce; facilitate business access to
11 capital for tourism; advertise and market the resources
12 offered by the state with respect to tourism advertising,
13 promotion and development; facilitate cooperation among
14 local, regional and private tourism enterprises; improve
15 infrastructure on a state, regional and community level in
16 order to facilitate tourism development; improve the
17 tourism business climate generally; and leverage funding
18 from sources other than the state, including local, federal
19 and private sources. In addition to all other power and
20 duties of the West Virginia Tourism Office by other
21 provisions of this code, the West Virginia Tourism Office
22 shall:

23 (1) Coordinate media events to promote a positive
24 image of West Virginia and new investment in the tourist
25 industry;

26 (2) Provide comprehensive strategic planning services
27 to existing tourism enterprises;

28 (3) Promote attractions of West Virginia in other states;

29 (4) Provide advertising, marketing and communications
30 goods and services, including, without limitation, a
31 cooperative advertising program to facilitate and allow
32 participation in the West Virginia Tourism Office’s
33 advertising and marketing campaigns and activities, to state
34 agencies, departments, units of state or local government,
35 private tourism enterprises and other persons, entities or
36 private enterprises, including, without limitation,
37 convention and visitors’ bureaus; and

38 (5) Distribute West Virginia informational publications
39 and manage the West Virginia Welcome Centers.

40 (b) In developing its strategies, plans and campaigns,
41 the West Virginia Tourism Office shall consider the
42 following:

43 (1) Improvement and expansion of existing tourism
44 marketing and promotion activities;

45 (2) Promotion of cooperation among municipalities,
46 counties and the West Virginia Infrastructure and Jobs
47 Development Council in funding physical infrastructure to
48 enhance the potential for tourism development.

49 (c) The West Virginia Tourism Office shall have the
50 power and duty:

51 (1) To acquire for the state in the name of the West
52 Virginia Tourism Office by purchase, lease or agreement,
53 or accept or reject for the state, in the name of the West
54 Virginia Tourism Office, gifts, donations, contributions,
55 bequests or devises of money, security or property, both real
56 and personal, and any interest in such property, to effectuate
57 or support the purposes of this article;

58 (2) To make recommendations to the Governor and the
59 Legislature of any legislation deemed necessary to facilitate
60 the carrying out of any of the foregoing powers and duties
61 and to exercise any other power that may be necessary or
62 proper for the orderly conduct of the business of the West
63 Virginia Tourism Office and the effective discharge of the
64 duties of the West Virginia Tourism Office;

65 (3) To cooperate and assist in the production of motion
66 pictures and television and other communications;

67 (4) To purchase advertising time or space in or upon any
68 medium generally engaged or employed for said purpose to
69 advertise and market the resources of the state or to inform
70 the public at large or any specifically targeted group or

71 industry about the benefits of living in, investing in,
72 producing in, buying from, contracting with, or in any other
73 way related to, the State of West Virginia or any business,
74 industry, agency, institution or other entity therein;

75 (5) To promote and disseminate information related to
76 the attractions of the state through the operation of the
77 state's telemarketing initiative, which telemarketing
78 initiative shall include a centralized reservation and
79 information system for state parks and recreational
80 facilities;

81 (6) To take such additional factors as may be necessary
82 to carry out the duties and programs described in this article;
83 and

84 (7) To provide assistance to and assist with retention and
85 expansion of existing tourism-related enterprises in the state
86 and to recruit or assist in the recruitment of new tourism-
87 related enterprises to the state.

88 (d) The West Virginia Tourism Office may charge and
89 collect reasonable fees for goods and services it provides to
90 state agencies, departments, units of state or local
91 government or other person, entity or enterprise. All
92 moneys collected by the West Virginia Tourism Office shall
93 be deposited in the Tourism Promotion Fund and used in
94 accordance with the provisions of this article.

95 (e) The West Virginia Tourism Office may engage and
96 retain one or more advertising and marketing agencies,
97 consultants, enterprises, firms or persons, as deemed by the
98 Executive Director of the West Virginia Tourism Office, in
99 his or her sole discretion, necessary or advisable to assist the
100 West Virginia Tourism Office in carrying out its powers and
101 duties as set forth in this article. In the procurement of
102 advertising agencies, consultants, enterprises or persons,
103 from time to time, estimated to cost \$250,000 or more, the
104 Executive Director of the West Virginia Tourism Office
105 shall encourage such advertising and marketing agencies,

106 consultants, enterprises, firms or persons to submit an
107 expression of interest, which shall include a statement of
108 qualifications, including anticipated concepts and proposed
109 advertising, marketing and advertising campaigns. All
110 potential contracts shall be announced by public notice
111 published as a Class II legal advertisement in compliance
112 with the provisions of article three, chapter fifty-nine of this
113 code. A committee of three to five representatives of the
114 West Virginia Tourism Office and/or the Tourism
115 Commission, as selected by the chair of the Tourism
116 Commission, shall evaluate the statements of qualifications
117 and other materials submitted by interested firms and select
118 three firms which, in their opinion, are best qualified to
119 perform the desired service. The committee shall then rank,
120 in order of preference, the three firms selected and shall
121 commence scope of service and price negotiations with the
122 first ranked firm. If the West Virginia Tourism Office is
123 unable to negotiate a satisfactory contract with the first
124 ranked firm, at a fee determined to be fair and reasonable,
125 price negotiations with the firm of second choice shall
126 commence. Failing accord with the second ranked firm, the
127 committee shall undertake price negotiations with the third
128 ranked firm. If the West Virginia Tourism Office is unable
129 to negotiate a satisfactory contract with any of the selected
130 firms, the office shall select additional firms in order of their
131 competence and qualifications and it shall continue
132 negotiations in accordance with this section until an
133 agreement is reached.

134 If the procurement of the services is estimated by the
135 executive director to cost less than \$250,000, the West
136 Virginia Tourism Office shall conduct discussions with
137 three or more firms solicited on the basis of known or
138 submitted qualifications for the assignment prior to the
139 awarding of any contract: *Provided*, That if a judgment is
140 made that special circumstances exist and that seeking
141 competition is not practical, the West Virginia Tourism
142 Office may, with the prior written approval of the Secretary
143 of Commerce, select a firm on the basis of previous

144 satisfactory performance and knowledge of the West
145 Virginia Tourism Office's needs. After selection, the West
146 Virginia Tourism Office and selected firm shall develop the
147 scope of desired services and negotiate a contract.

148 (f) The Executive Director of the West Virginia
149 Tourism Office may, in order to carry out the powers and
150 duties of the West Virginia Tourism Office described in this
151 article, employ necessary personnel, contract with
152 professional or technical experts or consultants and
153 purchase or contract for the necessary equipment or
154 supplies.

155 (g) The Executive Director of the West Virginia
156 Tourism Office may designate, in writing, with the written
157 consent of the Secretary of Commerce, a list of positions
158 within the West Virginia Tourism Office that shall be
159 exempt from coverage under the state's classified service.

160 (h) The West Virginia Tourism Office shall submit a
161 report annually to the Governor, Secretary of Commerce
162 and the Legislature about the development of the tourism
163 industry in the state and the necessary funding required by
164 the state to continue the development of the tourism
165 industry.

166 (i) The West Virginia Tourism Office and the Executive
167 Director of the West Virginia Tourism Office shall engage,
168 collaborate, assist and cooperate with the West Virginia
169 Development Office, when and as appropriate, to facilitate
170 retention, expansion, recruitment and location of existing
171 and new tourism-related enterprises.

§5B-2I-5. Public-private partnerships.

1 (a) The West Virginia Tourism Office may enter into
2 contractual or joint venture agreements with one or more
3 nonprofit corporations organized pursuant to the corporate
4 laws of the state, organized to permit qualification pursuant
5 to Section 501(c) of the Internal Revenue Code and
6 organized for purposes of the promotion and development

7 of tourism in West Virginia, and funded from sources other
8 than the state. Members of the Tourism Commission
9 provided in this article are authorized to sit on the board of
10 directors of such private nonprofit corporations.

11 (b) From time to time the West Virginia Tourism Office
12 may enter into joint ventures wherein the West Virginia
13 Development Office and one or more said nonprofit
14 corporations share in the development and funding of
15 tourism advertising, promotion and development programs
16 and campaigns.

17 (c) All contracts and joint venture agreements entered
18 into pursuant to this section for longer than one fiscal year
19 shall contain, in substance, a provision that the contract shall
20 be considered canceled without further obligation on the
21 part of the state if the Legislature, or, where appropriate, the
22 federal government shall fail to appropriate sufficient funds
23 therefor or shall act to impair the contract or cause it to be
24 canceled.

§5B-2I-6. Tourism Promotion Fund; use of funds.

1 (a) There is continued in the State Treasury the special
2 revenue fund known as the Tourism Promotion Fund
3 created under prior enactment of section nine, article one,
4 chapter five-b of this code.

5 (b) Moneys deposited in the fund each year shall be used
6 solely for marketing, direct advertising, business
7 development and public relations promoting travel and
8 tourism within the state and the state's image and brand
9 identity at the discretion and direction of the Executive
10 Director of the West Virginia Tourism Office. "Direct
11 advertising" means advertising which includes, but is not
12 limited to, television, radio, mailings, newspaper,
13 magazines, digital marketing, including the Internet and
14 social media, and outdoor billboards or any combination
15 thereof. Any balance remaining at the end of any fiscal year
16 does not revert to the General Revenue Fund, but shall

17 remain in the fund for expenditures in accordance with the
18 provisions of this section.

19 (c) Effective July 1, 2017, the Tourism Advertising
20 Partnership Program and all related legislative or procedural
21 rules shall cease, except as necessary for the Tourism
22 Commission to settle, finalize and conclude all outstanding
23 advertising grants or other financial obligations of the
24 Tourism Commission respecting funds in the Tourism
25 Promotion Fund previously approved, expended or
26 obligated by the Tourism Commission as of the effective
27 date of this article pursuant to subdivision (2), subsection
28 (e), section seven of this article and be replaced by a
29 cooperative advertising program to be created and
30 established by the West Virginia Tourism Office, under and
31 pursuant to section four of this article, to offer, facilitate and
32 allow participation in the West Virginia Tourism Office's
33 advertising and marketing campaigns and activities, to state
34 agencies, departments, units of state or local government,
35 private tourism enterprises and other persons, entities or
36 private enterprises, including, without limitation,
37 convention and visitors' bureaus. The Executive Director
38 of the West Virginia Tourism Office shall establish and
39 publish a fee schedule, which shall include a match of state
40 funds to program participant's funds, for participation in the
41 cooperative advertising program.

§5B-2I-7. Tourism Commission; members, appointment and expenses.

1 (a) There is continued within the Department of
2 Commerce an independent Tourism Commission, which is
3 a body corporate and politic, constituting a public
4 corporation and government instrumentality.

5 (b) The Tourism Commission consists of the following
6 fifteen members:

7 (1) The Secretary of Commerce, or his or her designee,
8 ex officio;

9 (2) The Secretary of Transportation or his or her
10 designee, ex officio;

11 (3) Twelve members appointed by the Governor, with
12 the advice and consent of the Senate, representing
13 participants in the state's tourism industry. Ten of the
14 members shall be from the private sector, one shall be a
15 director employed by a convention and visitors bureau and
16 one shall be a member of a convention and visitors bureau.
17 In making the appointments, the Governor may select from
18 a list provided by the West Virginia Hospitality and Travel
19 Association of qualified applicants. Of the twelve members
20 so appointed, no less than three shall be from each
21 congressional district within the state and shall be appointed
22 to provide the broadest geographic distribution which is
23 feasible;

24 (4) One member to be appointed by the Governor to
25 represent public sector nonstate participants in the tourism
26 industry within the state.

27 (c) Each member appointed by the Governor serves a
28 staggered term of four years. Any member whose term has
29 expired serves until his or her successor has been appointed.
30 Any person appointed to fill a vacancy serves only for the
31 unexpired term. Any member is eligible for reappointment.
32 In case of a vacancy in the office of a member, the vacancy
33 shall be filled by the Governor in the same manner as the
34 original appointment.

35 (d) The chair of the Tourism Commission shall be
36 appointed by the Governor from members then serving on
37 the commission, and serves at the will and pleasure of the
38 Governor.

39 (e) The Tourism Commission shall:

40 (1) Assist the Executive Director of the West Virginia
41 Tourism Office in the development and implementation of

42 the state's comprehensive tourism advertising, marketing,
43 promotion and development strategy; and

44 (2) Take all actions necessary to settle, finalize and
45 conclude all outstanding advertising grants or other
46 financial obligations of the Tourism Commission respecting
47 funds in the Tourism Promotion Fund previously approved,
48 expended or obligated by the Tourism Commission as of the
49 effective date of this article.

50 (f) Members of the Tourism Commission are not
51 entitled to compensation for services performed as
52 members. Each member from the private sector is entitled
53 to reimbursement for reasonable expenses incurred in the
54 discharge of their official duties. All expenses incurred by
55 members from the private sector shall be paid in a manner
56 consistent with guidelines of the Travel Management Office
57 of the Department of Administration and are payable solely
58 from the funds of the West Virginia Tourism Office or from
59 funds appropriated for that purpose by the Legislature.
60 Liability or obligation is not incurred by the West Virginia
61 Tourism Office beyond the extent to which moneys are
62 available from funds of the authority or from the
63 appropriations.

64 (g) Members shall meet quarterly as designated by the
65 chair.

§5B-2I-8. Confidentiality.

1 Any documentary material, data or other writing made
2 or received by the West Virginia Tourism Office, the West
3 Virginia Development Office or the Tourism Commission,
4 for the purpose of furnishing assistance to a new or existing
5 business are exempt from the provisions of article one,
6 chapter twenty-nine-b of this code: *Provided*, That any
7 agreement entered into or signed by the West Virginia
8 Tourism Office or the West Virginia Development Office
9 which obligates public funds is subject to inspection and
10 copying pursuant to the provisions of that article as of the

- 11 date the agreement is entered into, signed or otherwise made
- 12 public.

CHAPTER 239

(Com. Sub. for S. B. 637 - By Senators Trump and Rucker)

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §60-7-2 and §60-7-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8-27 of said code, all relating generally to private club operations requirements; defining terms; permitting certain private club licensees that operate tourist destination and resort facilities to obtain one private resort hotel license for the lawful sale and consumption of alcoholic liquors and nonintoxicating beer in designated and approved areas throughout the licensed premises but within the confines of the property; permitting certain private club licensees that operate golf or country clubs to obtain one private golf club license for the lawful sale and consumption of alcoholic liquors and nonintoxicating beer on the premises of the facility; establishing license requirement; permitting patrons seventeen years of age to enter the licensed premises unaccompanied by a parent or legal guardian at private resort hotels and private golf clubs under limited circumstances, subject to certain conditions, and certain private clubs with designated nonalcohol areas; and establishing license fees.

Be it enacted by the Legislature of West Virginia:

That §60-7-2 and §60-7-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8-27 of said code be amended and reenacted, all to read as follows:

**CHAPTER 60. STATE CONTROL OF ALCOHOLIC
LIQUORS.**

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

**§60-7-2. Definitions; power to lease building for establishment
of private club.**

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) “Applicant” means a private club applying for a
4 license under the provisions of this article.

5 (b) “Code” means the official code of West Virginia,
6 1931, as amended.

7 (c) “Commissioner” means the West Virginia Alcohol
8 Beverage Control Commissioner.

9 (d) “Licensee” means the holder of a license to operate
10 a private club granted under this article, which license shall
11 remain unexpired, unsuspended and unrevoked.

12 (e) “Private club” means any corporation or
13 unincorporated association which either: (1) Belongs to or
14 is affiliated with a nationally recognized fraternal or
15 veterans’ organization which is operated exclusively for the
16 benefit of its members, which pays no part of its income to
17 its shareholders or individual members, which owns or
18 leases a building or other premises to which club are
19 admitted only duly elected or approved dues-paying
20 members in good standing of the corporation or association
21 and their guests while in the company of a member and to
22 which club the general public is not admitted, and which
23 club maintains in the building or on the premises a suitable
24 kitchen and dining facility with related equipment for
25 serving food to members and their guests; or (2) is a
26 nonprofit social club, which is operated exclusively for the
27 benefit of its members, which pays no part of its income to

28 its shareholders or individual members, which owns or
29 leases a building or other premises to which club are
30 admitted only duly elected or approved dues-paying
31 members in good standing of the corporation or association
32 and their guests while in the company of a member and to
33 which club the general public is not admitted, and which
34 club maintains in the building or on the premises a suitable
35 kitchen and dining facility with related equipment for
36 serving food to members and their guests; or (3) is organized
37 and operated for legitimate purposes which has at least one
38 hundred duly elected or approved dues-paying members in
39 good standing, which owns or leases a building or other
40 premises, including any vessel licensed or approved by any
41 federal agency to carry or accommodate passengers on
42 navigable waters of this state, to which club are admitted
43 only duly elected or approved dues-paying members in
44 good standing of the corporation or association and their
45 guests while in the company of a member and to which club
46 the general public is not admitted, and which club maintains
47 in the building or on the premises a suitable kitchen and
48 dining facility with related equipment and employs a
49 sufficient number of persons for serving meals to members
50 and their guests; or (4) is organized for legitimate purposes
51 and owns or leases a building or other delimited premises in
52 any state, county or municipal park or at any airport, in
53 which building or premises a club has been established, to
54 which club are admitted only duly elected and approved
55 dues-paying members in good standing and their guests
56 while in the company of a member and to which club the
57 general public is not admitted, and which maintains in
58 connection with the club a suitable kitchen and dining
59 facility and related equipment and employs a sufficient
60 number of persons for serving meals in the club to the
61 members and their guests.

62 (f) "Private resort hotel" means an applicant for a
63 private club or licensed private club licensee meeting the
64 criteria set forth in this subsection which:

- 65 (1) Has at least five thousand members;
- 66 (2) Offers short-term daily-rate accommodations or
67 lodging for members and their guests amounting to at least
68 fifty separate bedrooms;
- 69 (3) Operates a restaurant and full kitchen with ovens,
70 six-burner ranges, walk-in freezers and other kitchen
71 utensils and apparatus as determined by the commissioner
72 on the licensed premises and serves freshly prepared food at
73 least twenty-five hours per week;
- 74 (4) Maintains, at any one time, \$5,000 of fresh food
75 inventory capable of being prepared in the private resort
76 hotel's full kitchen, and in calculating the food inventory the
77 commissioner may not include microwavable, frozen or
78 canned foods;
- 79 (5) Owns or leases, controls, operates and uses acreage
80 amounting to at least ten contiguous acres of bounded or
81 fenced real property which would be listed on the licensees'
82 floorplan and would be used for destination, resort and large
83 contracted for group-type events such as weddings,
84 reunions, conferences, meetings and sporting or recreational
85 events;
- 86 (6) Lists the entire property from subdivision (5) of this
87 subsection and all adjoining buildings and structures on the
88 private resort hotel's floorplan which would comprise the
89 licensed premises, which would be authorized for the lawful
90 sales, service and consumption of alcoholic liquors
91 throughout the licensed premises whether these activities
92 were conducted in a building or structure or outdoors while
93 on the private resort hotel's licensed premises and as noted
94 on the private resort hotel's floorplan;
- 95 (7) Has an identified person or persons or entity that has
96 right, title and ownership or lease interest in the real
97 property buildings and structures located on the proposed
98 licensed premises; and

99 (8) Utilizes an age verification system approved by the
100 commissioner.

101 (g) "Private golf club" means an applicant for a private
102 club or licensed private club licensee meeting the criteria set
103 forth in this subsection which:

104 (1) Has at least one thousand members;

105 (2) Maintains at least one eighteen hole golf course with
106 separate and distinct golf playing holes, not reusing nine
107 golf playing holes to comprise the eighteen golf playing
108 holes, a clubhouse, and offers golf carts, whether electric or
109 gasoline;

110 (3) Operates a restaurant and full kitchen with ovens, as
111 determined by the commissioner, on the licensed premises
112 and serves freshly prepared food at least fifteen hours per
113 week;

114 (4) Owns or leases, controls, operates and uses acreage
115 amounting to at least eighty contiguous acres of bounded or
116 fenced real property which would be listed on the private
117 golf club's floorplan and could be used for golfing events
118 and large contracted for group-type events such as
119 weddings, reunions, conferences, meetings and sporting or
120 recreational events;

121 (5) Lists the entire property from subdivision (4) of this
122 subsection and all adjoining buildings and structures on the
123 private golf club's floorplan which would comprise the
124 licensed premises, which would be authorized for the lawful
125 sales, service and consumption of alcoholic liquors
126 throughout the licensed premises whether these activities
127 were conducted, in a building or structure or outdoors while
128 on the private golf club's licensed premises and as noted on
129 the private golf club's floorplan;

130 (6) Has an identified person or persons or entity that has
131 right, title and ownership interest in the real property

132 buildings and structures located on the proposed licensed
133 premises; and

134 (7) Utilizes an age verification system approved by the
135 commissioner.

136 The Department of Natural Resources, the authority
137 governing any county or municipal park, or any county
138 commission, municipality, other governmental entity,
139 public corporation or public authority operating any park or
140 airport may lease as lessor a building or portion thereof or
141 other limited premises in any such park or airport to any
142 corporation or unincorporated association for the
143 establishment of a private club pursuant to this article.

§60-7-6. Annual license fee; partial fee.

1 (a) The annual license fee for a license issued under the
2 provisions of this article to a fraternal or veterans
3 organization or a nonprofit social club shall be \$750.

4 (b) The annual license fee for a license issued under the
5 provisions of this article to a private club other than a private
6 club of the type specified in subsection (a) of this section
7 shall be \$1,000 if the private club has less than one thousand
8 members, \$2,500 if the private club has one thousand or
9 more members, \$4,000 if the private club is a private golf
10 club as defined in section two of this article, and further, if
11 the private club is a private resort hotel as defined in section
12 two of this article, said private resort hotel may designate
13 areas within the licensed premises for the lawful sale,
14 service and consumption of alcoholic liquors as provided
15 for by this article. The annual license fee for a private resort
16 hotel with five or fewer designated areas shall be \$7,500,
17 and the annual license fee for a private resort hotel with at
18 least six but no more than ten designated areas shall be
19 \$12,500. The annual license fee for a private resort hotel
20 with at least eleven but no more than fifteen designated
21 areas shall be \$17,500. The annual license fee for a private
22 resort hotel with no fewer than fifteen nor more than twenty

23 designated areas shall be \$22,500: *Provided*, That a private
24 resort hotel having obtained the license and paid the
25 \$22,500 annual license fee may, upon application to and
26 approval of the commissioner, designate additional areas for
27 a period not to exceed seven days for an additional fee of
28 \$150 per day, per designated area.

29 (c) The fee for any such license issued following
30 January 1 of any year and to expire on June 30 of such year
31 shall be one half of the annual license fee prescribed by
32 subsections (a) and (b) of this section.

33 (d) All such fees shall be paid by the commissioner to
34 the State Treasurer and credited to the General Revenue
35 Fund of the state.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

1 Any proprietor or any person in charge of a dance house,
2 concert saloon, theater, museum, or similar place of
3 amusement, or other place, where wines or spirituous or
4 malt liquors are sold or given away, or any place of
5 entertainment injurious to health or morals who admits or
6 permits to remain therein any minor under the age of
7 eighteen years, unless accompanied by his or her parent or
8 guardian, is guilty of a misdemeanor and, on conviction
9 thereof, shall be punished by a fine not exceeding \$200:
10 *Provided*, That there is exemption from this prohibition for:
11 (a) A private resort hotel and private golf club licensed
12 pursuant to article seven, chapter sixty of this code and in
13 compliance with subdivision (8), subsection (f), section two
14 of said article; or (b) a private club with more than one
15 thousand members that is in good standing with the Alcohol
16 Beverage Control Commissioner, that has been approved by
17 the Alcohol Beverage Control Commissioner and which has

18 designated certain seating areas on its licensed premises as
19 nonalcoholic liquor and nonintoxicating beer areas, as noted
20 in the licensee's floorplan.

CHAPTER 240

(H. B. 2684 - By Delegates Canestraro, Lovejoy,
Hollen, R. Miller, Shott and Isner)

[Passed April 8, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 25, 2017.]

AN ACT to amend and reenact §17B-4-3 of the Code of West Virginia, 1931, as amended, relating to imposing enhanced penalties for repeat violations of the prohibition against driving a motor vehicle on any public highway of this state at a time when the privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent by weight.

Be it enacted by the Legislature of West Virginia:

That §17B-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

1 (a) Except as otherwise provided in subsection (b) or (d)
2 of this section, any person who drives a motor vehicle on
3 any public highway of this state at a time when his or her
4 privilege to do so has been lawfully suspended or revoked
5 by this state or any other jurisdiction is, for the first offense,
6 guilty of a misdemeanor and, upon conviction thereof, shall
7 be fined not less than \$100 nor more than \$500; for the
8 second offense, the person is guilty of a misdemeanor and,
9 upon conviction thereof, shall be fined not less than \$100
10 nor more than \$500; for the third or any subsequent offense,
11 the person is guilty of a misdemeanor and, upon conviction
12 thereof, shall be confined in jail for a period of not less than
13 thirty days nor more than ninety days and shall be fined not
14 less than \$150 nor more than \$500.

15 (b) Any person who drives a motor vehicle on any
16 public highway of this state at a time when his or her
17 privilege to do so has been lawfully revoked for driving
18 under the influence of alcohol, controlled substances or
19 other drugs, or any combination thereof, or for driving while
20 having an alcoholic concentration in his or her blood of
21 eight hundredths of one percent or more, by weight, or for
22 refusing to take a secondary chemical test of blood alcohol
23 content, is, for the first offense, guilty of a misdemeanor
24 and, upon conviction thereof, shall be confined in jail for a
25 period of not less than thirty days nor more than six months
26 and shall be fined not less than \$100 nor more than \$500;
27 for the second offense, the person is guilty of a
28 misdemeanor and, upon conviction thereof, shall be
29 confined in jail for a period of not less than six months nor
30 more than one year and shall be fined not less than \$1,000
31 nor more than \$3,000; for the third or any subsequent
32 offense, the person is guilty of a felony and, upon conviction
33 thereof, shall be imprisoned in a state correctional facility
34 for not less than one year nor more than three years and, in
35 addition to the mandatory prison sentence, shall be fined not
36 less than \$3,000 nor more than \$5,000.

37 (c) Upon receiving a record of the first or subsequent
38 conviction of any person under subsection (b) of this section

39 upon a charge of driving a vehicle while the license of that
40 person was lawfully suspended or revoked, the division
41 shall extend the period of the suspension or revocation for
42 an additional period of six months which may be served
43 concurrently with any other suspension or revocation. Upon
44 receiving a record of the second or subsequent conviction of
45 any person under subsection (a) of this section upon a
46 charge of driving a vehicle while the license of that person
47 was lawfully suspended or revoked, the division shall
48 extend the period of the suspension or revocation for an
49 additional period of ninety days which may be served
50 concurrently with any other suspension or revocation.

51 (d) Any person who drives a motor vehicle on any
52 public highway of this state at a time when his or her
53 privilege to do so has been lawfully suspended for driving
54 while under the age of twenty-one years with an alcohol
55 concentration in his or her blood of two hundredths of one
56 percent or more, by weight, but less than eight hundredths
57 of one percent, by weight, is guilty of a misdemeanor and,
58 upon conviction thereof, shall be confined in jail for twenty-
59 four hours or shall be fined not less than \$50 nor more than
60 \$500, or both; for the second offense, the person is guilty of
61 a misdemeanor and, upon conviction thereof, shall be
62 confined in jail for a period of not less than thirty days nor
63 more than six months and shall be fined not less than \$100
64 nor more than \$500; for the third or any subsequent offense,
65 the person is guilty of a felony and, upon conviction thereof,
66 shall be imprisoned in a state correctional facility for not
67 less than one year nor more than three years and fined not
68 less than \$1,000 nor more than \$5,000.

69 Upon receiving a record of a first or subsequent
70 conviction under this subsection for a charge of driving a
71 vehicle while the license of that person was lawfully
72 suspended or revoked, the division shall extend the period
73 of the suspension or revocation for an additional period of
74 six months which may be served concurrently with any
75 other suspension or revocation.

76 (e) An order for home detention by the court pursuant to
77 the provisions of article eleven-b, chapter sixty-two of this
78 code may be used as an alternative sentence to any period
79 of incarceration required by this section.

CHAPTER 241

**(H. B. 3053 - By Delegates Howell, Dean, Maynard,
Blair, N. Foster, G. Foster, Harshbarger, Hill,
McGeehan, Paynter and Queen)**

[Passed April 6, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2017.]

AN ACT to amend and reenact §17C-15-2 and §17C-15-17 of the Code of West Virginia, 1931, as amended, all relating to motor vehicle lighting; clarifying when certain lights are functional; allowing certain lamps and lighting devices be uncovered in certain circumstances; and allowing two auxiliary lamps.

Be it enacted by the Legislature of West Virginia:

That §17C-15-2 and §17C-15-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-2. When lighted lamps are required.

1 Every vehicle other than a school bus, motorcycle,
2 motor-driven cycle or moped operated upon a highway
3 within this state at any time from sunset to sunrise, or during
4 fog, smoke, rain or other unfavorable atmospheric
5 conditions, or at any other time when there is not sufficient
6 light to render clearly discernible persons and vehicles on

7 the highway at a distance of five hundred feet ahead, shall
8 display lighted head lamps and illuminating devices as
9 hereinafter respectively required for different classes of
10 vehicles, subject to exceptions with respect to parked
11 vehicles as provided for in subsection (c), section fifteen-c
12 of this article. Every school bus, motorcycle, motor-driven
13 cycle and moped shall display lighted head lamps at all
14 times when upon the highway. Lighted lamps and other
15 lighting devices that consist of multiple light-emitting
16 diodes (LEDs) or other illuminating components that
17 function as a single lighting unit are deemed to be functional
18 so long as at least sixty-six percent of the LEDs or other
19 illuminating components are functional: *Provided*, That the
20 lighted lamps or lighting devices must still project sufficient
21 illumination to satisfy all other requirements contained in
22 this article.

§17C-15-17. Spot lamps and other auxiliary lamps.

1 For the purposes of this section, a lamp or lighting
2 device meets the requirements specified below so long as
3 any portion of the illuminating surface of the lamp or
4 lighting device is within the specified range.

5 All lamps and lighting devices covered in this section
6 may be installed so that the entire lamp or lighting device
7 exceeds forty-two inches above the level surface upon
8 which the vehicle stands so long as such lamps or lighting
9 devices are either covered or dimmable.

10 (a) *Spot lamps.* — Any motor vehicle except a public
11 utility company maintenance vehicle may be equipped with
12 not more than one spot lamp and every lighted spot lamp
13 shall be so aimed and used upon approaching another
14 vehicle that no part of the high-intensity portion of the beam
15 will be directed to the left of the prolongation of the extreme
16 left side of the vehicle nor more than one hundred feet ahead
17 of the vehicle. A public utility company maintenance
18 vehicle may be equipped with more than one spot lamp but

19 all lighted spot lamps shall be aimed and used in conformity
20 to the requirements of this subsection.

21 (b) *Fog lamps.* — Any motor vehicle may be equipped
22 with not more than two fog lamps mounted on the front at a
23 height not less than twelve inches nor more than thirty
24 inches above the level surface upon which the vehicle stands
25 and so aimed that when the vehicle is not loaded none of the
26 high-intensity portion of the light to the left of the center of
27 the vehicle shall at a distance of twenty-five feet ahead
28 project higher than a level of four inches below the level of
29 the center of the lamp from which it comes.

30 (c) *Auxiliary passing lamp.* — Any motor vehicle may
31 be equipped with not more than two auxiliary passing lamps
32 mounted on the front at a height not less than twenty-four
33 inches nor more than forty-two inches above the level
34 surface upon which the vehicle stands and every auxiliary
35 passing lamp shall meet the requirements and limitations set
36 forth in this article.

37 (d) *Auxiliary driving lamp.* — Any motor vehicle may
38 be equipped with not more than two auxiliary driving lamps
39 mounted on the front at a height not less than sixteen inches
40 nor more than forty-two inches above the level surface upon
41 which the vehicle stands and every such auxiliary driving
42 lamp shall meet the requirements and limitations set forth in
43 this article.

44 (e) *Roof-mounted off-road light bar lighting device.* —
45 Any motor vehicle may be equipped with a roof-mounted
46 off-road light bar lighting device comprised of multiple
47 lamps: *Provided,* That whenever the vehicle is operated or
48 driven upon any road or highway of this state, the roof-
49 mounted off-road light bar lighting device shall be turned
50 off while the vehicle is being operated on any road or
51 highway of this state.

CHAPTER 242

(S. B. 164 - By Senator Blair)

[Passed March 31, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §17C-17-5 of the Code of West Virginia, 1931, as amended, relating to traffic regulations and special load limits; changing the load limitation of a digger or derrick line truck from forty feet to forty-five feet in length; increasing from six to nine feet the distance a load may extend beyond the foremost part of the truck; and increasing from nine to eleven feet the distance a load may extend beyond the rear of the body of the truck.

Be it enacted by the Legislature of West Virginia:

That §17C-17-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-5. Special load limits.

1 (a) Subject to the foregoing provisions of this article
2 limiting the length of vehicles and loads, the load upon any
3 vehicle operated alone or the load upon the front vehicle of
4 a combination of vehicles shall not extend more than three
5 feet beyond the foremost part of the vehicle, and the load
6 upon any vehicle operated alone or the load upon the rear
7 vehicle of a combination of vehicles shall not extend more
8 than six feet beyond the rear of the bed or body of such
9 vehicle: *Provided*, That a digger/derrick line truck may be
10 operated with a load of no more than forty-five feet in
11 length, with the load extending no more than nine feet
12 beyond the foremost part of the truck and no more than

13 eleven feet beyond the rear of the bed of the body of the
14 truck, between sunrise and sunset except in an emergency,
15 and the operation of the truck shall comply with the
16 provisions of section fourteen, article fifteen of this chapter.

17 (b) The limitations as to length of vehicles and loads
18 heretofore stated in section four of this article and
19 subsection (a) of this section shall not apply to any load
20 upon a pole trailer when transporting poles or pipes or
21 structural material which cannot be dismembered:
22 *Provided*, That no pole or pipe or other material exceeding
23 eighty feet in length shall be so transported unless a permit
24 has first been obtained as authorized in section eleven of this
25 article.

CHAPTER 243

**(Com. Sub. for H. B. 3064 - By Delegates Atkinson,
Mr. Speaker, (Mr. Armstead), Hill, Sobonya, Westfall
and Frich)**

[Passed April 7, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 26, 2017.]

AN ACT to amend and reenact §17C-17-11 of the Code of West Virginia, 1931, as amended, relating to permitting the Commissioner of Highways to issue permits allowing vehicles of a size and weight exceeding certain specifications to operate over routes specified by the commissioner; requiring an engineering analysis; providing for maximum gross vehicle weight of 120,000; limiting routes to specified roads; and authorizing additional terms and conditions set by the Public Service Commission and the Commissioner of Highways.

Be it enacted by the Legislature of West Virginia:

That §17C-17-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-11. Permits for excess size and weight.

1 (a) The Public Service Commission may, in its
2 discretion, upon application in writing and good cause
3 shown issue a special permit in writing authorizing: (1) The
4 applicant, in crossing any highway of this state, to operate
5 or move a vehicle or combination of vehicles of a size or
6 weight or load exceeding the maximum specified in this
7 chapter or otherwise not in conformity with the provisions
8 of this chapter, whether the operation is continuous or not,
9 provided the applicant agrees to compensate the
10 commissioner of highways for all damages or expenses
11 incurred in connection with the crossing; (2) the applicant
12 to operate or move a vehicle or combination of vehicles of
13 a size or weight of vehicles or nondivisible load exceeding
14 the maximum specified in this chapter or otherwise not in
15 conformity with the provisions of this chapter; and (3) the
16 applicant to move or operate, for limited or continuous
17 operation, a vehicle hauling containerized cargo in a sealed,
18 seagoing container to or from a seaport or inland waterway
19 port that has or will be transported by marine shipment
20 where the vehicle is not, as a result of hauling the container,
21 in conformity with the provisions of this article relating to
22 weight limitations, upon the conditions that: (A) The
23 container be hauled only on the roadways and highways
24 designated by the commissioner of highways; (B) the
25 contents of the container are not changed from the time it is
26 loaded by the consignor or the consignor's agent to the time
27 it is delivered to the consignee or the consignee's agent; and
28 (C) any additional conditions as the commissioner of
29 highways or the Public Service Commission may impose to
30 otherwise ensure compliance with the provisions of this
31 chapter.

32 (b)(1) The commissioner of highways may issue a
33 special permit to operate or move a vehicle or combination
34 of vehicles of a size or weight of vehicles or nondivisible
35 load exceeding the maximum specified in this chapter or
36 otherwise not in conformity with the provisions of this
37 chapter over routes designated by the commissioner of
38 highways upon terms and restrictions prescribed by the
39 Public Service Commission, together with the
40 commissioner of highways.

41 (2) For purposes of this section, nondivisible load means
42 any load exceeding applicable length or weight limits
43 which, if separated into smaller loads or vehicles, would:
44 (A) Compromise the intended use of the vehicle, to the
45 extent that the separation would make it unable to perform
46 the function for which it was intended; (B) destroy the value
47 of the load or vehicle, to the extent that the separation would
48 make it unusable for its intended purpose; or (C) require
49 more than eight workhours to dismantle using appropriate
50 equipment: *Provided*, That the applicant for a nondivisible
51 load permit has the burden of proof as to the number of
52 workhours required to dismantle the load.

53 (3) The commissioner of highways may, in his or her
54 discretion, upon application in writing and based upon an
55 engineering analysis, issue a special permit in writing
56 authorizing the applicant, when operating upon any
57 highway of this state designated by the commissioner, to
58 operate or move a vehicle or combination of vehicles,
59 hauling commodities manufactured for interstate
60 commerce, of a size or weight or divisible load exceeding
61 the maximum specified in this chapter or otherwise not in
62 conformity with the provisions of this chapter, whether the
63 operation is continuous or not.

64 (A) The engineering analysis must demonstrate that the
65 vehicle permitted under this subdivision does not adversely
66 affect the designated routes when compared to the size,
67 weight, and load provisions of this chapter.

68 (B) The maximum gross vehicle weight permitted under
69 this subsection is 120,000 pounds.

70 (C) The permit may contain any additional conditions
71 the commissioner of highways or the Public Service
72 Commission may impose to otherwise ensure compliance
73 with the provisions of this chapter.

74 (c) The application for any permit other than a special
75 annual permit shall specifically describe the vehicle or
76 vehicles and load to be operated or moved along or across
77 the highway and the particular highway or crossing of the
78 highway for which the permit to operate is requested, and
79 whether the permit is requested for a single trip or for a
80 continuous operation.

81 (d) The Public Service Commission is authorized to
82 issue or withhold a permit at his or her discretion; or, if the
83 permit is issued, to limit the number of trips, or to establish
84 seasonal or other time limitations within which the vehicles
85 described may be operated on or across the highways
86 indicated, or otherwise to limit or prescribe conditions of
87 operation of the vehicle or vehicles, when necessary to
88 assure against undue damage to the road foundations,
89 surface, or structures, and may require the undertaking,
90 bond or other security considered necessary to compensate
91 for any injury to any roadway structure and to specify the
92 type, number and the location for escort vehicles for any
93 vehicle: *Provided*, That in establishing limitations on
94 permits issued under this section, the Public Service
95 Commission shall consult with the commissioner of
96 highways, and may not issue, limit or condition a permit in
97 a manner inconsistent with the authority of the
98 commissioner of highways.

99 The Public Service Commission may charge a fee for
100 the issuance of a permit for a mobile home and a reasonable
101 fee for the issuance of a permit for any other vehicle under
102 the provisions of this section to pay the administrative costs
103 thereof.

104 (e) Every permit shall be carried in the vehicle or
105 combination of vehicles to which it refers and shall be open
106 to inspection by any police officer or authorized agent of the
107 commissioner of highways or the Public Service
108 Commission, and no person shall violate any of the terms or
109 conditions of the special permit.

CHAPTER 244

(Com. Sub. for S. B. 5 - By Senators Trump and Sypolt)

[Passed April 1, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2017.]

AN ACT to amend and reenact §17E-1-9 and §17E-1-13 of the Code of West Virginia, 1931, as amended, all relating to disqualification from holding commercial driver's license for certain convictions of driving a motor vehicle under the influence of alcohol or a controlled substance; clarifying that person committing disqualifying offense prior to possessing commercial driver's license is eligible for commercial driver's license once period of revocation and safety and treatment program have been completed; expanding range of offenses eligible for reinstatement after ten years and completion of safety and treatment program; providing that a person who committed certain offenses more than ten years before the initial issuance of a commercial driver's license by any state shall be deemed to have served the period of disqualification from holding a commercial driver's license if certain conditions are met; and setting forth conditions to be met.

Be it enacted by the Legislature of West Virginia:

That §17E-1-9 and §17E-1-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-9. Commercial driver's license qualification standards.

1 (a) No person may be issued a commercial driver's
2 license unless that person is a resident of this state and has
3 passed a knowledge and skills test for driving a commercial
4 motor vehicle which complies with minimum federal
5 standards established by federal regulations enumerated in
6 49 C. F. R. Part § 383, Subparts G and H (2004) and has
7 satisfied all other requirements of the Federal Motor Carrier
8 Safety Improvement Act of 1999 in addition to other
9 requirements imposed by state law or federal regulations.

10 (b) *Third-party testing.* — The commissioner may
11 authorize a person, including an agency of this or another
12 state, an employer, private individual or institution,
13 department, agency or instrumentality of local government,
14 to administer the skills test specified by this section so long
15 as:

16 (1) The test is the same which would otherwise be
17 administered by the state; and

18 (2) The party has entered into an agreement with the
19 state that complies with the requirements of 49 C. F. R., Part
20 §383.75.

21 (c) *Indemnification of driver examiners.* — No person
22 who has been officially trained and certified by the state as
23 a driver examiner, who administers a driving test, and no
24 other person, firm or corporation by whom or with which
25 that person is employed or is in any way associated, may be
26 criminally liable for the administration of the tests or civilly
27 liable in damages to the person tested or other persons or
28 property unless for gross negligence or willful or wanton
29 injury.

30 (d) The commissioner may waive the skills test specified
31 in this section for a commercial driver license applicant who
32 meets the requirements of 49 C. F. R. Part §383.77 and the
33 requirements specified by the commissioner.

34 (e) A commercial driver's license or commercial
35 driver's instruction permit may not be issued to a person
36 while the person is subject to a disqualification from driving
37 a commercial motor vehicle, when the person does not
38 possess a valid or current medical certification status or
39 while the person's driver's license is suspended, revoked or
40 canceled in any state. A commercial driver's license may
41 not be issued by any other state unless the person first
42 surrenders all such licenses to the division: *Provided*, That
43 a person who became subject to a disqualification from
44 driving a commercial motor vehicle prior to possessing a
45 commercial driver's license is not disqualified from
46 possessing a commercial driver's license or commercial
47 driver's license instruction permit so long as the mandatory
48 revocation period specified in subdivision (3), subsection
49 (a), section thirteen of this article has elapsed, and the
50 individual has completed the Safety and Treatment Program
51 or other appropriate program prescribed by the division as
52 required by subdivision (2) of said subsection.

53 (f) Commercial driver's instruction permit may be
54 issued as follows:

55 (1) To an individual who holds a valid Class E or Class
56 D driver's license and has passed the vision and written tests
57 required for issuance of a commercial driver's license.

58 (2) The commercial instruction permit may not be
59 issued for a period to exceed six months. Only one renewal
60 or reissuance may be granted within a two-year period. The
61 holder of a commercial driver's instruction permit may
62 drive a commercial motor vehicle on a highway only when
63 accompanied by the holder of a commercial driver's license
64 valid for the type of vehicle driven, who is twenty-one years
65 of age or older, who is alert and unimpaired and who

66 occupies a seat beside the individual for the purpose of
67 giving instruction or testing.

68 (3) Only to a person who is at least eighteen years of age
69 and has held a graduated Class E, Class E or Class D license
70 for at least two years.

71 (4) The applicant for a commercial driver's instruction
72 permit shall also be otherwise qualified to hold a
73 commercial driver's license.

§17E-1-13. Disqualification.

1 (a) A person may not operate a commercial motor
2 vehicle if his or her privilege to operate a commercial motor
3 vehicle is disqualified under the provisions of the Federal
4 Motor Carrier Safety Improvement Act of 1999, 49 C. F. R.
5 Part §383, Subpart D (2004) or in accordance with the
6 provisions of this section.

7 (1) For the purposes of determining first and subsequent
8 violations of the offenses listed in this section, each
9 conviction resulting from a separate incident includes
10 convictions for offenses committed in a commercial motor
11 vehicle or a noncommercial motor vehicle.

12 (2) Any person disqualified from operating a
13 commercial motor vehicle for life under the provisions of
14 this chapter for offenses described in subdivisions (1), (2),
15 (3), (4) and (6), subsection (b) of this section is eligible for
16 reinstatement of privileges to operate a commercial motor
17 vehicle after ten years and after completion of the Safety
18 and Treatment Program or other appropriate program
19 prescribed by the division. Any person whose lifetime
20 disqualification has been amended under the provisions of
21 this subdivision and who is subsequently convicted of a
22 disqualifying offense described in subdivisions (1) through
23 (8), inclusive, subsection (b) of this section is not eligible
24 for reinstatement.

25 (3) Any person who committed a disqualifying offense
26 contained in paragraph (B) or (E), subdivision (1),
27 subsection (b) of this section prior to obtaining a
28 commercial driver's license, and who committed the
29 disqualifying offense more than ten years before he or she
30 applied for a commercial driver's license and who has
31 completed the Safety and Treatment Program or other
32 appropriate program prescribed by the division, shall be
33 considered to have served the period of disqualification and
34 shall be eligible to obtain a commercial driver's license so
35 long as all other eligibility requirements contained in
36 sections nine and ten of this article are satisfied.

37 (4) Any disqualification imposed by this section is in
38 addition to any action to suspend, revoke or cancel the
39 driver's license or driving privileges if suspension,
40 revocation or cancellation is required under another
41 provision of this code.

42 (5) The provisions of this section apply to any person
43 operating a commercial motor vehicle and to any person
44 holding a commercial driver's license.

45 (b) Any person is disqualified from driving a
46 commercial motor vehicle for the following offenses and
47 time periods if convicted of:

48 (1) Driving a motor vehicle under the influence of
49 alcohol or a controlled substance;

50 (A) For a first conviction or for refusal to submit to any
51 designated secondary chemical test while operating a
52 commercial motor vehicle, a driver is disqualified from
53 operating a commercial motor vehicle for a period of one
54 year.

55 (B) For a first conviction or for refusal to submit to any
56 designated secondary chemical test while operating a
57 noncommercial motor vehicle, a commercial driver's

58 license holder is disqualified from operating a commercial
59 motor vehicle for a period of one year.

60 (C) For a first conviction or for refusal to submit to any
61 designated secondary chemical test while operating a
62 commercial motor vehicle transporting hazardous materials
63 required to be placarded under 49 C. F. R. Part §172,
64 Subpart F, a driver is disqualified from operating a
65 commercial motor vehicle for a period of three years.

66 (D) For a second conviction or for refusal to submit to
67 any designated secondary chemical test in a separate
68 incident of any combination of offenses in this subsection
69 while operating a commercial motor vehicle, a driver is
70 disqualified from operating a commercial motor vehicle for
71 life.

72 (E) For a second conviction or refusal to submit to any
73 designated secondary chemical test in a separate incident of
74 any combination of offenses in this subsection while
75 operating a noncommercial motor vehicle, a commercial
76 motor vehicle license holder is disqualified from operating
77 a commercial motor vehicle for life.

78 (2) Driving a commercial motor vehicle while the
79 person's alcohol concentration of the person's blood, breath
80 or urine is four hundredths of one percent or more, by
81 weight;

82 (A) For a first conviction or for refusal to submit to any
83 designated secondary chemical test while operating a
84 commercial motor vehicle, a driver is disqualified from
85 operating a commercial motor vehicle for one year.

86 (B) For a first conviction or for refusal to submit to any
87 designated secondary chemical test while operating a
88 commercial motor vehicle transporting hazardous materials
89 required to be placarded under 49 C. F. R. Part §172,
90 Subpart F, a driver is disqualified from operating a
91 commercial motor vehicle for three years.

92 (C) For a second conviction or refusal to submit to any
93 designated secondary chemical test in a separate incident of
94 any combination of offenses in this subsection while
95 operating a commercial motor vehicle, a driver is
96 disqualified from operating a commercial motor vehicle for
97 life.

98 (3) Refusing to submit to any designated secondary
99 chemical test required by the provisions of this code or the
100 provisions of 49 C. F. R. §383.72 (2004);

101 (A) For the first conviction or refusal to submit to any
102 designated secondary chemical test while operating a
103 commercial motor vehicle, a driver is disqualified from
104 operating a commercial motor vehicle for one year.

105 (B) For the first conviction or refusal to submit to any
106 designated secondary chemical test while operating a
107 noncommercial motor vehicle, a commercial driver's
108 license holder is disqualified from operating a commercial
109 motor vehicle for one year.

110 (C) For the first conviction or for refusal to submit to
111 any designated secondary chemical test while operating a
112 commercial motor vehicle transporting hazardous materials
113 required to be placarded under 49 C. F. R. Part §172,
114 Subpart F (2004), a driver is disqualified from operating a
115 commercial motor vehicle for a period of three years.

116 (D) For a second conviction or refusal to submit to any
117 designated secondary chemical test in a separate incident of
118 any combination of offenses in this subsection while
119 operating a commercial motor vehicle, a driver is
120 disqualified from operating a commercial motor vehicle for
121 life.

122 (E) For a second conviction or refusal to submit to any
123 designated secondary chemical test in a separate incident of
124 any combination of offenses in this subsection while
125 operating a noncommercial motor vehicle, a commercial

126 driver's license holder is disqualified from operating a
127 commercial motor vehicle for life.

128 (4) Leaving the scene of an accident;

129 (A) For the first conviction while operating a
130 commercial motor vehicle, a driver is disqualified from
131 operating a commercial motor vehicle for one year.

132 (B) For the first conviction while operating a
133 noncommercial motor vehicle, a commercial driver's
134 license holder is disqualified for one year.

135 (C) For the first conviction while operating a
136 commercial motor vehicle transporting hazardous materials
137 required to be placarded under 49 C. F. R. Part §172,
138 Subpart F (2004), a driver is disqualified from operating a
139 commercial motor vehicle for a period of three years.

140 (D) For a second conviction in a separate incident of any
141 combination of offenses in this subsection while operating
142 a commercial motor vehicle, a driver is disqualified from
143 operating a commercial motor vehicle for life.

144 (E) For a second conviction in a separate incident of any
145 combination of offenses in this subsection while operating
146 a noncommercial motor vehicle, a commercial driver's
147 license holder is disqualified from operating a commercial
148 motor vehicle for life.

149 (5) Using a motor vehicle in the commission of any
150 felony as defined in section three, article one of this chapter
151 except that the commission of any felony involving the
152 manufacture, distribution or dispensing of a controlled
153 substance or possession with intent to manufacture,
154 distribute or dispense a controlled substance falls under the
155 provisions of subdivision (8) of this subsection;

156 (A) For the first conviction while operating a
157 commercial motor vehicle, a driver is disqualified from
158 operating a commercial motor vehicle for one year.

159 (B) For the first conviction while operating a
160 noncommercial motor vehicle, a commercial driver's
161 license holder is disqualified from operating a commercial
162 motor vehicle for one year.

163 (C) For the first conviction while operating a
164 commercial motor vehicle transporting hazardous materials
165 required to be placarded under 49 C. F. R. Part §172,
166 Subpart F (2004), a driver is disqualified from operating a
167 commercial motor vehicle for a period of three years.

168 (D) For a second conviction in a separate incident of any
169 combination of offenses in this subsection while operating
170 a commercial motor vehicle, a driver is disqualified from
171 operating a commercial motor vehicle for life.

172 (E) For a second conviction in a separate incident of any
173 combination of offenses in this subsection while operating
174 a noncommercial motor vehicle, a commercial motor
175 vehicle license holder is disqualified from operating a
176 commercial motor vehicle for life.

177 (6) Operating a commercial motor vehicle when, as a
178 result of prior violations committed operating a commercial
179 motor vehicle, the driver's privilege to operate a motor
180 vehicle has been suspended, revoked or canceled or the
181 driver's privilege to operate a commercial motor vehicle has
182 been disqualified.

183 (A) For the first conviction while operating a
184 commercial motor vehicle, a driver is disqualified from
185 operating a commercial motor vehicle for one year.

186 (B) For the first conviction while operating a
187 commercial motor vehicle transporting hazardous materials
188 required to be placarded under 49 C. F. R. Part §172,
189 Subpart F (2004), a driver is disqualified from operating a
190 commercial motor vehicle for a period of three years.

191 (C) For a second conviction in a separate incident of any
192 combination of offenses in this subsection while operating

193 a commercial motor vehicle, a driver is disqualified from
194 operating a commercial motor vehicle for life.

195 (7) Causing a fatality through the negligent operation of
196 a commercial motor vehicle, including, but not limited to,
197 the crimes of motor vehicle manslaughter, homicide and
198 negligent homicide as defined in section five, article three,
199 chapter seventeen-b, and section one, article five, chapter
200 seventeen-c of this code;

201 (A) For the first conviction while operating a
202 commercial motor vehicle, a driver is disqualified from
203 operating a commercial motor vehicle for one year.

204 (B) For the first conviction while operating a
205 commercial motor vehicle transporting hazardous materials
206 required to be placarded under 49 C. F. R. Part §172,
207 Subpart F (2004), a driver is disqualified from operating a
208 commercial motor vehicle for a period of three years.

209 (C) For a second conviction in a separate incident of any
210 combination of offenses in this subsection while operating
211 a commercial motor vehicle, a driver is disqualified from
212 operating a commercial motor vehicle for life.

213 (8) Using a motor vehicle in the commission of any
214 felony involving the manufacture, distribution or dispensing
215 of a controlled substance or possession with intent to
216 manufacture, distribute or dispense a controlled substance,
217 a driver is disqualified from operating a commercial motor
218 vehicle for life and is not eligible for reinstatement.

219 (c) Any person is disqualified from driving a
220 commercial motor vehicle if convicted of:

221 (1) Speeding excessively involving any speed of fifteen
222 miles per hour or more above the posted speed limit;

223 (A) For a second conviction of any combination of
224 offenses in this subsection in a separate incident within a
225 three-year period while operating a commercial motor

226 vehicle, a driver is disqualified from operating a
227 commercial motor vehicle for a period of sixty days.

228 (B) For a second conviction of any combination of
229 offenses in this section in a separate incident within a three-
230 year period while operating a noncommercial motor
231 vehicle, if the conviction results in the suspension,
232 revocation or cancellation of the commercial driver's
233 license holder's privilege to operate any motor vehicle, a
234 commercial driver's license holder is disqualified from
235 operating a commercial motor vehicle for a period of sixty
236 days.

237 (C) For a third or subsequent conviction of any
238 combination of the offenses in this subsection in a separate
239 incident in a three-year period while operating a commercial
240 motor vehicle, a driver is disqualified from operating a
241 commercial motor vehicle for a period of one hundred
242 twenty days.

243 (D) For a third or subsequent conviction of any
244 combination of offenses in this subsection in a separate
245 incident within a three-year period while operating a
246 noncommercial motor vehicle, if the conviction results in
247 the suspension, revocation or cancellation of the
248 commercial driver's license holder's privilege to operate
249 any motor vehicle, a commercial driver's license holder
250 shall be disqualified from operating a commercial motor
251 vehicle for a period of one hundred twenty days.

252 (2) Reckless driving as defined in section three, article
253 five, chapter seventeen-c of this code, careless or negligent
254 driving, including, but not limited to, the offenses of driving
255 a motor vehicle in willful or wanton disregard for the safety
256 of persons or property;

257 (A) For a second conviction of any combination of
258 offenses in this subsection in a separate incident within a
259 three-year period while operating a commercial motor

260 vehicle, a driver is disqualified from operating a commercial
261 motor vehicle for a period of sixty days.

262 (B) For a second conviction of any combination of
263 offenses in this section in a separate incident within a three-
264 year period while operating a noncommercial motor
265 vehicle, if the conviction results in the suspension,
266 revocation or cancellation of the commercial driver's
267 license holder's privilege to operate any motor vehicle, a
268 commercial driver's license holder is disqualified from
269 operating a commercial motor vehicle for a period of sixty
270 days.

271 (C) For a third or subsequent conviction of any
272 combination of the offenses in this subsection in a separate
273 incident in a three-year period while operating a commercial
274 motor vehicle, a driver is disqualified from operating a
275 commercial motor vehicle for a period of one hundred
276 twenty days.

277 (D) For a third or subsequent conviction of any
278 combination of offenses in this subsection in a separate
279 incident within a three-year period while operating a
280 noncommercial motor vehicle, if the conviction results in
281 the suspension, revocation or cancellation of the
282 commercial driver's license holder's privilege to operate
283 any motor vehicle, a commercial driver's license holder
284 is disqualified from operating a commercial motor vehicle
285 for a period of one hundred twenty days.

286 (3) Making improper or erratic traffic lane changes;

287 (A) For a second conviction of any combination of
288 offenses in this subsection in a separate incident within a
289 three-year period while operating a commercial motor
290 vehicle, a driver is disqualified from operating a
291 commercial motor vehicle for a period of sixty days.

292 (B) For a second conviction of any combination of
293 offenses in this section in a separate incident within a three-

294 year period while operating a noncommercial motor
295 vehicle, if the conviction results in the suspension,
296 revocation, or cancellation of the commercial driver's
297 license holder's privilege to operate any motor vehicle, a
298 commercial driver's license holder is disqualified from
299 operating a commercial motor vehicle for a period of sixty
300 days.

301 (C) For a third or subsequent conviction of any
302 combination of the offenses in this subsection in a separate
303 incident in a three-year period while operating a commercial
304 motor vehicle, a driver is disqualified from operating a
305 commercial motor vehicle for a period of one hundred
306 twenty days.

307 (D) For a third or subsequent conviction of any
308 combination of offenses in this subsection in a separate
309 incident within a three-year period while operating a
310 noncommercial motor vehicle, if the conviction results in
311 the suspension, revocation or cancellation of the
312 commercial driver's license holder's privilege to operate
313 any motor vehicle, a commercial driver's license holder
314 is disqualified from operating a commercial motor vehicle
315 for a period of one hundred twenty days.

316 (4) Following the vehicle ahead too closely;

317 (A) For a second conviction of any combination of
318 offenses in this subsection in a separate incident within a
319 three-year period while operating a commercial motor
320 vehicle, a driver is disqualified from operating a
321 commercial motor vehicle for a period of sixty days.

322 (B) For a second conviction of any combination of
323 offenses in this section in a separate incident within a three-
324 year period while operating a noncommercial motor
325 vehicle, if the conviction results in the suspension,
326 revocation, or cancellation of the commercial driver's
327 license holder's privilege to operate any motor vehicle, a
328 commercial driver's license holder is disqualified from

329 operating a commercial motor vehicle for a period of sixty
330 days.

331 (C) For a third or subsequent conviction of any
332 combination of the offenses in this subsection in a separate
333 incident in a three-year period while operating a commercial
334 motor vehicle, a driver is disqualified from operating a
335 commercial motor vehicle for a period of one hundred
336 twenty days.

337 (D) For a third or subsequent conviction of any
338 combination of offenses in this subsection in a separate
339 incident within a three-year period while operating a
340 noncommercial motor vehicle, if the conviction results in
341 the suspension, revocation or cancellation of the
342 commercial driver's license holder's privilege to operate
343 any motor vehicle, a commercial driver's license holder
344 is disqualified from operating a commercial motor vehicle
345 for a period of one hundred twenty days.

346 (5) Violating any law relating to traffic control arising
347 in connection with a fatal accident, other than a parking
348 violation;

349 (A) For a second conviction of any combination of
350 offenses in this subsection in a separate incident within a
351 three-year period while operating a commercial motor
352 vehicle, a driver is disqualified from operating a commercial
353 motor vehicle for a period of sixty days.

354 (B) For a second conviction of any combination of
355 offenses in this section in a separate incident within a three-
356 year period while operating a noncommercial motor
357 vehicle, if the conviction results in the suspension,
358 revocation, or cancellation of the commercial driver's
359 license holder's privilege to operate any motor vehicle, a
360 commercial driver's license holder is disqualified from
361 operating a commercial motor vehicle for a period of sixty
362 days.

363 (C) For a third or subsequent conviction of any
364 combination of the offenses in this subsection in a separate
365 incident in a three-year period while operating a commercial
366 motor vehicle, a driver is disqualified from operating a
367 commercial motor vehicle for a period of one hundred
368 twenty days.

369 (D) For a third or subsequent conviction of any
370 combination of offenses in this subsection in a separate
371 incident within a three-year period while operating a
372 noncommercial motor vehicle, if the conviction results in
373 the suspension, revocation or cancellation of the
374 commercial driver's license holder's privilege to operate
375 any motor vehicle, a commercial motor vehicle license
376 holder is disqualified from operating a commercial motor
377 vehicle for a period of one hundred twenty days.

378 (6) Driving a commercial motor vehicle without
379 obtaining a commercial driver's license;

380 (A) For a second conviction of any combination of
381 offenses in this subsection in a separate incident within a
382 three-year period while operating a commercial motor
383 vehicle, a driver is disqualified from operating a
384 commercial motor vehicle for a period of sixty days.

385 (B) For a third or subsequent conviction of any
386 combination of the offenses in this subsection in a separate
387 incident in a three-year period while operating a commercial
388 motor vehicle, a driver is disqualified from operating a
389 commercial motor vehicle for a period of one hundred
390 twenty days.

391 (7) Driving a commercial motor vehicle without a
392 commercial driver's license in the driver's possession
393 except that any person who provides proof of possession of
394 a commercial driver's license to the enforcement agency
395 that issued the citation by the court appearance or fine
396 payment deadline is not guilty of this offense;

397 (A) For a second conviction of any combination of
398 offenses in this subsection in a separate incident within a
399 three-year period while operating a commercial motor
400 vehicle, a commercial driver's license holder is disqualified
401 from operating a commercial motor vehicle for a period of
402 sixty days.

403 (B) For a third or subsequent conviction of any
404 combination of the offenses in this subsection in a separate
405 incident in a three-year period while operating a commercial
406 motor vehicle, a commercial driver's license holder
407 is disqualified from operating a commercial motor vehicle
408 for a period of one hundred twenty days.

409 (8) Driving a commercial motor vehicle without the
410 proper class of commercial driver's license or the proper
411 endorsements for the specific vehicle group being operated
412 or for the passengers or type of cargo being transported;

413 (A) For a second conviction of any combination of
414 offenses in this subsection in a separate incident within a
415 three-year period while operating a commercial motor
416 vehicle, a commercial driver's license holder is disqualified
417 from operating a commercial motor vehicle for a period of
418 sixty days.

419 (B) For a third or subsequent conviction of any
420 combination of the offenses in this subsection in a separate
421 incident in a three-year period while operating a commercial
422 motor vehicle, a commercial driver's license holder
423 is disqualified from operating a commercial motor vehicle
424 for a period of one hundred twenty days.

425 (9) Driving a commercial motor vehicle while engaged
426 in texting and convicted pursuant to section fourteen-a of
427 this article or similar law of this or any other jurisdiction or
428 49 C. F. R §392.80;

429 (A) For a second conviction of any combination of
430 offenses in this subsection in a separate incident within a

431 three-year period while operating a commercial motor
432 vehicle, a commercial driver's license holder is disqualified
433 from operating a commercial motor vehicle for a period of
434 sixty days.

435 (B) For a third or subsequent conviction of any
436 combination of the offenses in this subsection in a separate
437 incident in a three-year period while operating a commercial
438 motor vehicle, a commercial driver's license holder
439 is disqualified from operating a commercial motor vehicle
440 for a period of one hundred twenty days.

441 (d) Any person convicted of operating a commercial
442 motor vehicle in violation of any federal, state or local law
443 or ordinance pertaining to railroad crossing violations
444 described in subdivisions (1) through (6), inclusive, of this
445 subsection is disqualified from operating a commercial
446 motor vehicle for the period of time specified;

447 (1) Failing to slow down and check that the tracks are
448 clear of an approaching train, if not required to stop in
449 accordance with the provisions of section three, article
450 twelve, chapter seventeen-c of this code;

451 (A) For the first conviction, a driver is disqualified from
452 operating a commercial motor vehicle for a period of sixty
453 days;

454 (B) For a second conviction of any combination of
455 offenses in this subsection within a three-year period, a
456 driver is disqualified from operating a commercial motor
457 vehicle for one hundred twenty days; and

458 (C) For a third or subsequent conviction of any
459 combination of offenses in this subsection within a three-
460 year period, a driver is disqualified from operating a
461 commercial motor vehicle for one year.

462 (2) Failing to stop before reaching the crossing, if the
463 tracks are not clear, if not required to stop in accordance

464 with the provisions of section one, article twelve, chapter
465 seventeen-c of this code;

466 (A) For the first conviction, a driver is disqualified from
467 operating a commercial motor vehicle for a period of sixty
468 days;

469 (B) For a second conviction of any combination of
470 offenses in this subsection within a three-year period, a
471 driver is disqualified from operating a commercial motor
472 vehicle for one hundred twenty days; and

473 (C) For a third or subsequent conviction of any
474 combination of offenses in this subsection within a three-
475 year period, a driver is disqualified from operating a
476 commercial motor vehicle for one year.

477 (3) Failing to stop before driving onto the crossing, if
478 required to stop in accordance with the provisions of section
479 three, article twelve, chapter seventeen-c of this code;

480 (A) For the first conviction, a driver is disqualified from
481 operating a commercial motor vehicle for a period of sixty
482 days;

483 (B) For a second conviction of any combination of
484 offenses in this subsection within a three-year period, the
485 driver is disqualified from operating a commercial motor
486 vehicle for one hundred twenty days; and

487 (C) For a third or subsequent conviction of any
488 combination of offenses in this subsection within a three-
489 year period, a driver is disqualified from operating a
490 commercial motor vehicle for one year.

491 (4) Failing to have sufficient space to drive completely
492 through the crossing without stopping in accordance with
493 the provisions of section three, article twelve, chapter
494 seventeen-c of this code;

495 (A) For the first conviction, a driver is disqualified from
496 operating a commercial motor vehicle for a period of sixty
497 days;

498 (B) For a second conviction of any combination of
499 offenses in this subsection within a three-year period, a
500 driver is disqualified from operating a commercial motor
501 vehicle for one hundred twenty days; and

502 (C) For a third or subsequent conviction of any
503 combination of offenses in this subsection within a three-
504 year period, a driver is disqualified from operating a
505 commercial motor vehicle for one year.

506 (5) Failing to obey a traffic control device or the
507 directions of an enforcement official at the crossing in
508 accordance with the provisions of section one, article
509 twelve, chapter seventeen-c of this code;

510 (A) For the first conviction, a driver is disqualified from
511 operating a commercial motor vehicle for a period of sixty
512 days;

513 (B) For a second conviction of any combination of
514 offenses in this subsection within a three-year period, a
515 driver is disqualified from operating a commercial motor
516 vehicle for one hundred twenty days; and

517 (C) For a third or subsequent conviction of any
518 combination of offenses in this subsection within a three-
519 year period, a driver is disqualified from operating a
520 commercial motor vehicle for one year.

521 (6) Failing to negotiate a crossing because of
522 insufficient undercarriage clearance in accordance with the
523 provisions of section three, article twelve, chapter
524 seventeen-c of this code.

525 (A) For the first conviction, a driver is disqualified from
526 operating a commercial motor vehicle for a period of sixty
527 days;

528 (B) For a second conviction of any combination of
529 offenses in this subsection within a three-year period, a
530 driver is disqualified from operating a commercial motor
531 vehicle for one hundred twenty days; and

532 (C) For a third or subsequent conviction of any
533 combination of offenses in this subsection within a three-
534 year period, a driver is disqualified from operating a
535 commercial motor vehicle for one year.

536 (e) Any person who is convicted of violating an out-of-
537 service order while operating a commercial motor vehicle
538 is disqualified for the following periods of time:

539 (1) If convicted of violating a driver or vehicle out-of-
540 service order while transporting nonhazardous materials;

541 (A) For the first conviction of violating an out-of-
542 service order while operating a commercial motor vehicle,
543 a driver is disqualified from operating a commercial motor
544 vehicle for one hundred eighty days.

545 (B) For a second conviction in a separate incident within
546 a ten-year period for violating an out-of-service order while
547 operating a commercial motor vehicle, a driver is
548 disqualified from operating a commercial motor vehicle for
549 two years.

550 (C) For a third or subsequent conviction in a separate
551 incident within a ten-year period for violating an out-of-
552 service order while operating a commercial motor vehicle,
553 a driver is disqualified from operating a commercial motor
554 vehicle for three years.

555 (2) If convicted of violating a driver or vehicle out-of-
556 service order while transporting hazardous materials
557 required to be placarded under 49 C. F. R. Part §172,
558 Subpart F (2004) or while operating a vehicle designed to
559 transport sixteen or more passengers including the driver;

560 (A) For the first conviction of violating an out of service
561 order while operating a commercial motor vehicle, a driver
562 is disqualified from operating a commercial motor vehicle
563 for one hundred eighty days.

564 (B) For a second conviction in a separate incident within
565 a ten-year period for violating an out-of-service order while
566 operating a commercial motor vehicle, a driver
567 is disqualified from operating a commercial motor vehicle
568 for three years.

569 (C) For a third or subsequent conviction in a separate
570 incident within a ten-year period for violating an out-of-
571 service order while operating a commercial motor vehicle,
572 a driver is disqualified from operating a commercial motor
573 vehicle for three years.

574 (f) After disqualifying, suspending, revoking or
575 canceling a commercial driver's license, the division shall
576 update its records to reflect that action within ten days.

577 (g) In accordance with the provisions of 49 U. S. C.
578 §313119(a)(19)(2004), and 49 C. F. R. §384.226 (2004),
579 notwithstanding the provisions of section twenty-five,
580 article eleven, chapter sixty-one of this code, no record of
581 conviction, revocation, suspension or disqualification
582 related to any type of motor vehicle traffic control offense,
583 other than a parking violation, of a commercial driver's
584 license holder or a person operating a commercial motor
585 vehicle may be masked, expunged, deferred or be subject to
586 any diversion program.

587 (h) Notwithstanding any provision in this code to the
588 contrary, the division may not issue any temporary driving
589 permit, work-only driving permit or hardship license or
590 permit that authorizes a person to operate a commercial
591 motor vehicle when his or her privilege to operate any motor
592 vehicle has been revoked, suspended, disqualified or
593 otherwise canceled for any reason.

594 (i) In accordance with the provisions of 49 C. F. R.
595 §391.15(b), a driver is disqualified from operating a
596 commercial motor vehicle for the duration of any
597 suspension, revocation or cancellation of his or her driver's
598 license or privilege to operate a motor vehicle by this state
599 or by any other state or jurisdiction until the driver complies
600 with the terms and conditions for reinstatement set by this
601 state or by another state or jurisdiction.

602 (j) In accordance with the provisions of 49 C. F. R.
603 §353.52 (2006), the division shall immediately disqualify a
604 driver's privilege to operate a commercial motor vehicle
605 upon a notice from the assistant administrator of the Federal
606 Motor Carrier Safety Administration that the driver poses
607 an imminent hazard. Any disqualification period imposed
608 under the provisions of this subsection shall be served
609 concurrently with any other period of disqualification if
610 applicable.

611 (k) In accordance with the provisions of 49 C. F. R.
612 §1572.11(a), the division shall immediately disqualify a
613 driver's privilege to operate a commercial motor vehicle if
614 the driver fails to surrender his or her driver's license with
615 a hazardous material endorsement to the division upon
616 proper notice by the division to the driver that the division
617 received notice from the Department of Homeland Security
618 Transportation Security Administration of an initial
619 determination of threat assessment and immediate
620 revocation that the driver does not meet the standards for
621 security threat assessment provided in 49 C. F. R. §1572.5.
622 The disqualification remains in effect until the driver either
623 surrenders the driver's license to the division or provides the
624 division with an affidavit attesting to the fact that the driver
625 has lost or is otherwise unable to surrender the license.

626 (l) In accordance with 49 C. F. R. §391.41, a driver is
627 disqualified from operating a commercial motor vehicle if
628 the driver is not physically qualified to operate a
629 commercial motor vehicle or does not possess a valid
630 medical certification status.

631 (m) In accordance with the provisions of 49 C. F. R.
632 §383.73(g), the division shall disqualify a driver's privilege
633 to operate a commercial motor vehicle if the division
634 determines that the licensee has falsified any information or
635 certifications required under the provisions of 49 C. F. R.
636 383 Subpart J or 49 C. F. R. §383.71(a) for sixty days in
637 addition to any other penalty prescribed by this code.

CHAPTER 245

**(Com. Sub. for S. B. 222 - By Senators Weld and
Trump)**

[Passed April 3, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 8, 2017.]

AN ACT to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to disqualification for unemployment benefits; providing that an individual is disqualified for benefits for any week or portion of a week in which he or she left or lost his or her job as a result of a strike or other bona fide labor dispute; clarifying that a lockout is not a strike; providing that operation of a facility by non-striking employees, contractors or other personnel is not reason to grant benefits; establishing the circumstances when a worker is determined to leave or lose employment by reason of a lockout; providing the circumstances when a worker is determined to be permanently replaced by another employee; providing that contractors or employees who perform the work of a striking worker on a temporary basis are not to be determined to have permanently replaced a striking worker; and describing the circumstances under which employees and contractors are hired to perform striking employees' work on a temporary basis.

Be it enacted by the Legislature of West Virginia

That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. APPEALS.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the
2 commissioner, an individual is disqualified for benefits:

3 (1) For the week in which he or she left his or her most
4 recent work voluntarily without good cause involving fault
5 on the part of the employer and until the individual returns
6 to covered employment and has been employed in covered
7 employment at least thirty working days.

8 For the purpose of this subdivision, an individual has
9 not left his or her most recent work voluntarily without good
10 cause involving fault on the part of the employer if the
11 individual leaves his or her most recent work with an
12 employer and if he or she in fact, within a fourteen-day
13 calendar period, does return to employment with the last
14 preceding employer with whom he or she was previously
15 employed within the past year prior to his or her return to
16 work, and which last preceding employer, after having
17 previously employed the individual for thirty working days
18 or more, laid off the individual because of lack of work,
19 which layoff occasioned the payment of benefits under this
20 chapter or could have occasioned the payment of benefits
21 under this chapter had the individual applied for benefits. It
22 is the intent of this paragraph to cause no disqualification
23 for benefits for an individual who complies with the
24 foregoing set of requirements and conditions. Further, for
25 the purpose of this subdivision, an individual has not left his
26 or her most recent work voluntarily without good cause
27 involving fault on the part of the employer, if the individual
28 was compelled to leave his or her work for his or her own
29 health-related reasons and notifies the employer prior to
30 leaving the job or within two business days after leaving the
31 job or as soon as practicable and presents written

32 certification from a licensed physician within thirty days of
33 leaving the job that his or her work aggravated, worsened or
34 will worsen the individual's health problem.

35 (2) For the week in which he or she was discharged from
36 his or her most recent work for misconduct and the six
37 weeks immediately following that week; or for the week in
38 which he or she was discharged from his or her last thirty-
39 day employing unit for misconduct and the six weeks
40 immediately following that week. The disqualification
41 carries a reduction in the maximum benefit amount equal to
42 six times the individual's weekly benefit. However, if the
43 claimant returns to work in covered employment for thirty
44 days during his or her benefit year, whether or not the days
45 are consecutive, the maximum benefit amount is increased
46 by the amount of the decrease imposed under the
47 disqualification; except that:

48 If he or she were discharged from his or her most recent
49 work for one of the following reasons, or if he or she were
50 discharged from his or her last thirty days employing unit
51 for one of the following reasons: Gross misconduct
52 consisting of willful destruction of his or her employer's
53 property; assault upon the person of his or her employer or
54 any employee of his or her employer; if the assault is
55 committed at the individual's place of employment or in the
56 course of employment; reporting to work in an intoxicated
57 condition, or being intoxicated while at work; reporting to
58 work under the influence of any controlled substance, as
59 defined in chapter sixty-a of this code without a valid
60 prescription, or being under the influence of any controlled
61 substance, as defined in said chapter without a valid
62 prescription, while at work; adulterating or otherwise
63 manipulating a sample or specimen in order to thwart a drug
64 or alcohol test lawfully required of an employee; refusal to
65 submit to random testing for alcohol or illegal controlled
66 substances for employees in safety sensitive positions as
67 defined in section two, article one-d, chapter twenty-one of
68 this code; arson, theft, larceny, fraud or embezzlement in

69 connection with his or her work; or any other gross
70 misconduct, he or she is disqualified for benefits until he or
71 she has thereafter worked for at least thirty days in covered
72 employment: *Provided*, That for the purpose of this
73 subdivision, the words “any other gross misconduct”
74 includes, but is not limited to, any act or acts of misconduct
75 where the individual has received prior written warning that
76 termination of employment may result from the act or acts.

77 (3) For the week in which he or she failed without good
78 cause to apply for available, suitable work, accept suitable
79 work when offered, or return to his or her customary self-
80 employment when directed to do so by the commissioner,
81 and for the four weeks which immediately follow for such
82 additional period as any offer of suitable work shall
83 continue open for his or her acceptance. The disqualification
84 carries a reduction in the maximum benefit amount equal to
85 four times the individual’s weekly benefit amount.

86 (4) For any week or portion thereof in which he or she
87 did not work as a result of:

88 (a) A strike or other bona fide labor dispute which
89 caused him or her to leave or lose his or her employment;

90 (b) A lockout is not a strike or a bona fide labor dispute
91 and no individual may be denied benefits by reason of a
92 lockout. However, the operation of a facility by non-striking
93 employees of the company, contractors or other personnel
94 is not a reason to grant employees of the company on strike
95 unemployment compensation benefit payments. If the
96 operation of a facility is with workers hired to permanently
97 replace the employees on strike, the employees would be
98 eligible for benefits.

99 (c) For the purpose of this subsection, an individual
100 shall be determined to leave or lose his or her employment
101 by reason of a lockout where the individual employee has
102 established that: (i) The individual presented himself or
103 herself physically for work at the workplace on the first day

104 of such lockout or on the first day he or she is able to present
105 himself at the workplace or herself; and (ii) the employer
106 denied the individual the opportunity to perform work.

107 (d) For purposes of this subsection, an individual is
108 determined to be permanently replaced where the individual
109 employee establishes that: (i) He or she is currently
110 employed by an employer who is the subject of a strike or
111 other bona fide labor dispute; and (ii) the position of the
112 employee has been occupied by another employee who has
113 been notified they are permanently replacing the employee
114 who previously occupied the position. Employees or
115 contractors who are hired to perform striking employees'
116 work on a temporary basis, such as the duration of a strike
117 or other bona fide labor dispute, or a shorter period of time,
118 may not be determined to have permanently replaced a
119 striking employee.

120 (5) For a week with respect to which he or she is
121 receiving or has received:

122 (a) Wages in lieu of notice;

123 (b) Compensation for temporary total disability under
124 the workers' compensation law of any state or under a
125 similar law of the United States; or

126 (c) Unemployment compensation benefits under the
127 laws of the United States or any other state.

128 (6) For the week in which an individual has voluntarily
129 quit employment to marry or to perform any marital,
130 parental or family duty, or to attend to his or her personal
131 business or affairs and until the individual returns to covered
132 employment and has been employed in covered
133 employment at least thirty working days: *Provided*, That an
134 individual who has voluntarily quit employment to
135 accompany a spouse serving in active military service who
136 has been reassigned from one military assignment to
137 another is not disqualified for benefits pursuant to this

138 subdivision: *Provided however*, That the account of the
139 employer of an individual who leaves the employment to
140 accompany a spouse reassigned from one military
141 assignment to another may not be charged.

142 (7) Benefits may not be paid to any individual on the
143 basis of any services, substantially all of which consist of
144 participating in sports or athletic events or training or
145 preparing to so participate, for any week which commences
146 during the period between two successive sport seasons (or
147 similar periods) if the individual performed the services in
148 the first of the seasons (or similar periods) and there is a
149 reasonable assurance that the individual will perform the
150 services in the later of the seasons (or similar periods).

151 (8) (a) Benefits may not be paid on the basis of services
152 performed by an alien unless the alien is an individual who
153 was lawfully admitted for permanent residence at the time
154 the services were performed, was lawfully present for
155 purposes of performing the services or was permanently
156 residing in the United States under color of law at the time
157 the services were performed (including an alien who is
158 lawfully present in the United States as a result of the
159 application of the provisions of Section 203(a)(7) or Section
160 212(d)(5) of the Immigration and Nationality Act):
161 *Provided*, That any modifications to the provisions of
162 Section 3304(a)(14) of the federal Unemployment Tax Act
163 as provided by Public Law 94-566 which specify other
164 conditions or other effective date than stated in this
165 subdivision for the denial of benefits based on services
166 performed by aliens and which modifications are required
167 to be implemented under state law as a condition for full tax
168 credit against the tax imposed by the federal Unemployment
169 Tax Act are applicable under the provisions of this section.

170 (b) Any data or information required of individuals
171 applying for benefits to determine whether benefits are not
172 payable to them because of their alien status shall be
173 uniformly required from all applicants for benefits.

174 (c) In the case of an individual whose application for
175 benefits would otherwise be approved, no determination
176 that benefits to the individual are not payable because of his
177 or her alien status may be made except upon a
178 preponderance of the evidence.

179 (9) For each week in which an individual is unemployed
180 because, having voluntarily left employment to attend a
181 school, college, university or other educational institution,
182 he or she is attending that school, college, university or other
183 educational institution, or is awaiting entrance thereto or is
184 awaiting the starting of a new term or session thereof, and
185 until the individual returns to covered employment.

186 (10) For each week in which he or she is unemployed
187 because of his or her request, or that of his or her duly
188 authorized agent, for a vacation period at a specified time
189 that would leave the employer no other alternative but to
190 suspend operations.

191 (11) In the case of an individual who accepts an early
192 retirement incentive package, unless he or she: (i)
193 Establishes a well-grounded fear of imminent layoff
194 supported by definitive objective facts involving fault on the
195 part of the employer; and (ii) establishes that he or she
196 would suffer a substantial loss by not accepting the early
197 retirement incentive package.

198 (12) For each week with respect to which he or she is
199 receiving or has received benefits under Title II of the Social
200 Security Act or similar payments under any Act of
201 Congress, or remuneration in the form of an annuity,
202 pension or other retirement pay from a base period employer
203 or chargeable employer or from any trust or fund
204 contributed to by a base period employer or chargeable
205 employer or any combination of the above, the weekly
206 benefit amount payable to the individual for that week shall
207 be reduced (but not below zero) by the prorated weekly
208 amount of those benefits, payments or remuneration:
209 *Provided*, That if the amount of benefits is not a multiple of
210 \$1, it shall be computed to the next lowest multiple of \$1:
211 *Provided, however*, That there is no disqualification if in the

212 individual's base period there are no wages which were paid
213 by the base period employer or chargeable employer paying
214 the remuneration, or by a fund into which the employer has
215 paid during the base period: *Provided further*, That
216 notwithstanding any other provision of this subdivision to
217 the contrary, the weekly benefit amount payable to the
218 individual for that week may not be reduced by any
219 retirement benefits he or she is receiving or has received
220 under Title II of the Social Security Act or similar payments
221 under any Act of Congress. A claimant may be required to
222 certify as to whether or not he or she is receiving or has been
223 receiving remuneration in the form of an annuity, pension
224 or other retirement pay from a base period employer or
225 chargeable employer or from a trust fund contributed to by
226 a base period employer or chargeable employer.

227 (13) For each week in which and for fifty-two weeks
228 thereafter, beginning with the date of the decision, if the
229 commissioner finds the individual who within twenty-four
230 calendar months immediately preceding the decision, has
231 made a false statement or representation knowing it to be false
232 or knowingly fails to disclose a material fact, to obtain or
233 increase any benefit or payment under this article: *Provided*,
234 That disqualification under this subdivision does not preclude
235 prosecution under section seven, article ten of this chapter.



CHAPTER 246

**(S. B. 365 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed April 4, 2017; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2017.]

AN ACT to amend and reenact §21A-8-16 of the Code of West Virginia, 1931, as amended, relating to maintaining the solvency of the Unemployment Compensation Fund; and

extending the time period for borrowing funds from the Revenue Shortfall Reserve Fund for the Unemployment Compensation Fund to September 1, 2018.

Be it enacted by the Legislature of West Virginia:

That §21A-8-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.

§21A-8-16. Loans to Unemployment Compensation Fund from Revenue Shortfall Reserve Fund.

1 (a) Notwithstanding any provision of this code to the
2 contrary and subject to the provisions of this section, the
3 Governor may, by executive order, after first notifying the
4 presiding officers of both houses of the Legislature in
5 writing, borrow funds from the Revenue Shortfall Reserve
6 Fund created in section twenty, article two, chapter eleven-
7 b of this code for deposit into the Unemployment
8 Compensation Fund, created in section one of this article, to
9 be expended in accordance with this code. The amount of
10 funds borrowed and outstanding under this section may not
11 exceed \$50 million at any one time, or the amount the
12 Governor determines is necessary to adequately sustain the
13 balance in the Unemployment Compensation Fund at a
14 minimum of \$50 million, whichever is less.

15 (b) Notwithstanding the provisions of subsection (a) of
16 this section, the Governor may not borrow funds from the
17 Revenue Shortfall Reserve Fund unless the Executive
18 Director of Workforce West Virginia has projected that the
19 balance in the state's Unemployment Compensation Fund
20 will be less than \$50 million at any time during the next
21 thirty days.

22 (c) Any funds borrowed pursuant to this section shall be
23 used to pay benefits only.

24 (d) Any funds borrowed pursuant to this subsection
25 shall be repaid from funds on deposit in the Unemployment
26 Trust Fund in excess of \$50 million or from other funds
27 legally available for such purpose, without interest, and
28 redeposited to the credit of the Revenue Shortfall Reserve
29 Fund within one hundred eighty days of their withdrawal.

30 (e) No amounts may be borrowed pursuant to the
31 provisions of this section after September 1, 2018.

LEGISLATURE OF WEST VIRGINIA

**CONSTITUTIONAL
AMENDMENT**

REGULAR SESSION, 2017

SENATE JOINT RESOLUTION 6

**(Com. Sub. for SJR 6 - By Senators Carmichael (Mr.
President) and Prezioso)
[By Request of the Executive]**

[Adopted by the Legislature April 8, 2017.]

Proposing an amendment to the Constitution of the State of West Virginia, relating to authorizing the Legislature to issue and sell state bonds not exceeding the aggregate amount of \$1.6 billion to be used for improvement and construction of state roads and bridges; numbering and designating such proposed amendment; authorizing a special election on the ratification or rejection of the amendment to take place in 2017, to be set by the Governor; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at a special election to be held at a date set

by the Governor in 2017 and proclaimed in accordance with section three, article eleven, chapter three of the Code of West Virginia, which proposed amendment is to read as follows:

Roads to Prosperity Amendment of 2017.

1 (a) The Legislature shall have power to authorize the
2 issuing and selling of state bonds not exceeding in the
3 aggregate \$1.6 billion. The proceeds of said bonds are
4 hereby authorized to be issued and sold over a four-year
5 period in the following amounts:

6 (1) July 1, 2017, an amount not to exceed \$800 million;

7 (2) July 1, 2018, an amount not to exceed \$400 million;

8 (3) July 1, 2019, an amount not to exceed \$200 million;
9 and

10 (4) July 1, 2020, an amount not to exceed \$200 million.

11 Any bonds not issued under the provisions of
12 subdivisions (1) through (3), inclusive, of this subsection
13 may be carried forward and issued in any subsequent year
14 before July 1, 2021.

15 (b) The proceeds of the bonds shall be used and
16 appropriated for the following purposes:

17 (1) Matching available federal funds for highway and
18 bridge construction in this state; and

19 (2) General highway and secondary road and bridge
20 construction or improvements in each of the fifty-five
21 counties.

22 (c) When a bond issue as aforesaid is authorized, the
23 Legislature shall at the same time provide for the collection
24 of an annual state tax which shall be in a sufficient amount
25 to pay the interest on such bonds and the principal thereof
26 as such may accrue within and not exceeding twenty-five
27 years. Such taxes shall be levied in any year only to the

28 extent that the moneys in the state road fund irrevocably set
29 aside and appropriated for and applied to the payment of the
30 interest on and the principal of said bonds becoming due and
31 payable in such year are insufficient therefor. Any interest
32 that accrues on the issued bonds prior to payment shall only
33 be used for the purposes of the bonds.

34 *Resolved further,* That in accordance with the
35 provisions of article eleven, chapter three of the Code of
36 West Virginia, 1931, as amended, such proposed
37 amendment is hereby numbered “Amendment No. 1” and
38 designated as the “Roads to Prosperity Amendment of
39 2017” and the purpose of the proposed amendment is
40 summarized as follows: “To provide for the improvement
41 and construction of safe roads in the state by the issuance of
42 bonds not to exceed \$1.6 billion in the aggregate to be paid
43 for from the State Road Fund and the collection of annual
44 state taxes as provided by the Legislature by general law.”

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2017

CHAPTER 1

(S. B. 1013 - By Senators Carmichael (Mr. President)
and Prezioso)

[By Request of the Executive]

[Passed June 16, 2017; in effect from passage.]

AN ACT making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

Title

- I. General Provisions.**
- II. Appropriations.**
- III. Administration.**

TITLE I—GENERAL PROVISIONS.

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.
- §5. Maximum expenditures.

TITLE I – GENERAL PROVISIONS.

- 1 **Section 1. General policy.** – The purpose of this bill is
- 2 to appropriate money necessary for the economical and
- 3 efficient discharge of the duties and responsibilities of the
- 4 state and its agencies during the fiscal year 2018.

1 **Sec. 2. Definitions.** — For the purpose of this bill:

2 “Governor” shall mean the Governor of the State of
3 West Virginia.

4 “Code” shall mean the Code of West Virginia, one
5 thousand nine hundred thirty-one, as amended.

6 “Spending unit” shall mean the department, bureau,
7 division, office, board, commission, agency or institution to
8 which an appropriation is made.

9 The “fiscal year 2018” shall mean the period from July
10 1, 2017, through June 30, 2018.

11 “General revenue fund” shall mean the general
12 operating fund of the state and includes all moneys received
13 or collected by the state except as provided in W.Va. Code
14 §12-2-2 or as otherwise provided.

15 “Special revenue funds” shall mean specific revenue
16 sources which by legislative enactments are not required to
17 be accounted for as general revenue, including federal
18 funds.

19 “From collections” shall mean that part of the total
20 appropriation which must be collected by the spending unit
21 to be available for expenditure. If the authorized amount of
22 collections is not collected, the total appropriation for the
23 spending unit shall be reduced automatically by the amount
24 of the deficiency in the collections. If the amount collected
25 exceeds the amount designated “from collections,” the
26 excess shall be set aside in a special surplus fund and may
27 be expended for the purpose of the spending unit as
28 provided by Article 2, Chapter 11B of the Code.

1 **Sec. 3. Classification of appropriations.** — An
2 appropriation for:

3 “Personal services” shall mean salaries, wages and other
4 compensation paid to full-time, part-time and temporary

5 employees of the spending unit but shall not include fees or
6 contractual payments paid to consultants or to independent
7 contractors engaged by the spending unit. “Personal
8 services” shall include “annual increment” for “eligible
9 employees” and shall be disbursed only in accordance with
10 Article 5, Chapter 5 of the Code.

11 Unless otherwise specified, appropriations for “personal
12 services” shall include salaries of heads of spending units.

13 “Employee benefits” shall mean social security
14 matching, workers’ compensation, unemployment
15 compensation, pension and retirement contributions, public
16 employees insurance matching, personnel fees or any other
17 benefit normally paid by the employer as a direct cost of
18 employment. Should the appropriation be insufficient to
19 cover such costs, the remainder of such cost shall be paid by
20 each spending unit from its “unclassified” appropriation, or
21 its “current expenses” appropriation or other appropriate
22 appropriation. Each spending unit is hereby authorized and
23 required to make such payments in accordance with the
24 provisions of Article 2, Chapter 11B of the Code.

25 Each spending unit shall be responsible for all
26 contributions, payments or other costs related to coverage
27 and claims of its employees for unemployment compensation
28 and workers compensation. Such expenditures shall be
29 considered an employee benefit.

30 “BRIM Premiums” shall mean the amount charged as
31 consideration for insurance protection and includes the
32 present value of projected losses and administrative
33 expenses. Premiums are assessed for coverages, as defined
34 in the applicable policies, for claims arising from, inter alia,
35 general liability, wrongful acts, property, professional
36 liability and automobile exposures.

37 Should the appropriation for “BRIM Premium” be
38 insufficient to cover such cost, the remainder of such costs
39 shall be paid by each spending unit from its “unclassified”

40 appropriation, its “current expenses” appropriation or any
41 other appropriate appropriation to the Board of Risk and
42 Insurance Management. Each spending unit is hereby
43 authorized and required to make such payments. If there is
44 no appropriation for “BRIM Premium” such costs shall be
45 paid by each spending unit from its “current expenses”
46 appropriation, “unclassified” appropriation or other
47 appropriate appropriation.

48 West Virginia Council for Community and Technical
49 College Education and Higher Education Policy
50 Commission entities operating with special revenue funds
51 and/or federal funds shall pay their proportionate share of
52 the Board of Risk and Insurance Management total
53 insurance premium cost for their respective institutions.

54 “Current expenses” shall mean operating costs other
55 than personal services and shall not include equipment,
56 repairs and alterations, buildings or lands. Each spending
57 unit shall be responsible for and charged monthly for all
58 postage meter service and shall reimburse the appropriate
59 revolving fund monthly for all such amounts. Such
60 expenditures shall be considered a current expense.

61 “Equipment” shall mean equipment items which have
62 an appreciable and calculable period of usefulness in excess
63 of one year.

64 “Repairs and alterations” shall mean routine
65 maintenance and repairs to structures and minor
66 improvements to property which do not increase the capital
67 assets.

68 “Buildings” shall include new construction and major
69 alteration of existing structures and the improvement of
70 lands and shall include shelter, support, storage, protection
71 or the improvement of a natural condition.

72 “Lands” shall mean the purchase of real property or
73 interest in real property.

74 “Capital outlay” shall mean and include buildings, lands
75 or buildings and lands, with such category or item of
76 appropriation to remain in effect as provided by W.Va.
77 Code §12-3-12.

78 From appropriations made to the spending units of state
79 government, upon approval of the Governor there may be
80 transferred to a special account an amount sufficient to
81 match federal funds under any federal act.

82 Appropriations classified in any of the above categories
83 shall be expended only for the purposes as defined above
84 and only for the spending units herein designated: *Provided*,
85 That the secretary of each department shall have the
86 authority to transfer within the department those general
87 revenue funds appropriated to the various agencies of the
88 department: *Provided, however*, That no more than five
89 percent of the general revenue funds appropriated to any
90 one agency or board may be transferred to other agencies or
91 boards within the department: and no funds may be
92 transferred to a “personal services and employee benefits”
93 appropriation unless the source funds are also wholly from
94 a “personal services and employee benefits” line, or unless
95 the source funds are from another appropriation that has
96 exclusively funded employment expenses for at least twelve
97 consecutive months prior to the time of transfer and the
98 position(s) supported by the transferred funds are also
99 permanently transferred to the receiving agency or board
100 within the department: *Provided further*, That the secretary
101 of each department and the director, commissioner,
102 executive secretary, superintendent, chairman or any other
103 agency head not governed by a departmental secretary as
104 established by Chapter 5F of the Code shall have the
105 authority to transfer funds appropriated to “personal
106 services and employee benefits,” “current expenses,”
107 “repairs and alterations,” “equipment,” “other assets,”
108 “land,” and “buildings” to other appropriations within the
109 same account and no funds from other appropriations shall
110 be transferred to the “personal services and employee
111 benefits” or the “unclassified” appropriation: *And provided*
112 *further*, That no authority exists hereunder to transfer funds

113 into appropriations to which no funds are legislatively
 114 appropriated: *And provided further*, That if the Legislature
 115 by subsequent enactment consolidates agencies, boards or
 116 functions, the secretary or other appropriate agency head
 117 may transfer the funds formerly appropriated to such
 118 agency, board or function in order to implement such
 119 consolidation. No funds may be transferred from a Special
 120 Revenue Account, dedicated account, capital expenditure
 121 account or any other account or fund specifically exempted
 122 by the Legislature from transfer, except that the use of the
 123 appropriations from the State Road Fund for the office of
 124 the Secretary of the Department of Transportation is not a
 125 use other than the purpose for which such funds were
 126 dedicated and is permitted.

127 Appropriations otherwise classified shall be expended
 128 only where the distribution of expenditures for different
 129 purposes cannot well be determined in advance or it is
 130 necessary or desirable to permit the spending unit the
 131 freedom to spend an appropriation for more than one of the
 132 above classifications.

1 **Sec. 4. Method of expenditure.** — Money appropriated
 2 by this bill, unless otherwise specifically directed, shall be
 3 appropriated and expended according to the provisions of
 4 Article 3, Chapter 12 of the Code or according to any law
 5 detailing a procedure specifically limiting that article.

1 **Sec. 5. Maximum expenditures.** — No authority or
 2 requirement of law shall be interpreted as requiring or
 3 permitting an expenditure in excess of the appropriations set
 4 out in this bill.

TITLE II – APPROPRIATIONS.

§1. Appropriations from general revenue.

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 Lottery Senior Citizens Fund, Fund No. 5405 2345

§11. Appropriations from state excess lottery revenue surplus accrued
 Human Services, Division of – Fund No. 5365 2346

§12. Special Revenue Appropriations.
 Administration, Department of – Office of the Secretary –
 Gifts, Grants and Donations – Fund No. 2046..... 2347
 Administration, Department of – Office of the Secretary –
 State Employee Sick Leave Fund – Fund No. 2045 2347
 Administration, Department of – Division of Personnel –
 Civil Service Emergency Employment Fund – Fund No. 2444..... 2347
 Health and Human Resources, Department of – Division
 of Health – Breast and Cervical Diagnostic and
 Treatment Fund – Fund No. 5197..... 2348
 Treasurer’s Office – Banking Services Fund – Fund No. 1322 2347

§13. State Improvement Fund Appropriations.
 §14. Specific funds and collection accounts.
 §15. Appropriations for refunding erroneous payment.
 §16. Sinking fund deficiencies.
 §17. Appropriations for local governments.
 §18. Total appropriations.
 §19. General school fund.

1 **Section 1. Appropriations from general revenue.** –
 2 From the State Fund, General Revenue, there are hereby
 3 appropriated conditionally upon the fulfillment of the
 4 provisions set forth in Article 2, Chapter 11B the following
 5 amounts, as itemized, for expenditure during the fiscal year
 6 2018.

LEGISLATIVE*1-Senate*Fund 0165 FY 2018 Org 2100

		General
	Appro-	Revenue
	priation	Fund
1 Compensation of Members (R).....	00300	\$ 1,010,000
2 Compensation and Per Diem of		
3 Officers and Employees (R)	00500	4,011,332
4 Current Expenses and		
5 Contingent Fund (R).....	02100	276,392
6 Repairs and Alterations (R)	06400	50,000
7 Computer Supplies (R)	10100	20,000
8 Computer Systems (R).....	10200	60,000
9 Printing Blue Book (R).....	10300	125,000
10 Expenses of Members (R).....	39900	370,000
11 BRIM Premium (R)	91300	<u>29,482</u>
12 Total.....		\$ 5,952,206

13 The appropriations for the Senate for the fiscal year
 14 2017 are to remain in full force and effect and are hereby
 15 reappropriated to June 30, 2018; Provided that on July 1,
 16 2017, the following reappropriated funds and amounts be
 17 transferred to the Division of Human Services - Medical
 18 Services Trust Fund, fund 5185: Fund 0165, fiscal year
 19 2012, appropriation 00500, Compensation and Per Diem of
 20 Officers and Employees, \$2,855,443.90; fund 0165, fiscal
 21 year 2012, appropriation 39900, Expenses of Members,
 22 \$2,846,352.39; fund 0165, fiscal year 2012, appropriation
 23 10200, Computer Systems, \$2,475,425.32; fund 0165, fiscal
 24 year 2012, appropriation 00300, Compensation of
 25 Members, \$1,994,589.96; fund 0165, fiscal year 2012,
 26 appropriation 01000, Employee Benefits, \$1,075,030.30;
 27 fund 0165, fiscal year 2012, appropriation 06400, Repairs
 28 and Alterations, \$752,131.08; and fund 0165, fiscal year

29 2012, appropriation 02100, Current Expenses and
30 Contingent Fund, \$98,653.36. Any balances so
31 reappropriated may be transferred and credited to the fiscal
32 year 2017 accounts.

33 Upon the written request of the Clerk of the Senate, the
34 Auditor shall transfer amounts between items of the total
35 appropriation in order to protect or increase the efficiency
36 of the service.

37 The Clerk of the Senate, with the approval of the
38 President, is authorized to draw his or her requisitions upon
39 the Auditor, payable out of the Current Expenses and
40 Contingent Fund of the Senate, for any bills for supplies and
41 services that may have been incurred by the Senate and not
42 included in the appropriation bill, for supplies and services
43 incurred in preparation for the opening, the conduct of the
44 business and after adjournment of any regular or
45 extraordinary session, and for the necessary operation of the
46 Senate offices, the requisitions for which are to be
47 accompanied by bills to be filed with the Auditor.

48 The Clerk of the Senate, with the approval of the
49 President, or the President of the Senate shall have authority
50 to employ such staff personnel during any session of the
51 Legislature as shall be needed in addition to staff personnel
52 authorized by the Senate resolution adopted during any such
53 session. The Clerk of the Senate, with the approval of the
54 President, or the President of the Senate shall have authority
55 to employ such staff personnel between sessions of the
56 Legislature as shall be needed, the compensation of all staff
57 personnel during and between sessions of the Legislature,
58 notwithstanding any such Senate resolution, to be fixed by
59 the President of the Senate. The Clerk is hereby authorized
60 to draw his or her requisitions upon the Auditor for the
61 payment of all such staff personnel for such services,
62 payable out of the appropriation for Compensation and Per
63 Diem of Officers and Employees or Current Expenses and
64 Contingent Fund of the Senate.

65 For duties imposed by law and by the Senate, the Clerk
 66 of the Senate shall be paid a monthly salary as provided by
 67 the Senate resolution, unless increased between sessions
 68 under the authority of the President, payable out of the
 69 appropriation for Compensation and Per Diem of Officers
 70 and Employees or Current Expenses and Contingent Fund
 71 of the Senate.

72 The distribution of the blue book shall be by the office
 73 of the Clerk of the Senate and shall include 75 copies for
 74 each member of the Legislature and two copies for each
 75 classified and approved high school and junior high or
 76 middle school and one copy for each elementary school
 77 within the state.

78 Included in the above appropriation for Senate (fund
 79 0165, appropriation 02100), an amount not less than \$5,000
 80 is to be used for the West Virginia Academy of Family
 81 Physicians - Doc of the Day Program.

2-House of Delegates

Fund 0170 FY 2018 Org 2200

1	Compensation of Members (R).....	00300	\$ 3,000,000
2	Compensation and Per Diem of		
3	Officers and Employees (R)	00500	575,000
4	Current Expenses and		
5	Contingent Fund (R).....	02100	3,929,031
6	Expenses of Members (R).....	39900	1,350,000
7	BRIM Premium (R)	91300	<u>50,000</u>
8	Total.....		\$ 8,904,031

9 The appropriations for the House of Delegates for the
 10 fiscal year 2017 are to remain in full force and effect and are
 11 hereby reappropriated to June 30, 2018. Any balances so
 12 reappropriated may be transferred and credited to the fiscal
 13 year 2017 accounts.

14 Upon the written request of the Clerk of the House of
 15 Delegates, the Auditor shall transfer amounts between items

16 of the total appropriation in order to protect or increase the
17 efficiency of the service.

18 The Clerk of the House of Delegates, with the approval
19 of the Speaker, is authorized to draw his or her requisitions
20 upon the Auditor, payable out of the Current Expenses and
21 Contingent Fund of the House of Delegates, for any bills for
22 supplies and services that may have been incurred by the
23 House of Delegates and not included in the appropriation
24 bill, for bills for services and supplies incurred in
25 preparation for the opening of the session and after
26 adjournment, and for the necessary operation of the House
27 of Delegates' offices, the requisitions for which are to be
28 accompanied by bills to be filed with the Auditor.

29 The Speaker of the House of Delegates, upon approval
30 of the House committee on rules, shall have authority to
31 employ such staff personnel during and between sessions of
32 the Legislature as shall be needed, in addition to personnel
33 designated in the House resolution, and the compensation of
34 all personnel shall be as fixed in such House resolution for
35 the session, or fixed by the Speaker, with the approval of the
36 House committee on rules, during and between sessions of
37 the Legislature, notwithstanding such House resolution. The
38 Clerk of the House of Delegates is hereby authorized to
39 draw requisitions upon the Auditor for such services,
40 payable out of the appropriation for the Compensation and
41 Per Diem of Officers and Employees or Current Expenses
42 and Contingent Fund of the House of Delegates.

43 For duties imposed by law and by the House of
44 Delegates, including salary allowed by law as keeper of the
45 rolls, the Clerk of the House of Delegates shall be paid a
46 monthly salary as provided in the House resolution, unless
47 increased between sessions under the authority of the
48 Speaker, with the approval of the House committee on rules,
49 and payable out of the appropriation for Compensation and
50 Per Diem of Officers and Employees or Current Expenses
51 and Contingent Fund of the House of Delegates.

52 Included in the above appropriation for House of
 53 Delegates (fund 0170, appropriation 02100), an amount not
 54 less than \$5,000 is to be used for the West Virginia
 55 Academy of Family Physicians - Doc of the Day Program.

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2018 Org 2300

1	Joint Committee on Government		
2	and Finance (R)	10400	\$ 5,725,138
3	Legislative Printing (R)	10500	760,000
4	Legislative Rule-Making		
5	Review Committee (R).....	10600	147,250
6	Legislative Computer System (R)..	10700	1,447,500
7	BRIM Premium (R)	91300	<u>60,569</u>
8	Total.....		\$ 8,140,457

9 The appropriations for the Joint Expenses for the fiscal
 10 year 2017 are to remain in full force and effect and are
 11 hereby reappropriated to June 30, 2018. Any balances
 12 reappropriated may be transferred and credited to the fiscal
 13 year 2017 accounts.

14 Upon the written request of the Clerk of the Senate, with
 15 the approval of the President of the Senate, and the Clerk of
 16 the House of Delegates, with the approval of the Speaker of
 17 the House of Delegates, and a copy to the Legislative
 18 Auditor, the Auditor shall transfer amounts between items
 19 of the total appropriation in order to protect or increase the
 20 efficiency of the service.

JUDICIAL

4-Supreme Court –

General Judicial

Fund 0180 FY 2018 Org 2400

1	Personal Services and		
2	Employee Benefits (R)	00100	\$101,924,358
3	Children's Protection Act (R)	09000	3,000,000
4	Current Expenses (R).....	13000	32,274,266
5	Repairs and Alterations (R)	06400	636,450
6	Equipment (R).....	07000	1,800,000
7	Judges' Retirement System (R)	11000	900,000
8	Buildings (R).....	25800	100,000
9	Other Assets (R).....	69000	500,000
10	BRIM Premium (R)	91300	<u>624,596</u>
11	Total		\$141,759,670

12 The appropriations to the Supreme Court of Appeals for
13 the fiscal years 2016 and 2017 are to remain in full force
14 and effect and are hereby reappropriated to June 30, 2018.
15 Any balances so reappropriated may be transferred and
16 credited to the fiscal year 2017 accounts.

17 This fund shall be administered by the Administrative
18 Director of the Supreme Court of Appeals, who shall draw
19 requisitions for warrants in payment in the form of payrolls,
20 making deductions there from as required by law for taxes
21 and other items.

22 The appropriation for the Judges' Retirement System
23 (fund 0180, appropriation 11000) is to be transferred to the
24 Consolidated Public Retirement Board, in accordance with
25 the law relating thereto, upon requisition of the
26 Administrative Director of the Supreme Court of Appeals.

EXECUTIVE

5-Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2018 Org 0100

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,098,903
3	Current Expenses (R).....	13000	571,648

1	Repairs and Alterations.....	06400	2,000
2	National Governors Association....	12300	60,700
3	Herbert Henderson		
4	Office of Minority Affairs	13400	146,726
5	BRIM Premium.....	91300	<u>169,079</u>
6	Total.....		\$ 4,049,056

7 Any unexpended balances remaining in the
8 appropriations for Unclassified (fund 0101, appropriation
9 09900), and Current Expenses (fund 0101, appropriation
10 13000) at the close of the fiscal year 2017 are hereby
11 reappropriated for expenditure during the fiscal year 2018.

12 Included in the above appropriation to Personal Services
13 and Employee Benefits (fund 0101, appropriation 00100),
14 is \$150,000 for the Salary of the Governor.

15 The above appropriation for Herbert Henderson Office
16 of Minority Affairs (fund 0101, appropriation 13400) shall
17 be transferred to the Minority Affairs Fund (fund 1058).

6-Governor's Office –

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2018 Org 0100

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 351,089
3	Current Expenses (R).....	13000	182,708
4	Repairs and Alterations.....	06400	<u>5,000</u>
5	Total.....		\$ 538,797

6 Any unexpended balance remaining in the appropriation
7 for Current Expenses (fund 0102, appropriation 13000) at
8 the close of the fiscal year 2017 is hereby reappropriated for
9 expenditure during the fiscal year 2018, with the exception
10 of fund 0102, fiscal year 2017, appropriation 13000
11 (\$20,000) which shall expire June 30, 2017.

12 Appropriations are to be used for current general
13 expenses, including compensation of employees, household
14 maintenance, cost of official functions and additional
15 household expenses occasioned by such official functions.

7-Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2018 Org 0100

1 Any unexpended balances remaining in the
2 appropriations for Business and Economic Development
3 Stimulus – Surplus (fund 0105, appropriation 08400), Civil
4 Contingent Fund – Total (fund 0105, appropriation 11400),
5 2012 Natural Disasters – Surplus (fund 0105, appropriation
6 13500), Civil Contingent Fund – Total – Surplus (fund
7 0105, appropriation 23800), Civil Contingent Fund –
8 Surplus (fund 0105, appropriation 26300), Business and
9 Economic Development Stimulus (fund 0105, appropriation
10 58600), Civil Contingent Fund (fund 0105, appropriation
11 61400), and Natural Disasters – Surplus (fund 0105,
12 appropriation 76400) at the close of the fiscal year 2017 are
13 hereby reappropriated for expenditure during the fiscal year.

14 From this fund there may be expended, at the discretion
15 of the Governor, an amount not to exceed \$1,000 as West
16 Virginia's contribution to the interstate oil compact
17 commission.

18 The above fund is intended to provide contingency
19 funding for accidental, unanticipated, emergency or
20 unplanned events which may occur during the fiscal year
21 and is not to be expended for the normal day-to-day
22 operations of the Governor's Office.

8-Auditor's Office –

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2018 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,620,288
3	Current Expenses (R).....	13000	10,622
4	BRIM Premium.....	91300	<u>11,287</u>
5	Total.....		\$ 2,642,197

6 Any unexpended balance remaining in the appropriation
7 for Current Expenses (fund 0116, appropriation 13000) at
8 the close of the fiscal year 2017 is hereby reappropriated for
9 expenditure during the fiscal year 2018.

10 Included in the above appropriation to Personal Services
11 and Employee Benefits (fund 0116, appropriation 00100),
12 is \$95,000 for the Salary of the Auditor.

9-Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2018 Org 1300

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,424,551
3	Unclassified	09900	30,963
4	Current Expenses (R).....	13000	472,377
5	Abandoned Property Program	11800	41,794
6	Other Assets.....	69000	10,000
7	ABLE Program	69201	150,000
8	BRIM Premium.....	91300	<u>54,409</u>
9	Total.....		\$ 3,184,094

10 Any unexpended balances remaining in the
11 appropriation for Current Expenses (fund 0126,
12 appropriation 13000) at the close of the fiscal year 2017 are
13 hereby reappropriated for expenditure during the fiscal year
14 2018.

15 Included in the above appropriation to Personal Services
 16 and Employee Benefits (fund 0126, appropriation 00100),
 17 is \$95,000 for the Salary of the Treasurer.

10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 5,105,550
3	Animal Identification Program	03900	121,528
4	State Farm Museum.....	05500	87,759
5	Current Expenses (R).....	13000	135,155
6	Gypsy Moth Program (R)	11900	917,769
7	Huntington Farmers Market.....	12800	37,142
8	Black Fly Control.....	13700	450,434
9	Donated Foods Program	36300	45,000
10	Predator Control (R)	47000	176,400
11	Logan Farmers Market.....	50100	40,988
12	Bee Research.....	69100	65,470
13	Charleston Farmers Market	74600	71,429
14	Microbiology Program.....	78500	97,126
15	Moorefield Agriculture Center	78600	905,605
16	Chesapeake Bay Watershed.....	83000	102,023
17	Livestock Care Standards Board....	84300	8,820
18	BRIM Premium.....	91300	129,818
19	State FFA-FHA Camp and		
20	Conference Center	94101	586,215
21	Threat Preparedness.....	94200	68,987
22	WV Food Banks.....	96900	126,000
23	Senior's Farmers' Market		
24	Nutrition Coupon Program	97000	<u>55,840</u>
25	Total.....		\$ 9,335,058

26 Any unexpended balances remaining in the
 27 appropriations for Unclassified – Surplus (fund 0131,
 28 appropriation 09700), Gypsy Moth Program (fund 0131,
 29 appropriation 11900), Current Expenses (fund 0131,

30 appropriation 13000), Predator Control (fund 0131,
 31 appropriation 47000), and Agricultural Disaster and
 32 Mitigation Needs – Surplus (fund 0131, appropriation
 33 85000) at the close of the fiscal year 2017 are hereby
 34 reappropriated for expenditure during the fiscal year 2018,
 35 with the exception of fund 0131, fiscal year 2017,
 36 appropriation 11900 (\$18,859), fund 0131, fiscal year 2017,
 37 appropriation 13000 (\$19,343), and fund 0131, fiscal year
 38 2017, appropriation 47000 (\$3,600) which shall expire on
 39 June 30, 2017.

40 Included in the above appropriation to Personal Services
 41 and Employee Benefits (fund 0131, appropriation 00100),
 42 is \$95,000 for the Salary of the Commissioner.

43 The above appropriation for Predator Control (fund
 44 0131, appropriation 47000) is to be made available to the
 45 United States Department of Agriculture, Wildlife Services
 46 to administer the Predator Control Program.

47 A portion of the Current Expenses appropriation may be
 48 transferred to a special revenue fund for the purpose of
 49 matching federal funds for marketing and development
 50 activities.

51 From the above appropriation for WV Food Banks
 52 (fund 0131, appropriation 96900), \$20,000 is for House of
 53 Hope and the remainder of the appropriation shall be
 54 allocated to the Huntington Food Bank and the Mountaineer
 55 Food Bank in Braxton County.

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2018 Org 1400

1	Personal Services and			
2	Employee Benefits.....	00100	\$	725,163
3	Unclassified (R).....	09900		77,808
4	Current Expenses (R).....	13000		316,049

5	Soil Conservation Projects (R)	12000	6,536,679
6	BRIM Premium.....	91300	<u>30,213</u>
7	Total.....		\$ 7,685,912

8 Any unexpended balances remaining in the
 9 appropriations for Unclassified (fund 0132, appropriation
 10 09900), Soil Conservation Projects (fund 0132,
 11 appropriation 12000), and Current Expenses (fund 0132,
 12 appropriation 13000) at the close of the fiscal year 2017 are
 13 hereby reappropriated for expenditure during the fiscal year
 14 2018, with the exception of fund 0132, fiscal year 2017,
 15 appropriation 12000 (\$157,439) which shall expire on June
 16 30, 2017.

12-Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 620,127
3	Unclassified	09900	7,090
4	Current Expenses	13000	<u>81,880</u>
5	Total.....		\$ 709,097

6 Any part or all of this appropriation may be transferred
 7 to a special revenue fund for the purpose of matching federal
 8 funds for the above-named program.

13-Department of Agriculture –

Agricultural Awards Fund

(WV Code Chapter 19)

Fund 0136 FY 2018 Org 1400

1	Programs and Awards for		
2	4-H Clubs and FFA/FHA	57700	\$ 15,000

3	Commissioner's Awards			
4	and Programs	73700		<u>39,250</u>
5	Total.....		\$	54,250

14-Department of Agriculture –

West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

Fund 0607 FY 2018 Org 1400

1	Personal Services and			
2	Employee Benefits.....	00100	\$	94,823
3	Unclassified	09900		<u>950</u>
4	Total.....		\$	95,773

15-Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2018 Org 1500

1	Personal Services and			
2	Employee Benefits (R)	00100	\$	2,281,145
3	Unclassified (R)	09900		24,428
4	Current Expenses (R).....	13000		752,408
5	Repairs and Alterations.....	06400		1,000
6	Equipment.....	07000		1,000
7	Criminal Convictions and			
8	Habeas Corpus Appeals (R)	26000		908,529
9	Better Government Bureau	74000		271,991
10	BRIM Premium.....	91300		<u>112,761</u>
11	Total.....		\$	4,353,262

12 Any unexpended balances remaining in the above
 13 appropriations for Personal Services and Employee Benefits
 14 (fund 0150, appropriation 00100), Unclassified (fund 0150,
 15 appropriation 09900), Current Expenses (fund 0150,
 16 appropriation 13000), Criminal Convictions and Habeas

17 Corpus Appeals (fund 0150, appropriation 26000), and
 18 Agency Client Revolving Liquidity Pool (fund 0150,
 19 appropriation 36200) at the close of the fiscal year 2017 are
 20 hereby reappropriated for expenditure during the fiscal year
 21 2018, with the exception of fund 0150, fiscal year 2017,
 22 appropriation 09900 (\$20,000), and fund 0150, fiscal year
 23 2017, appropriation 26000 (\$69,575) which shall expire on
 24 June 30, 2017.

25 Included in the above appropriation to Personal Services
 26 and Employee Benefits (fund 0150, appropriation 00100),
 27 is \$95,000 for the Salary of the Attorney General.

28 When legal counsel or secretarial help is appointed by
 29 the Attorney General for any state spending unit, this
 30 account shall be reimbursed from such spending units
 31 specifically appropriated account or from accounts
 32 appropriated by general language contained within this bill:
 33 *Provided*, That the spending unit shall reimburse at a rate
 34 and upon terms agreed to by the state spending unit and the
 35 Attorney General: *Provided, however*, That if the spending
 36 unit and the Attorney General are unable to agree on the
 37 amount and terms of the reimbursement, the spending unit
 38 and the Attorney General shall submit their proposed
 39 reimbursement rates and terms to the Governor for final
 40 determination.

16-Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2018 Org 1600

1	Personal Services and			
2	Employee Benefits.....	00100	\$	117,213
3	Unclassified (R).....	09900		9,731
4	Current Expenses (R).....	13000		805,697
5	BRIM Premium.....	91300		<u>21,695</u>
6	Total.....		\$	954,336

7 Any unexpended balances remaining in the
 8 appropriations for Unclassified (fund 0155, appropriation
 9 09900) and Current Expenses (fund 0155, appropriation
 10 13000) at the close of the fiscal year 2017 are hereby
 11 reappropriated for expenditure during the fiscal year 2018,
 12 with the exception of fund 0155, fiscal year 2017
 13 appropriation 13000 (\$19,613) which shall expire on June
 14 30, 2017.

15 Included in the above appropriation to Personal Services
 16 and Employee Benefits (fund 0155, appropriation 00100),
 17 is \$95,000 for the Salary of the Secretary of State.

17-State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2018 Org 1601

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,477
3	Unclassified	09900		75
4	Current Expenses	13000		<u>4,956</u>
5	Total.....		\$	7,508

DEPARTMENT OF ADMINISTRATION

18-Department of Administration –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2018 Org 0201

1	Personal Services and			
2	Employee Benefits.....	00100	\$	580,647
3	Unclassified	09900		9,177
4	Current Expenses	13000		84,883
5	Repairs and Alterations.....	06400		100
6	Equipment.....	07000		1,000
7	Financial Advisor (R)	30400		27,546

8	Lease Rental Payments	51600	15,000,000
9	Design-Build Board	54000	4,000
10	Other Assets	69000	100
11	BRIM Premium.....	91300	<u>5,887</u>
12	Total.....		\$ 15,713,340

13 Any unexpended balance remaining in the appropriation
 14 for Financial Advisor (fund 0186, appropriation 30400) at
 15 the close of the fiscal year 2017 is hereby reappropriated for
 16 expenditure during the fiscal year 2018, with the exception
 17 of fund 0186, fiscal year 2017, appropriation 30400
 18 (\$73,000) which shall expire on June 30, 2017.

19 The appropriation for Lease Rental Payments (fund
 20 0186, appropriation 51600) shall be disbursed as provided
 21 by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2018 Org 0205

1 The Division of Highways, Division of Motor Vehicles,
 2 Public Service Commission and other departments, bureaus,
 3 divisions, or commissions operating from special revenue
 4 funds and/or federal funds shall pay their proportionate
 5 share of the retirement costs for their respective divisions.
 6 When specific appropriations are not made, such payments
 7 may be made from the balances in the various special
 8 revenue funds in excess of specific appropriations.

20-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2018 Org 0209

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 65,574
3	Unclassified	09900	1,400

4	Current Expenses	13000	68,083
5	GAAP Project (R).....	12500	591,072
6	BRIM Premium.....	91300	<u>5,625</u>
7	Total.....		\$ 731,754

8 Any unexpended balance remaining in the appropriation
 9 for GAAP Project (fund 0203, appropriation 12500) at the
 10 close of the fiscal year 2017 is hereby reappropriated for
 11 expenditure during the fiscal year 2018.

21-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2018 Org 0211

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,504,207
3	Unclassified	09900	20,000
4	Current Expenses	13000	725,024
5	Repairs and Alterations.....	06400	500
6	Equipment.....	07000	5,000
7	Fire Service Fee	12600	14,000
8	Buildings (R).....	25800	500
9	Preservation and Maintenance of		
10	Statues and Monuments		
11	On Capitol Grounds.....	37100	68,000
12	Capital Outlay, Repairs		
13	and Equipment (R).....	58900	4,122,932
14	Other Assets.....	69000	500
15	Land (R).....	73000	500
16	BRIM Premium.....	91300	<u>121,479</u>
17	Total.....		\$ 7,582,642

18 Any unexpended balances remaining in the above
 19 appropriations for Buildings (fund 0230, appropriation
 20 25800), Capital Outlay, Repairs and Equipment (fund 0230,
 21 appropriation 58900), Capital Outlay, Repairs and
 22 Equipment – Surplus (fund 0230, appropriation 67700), and
 23 Land (fund 0230, appropriation 73000) at the close of the

24 fiscal year 2017 are hereby reappropriated for expenditure
25 during the fiscal year 2018.

26 From the above appropriation for Preservation and
27 Maintenance of Statues and Monuments on Capitol
28 Grounds (fund 0230, appropriation 37100), the Division
29 shall consult the Division of Culture and History and
30 Capitol Building Commission in all aspects of planning,
31 assessment, maintenance and restoration.

32 The above appropriation for Capital Outlay, Repairs and
33 Equipment (fund 0230, appropriation 58900) shall be
34 expended for capital improvements, maintenance, repairs
35 and equipment for state-owned buildings.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2018 Org 0213

1	Personal Services and			
2	Employee Benefits.....	00100	\$	997,906
3	Unclassified	09900		144
4	Current Expenses	13000		250
5	Repairs and Alterations.....	06400		200
6	BRIM Premium.....	91300		<u>6,469</u>
7	Total.....		\$	<u>1,004,969</u>

8 The Division of Highways shall reimburse Fund 2031
9 within the Division of Purchasing for all actual expenses
10 incurred pursuant to the provisions of W.Va. Code §17-2A-
11 13.

23-Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2018 Org 0215

1	Personal Services and			
2	Employee Benefits.....	00100	\$	762,556

3	Unclassified	09900	12,032
4	Current Expenses	13000	430,532
5	Repairs and Alterations.....	06400	1,000
6	Equipment.....	07000	5,000
7	Buildings (R).....	25800	100
8	Other Assets.....	69000	<u>100</u>
9	Total.....		\$ 1,211,320

10 Any unexpended balance remaining in the appropriation
 11 for Buildings (fund 0615, appropriation 25800) at the close
 12 of the fiscal year 2017 is hereby reappropriated for
 13 expenditure during the fiscal year 2018.

24-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2018 Org 0217

1	Current Expenses	13000	\$	45,550
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2 To pay expenses for members of the commission on
 3 uniform state laws.

25-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2018 Org 0219

1	Personal Services and			
2	Employee Benefits.....	00100	\$	911,114
3	Unclassified	09900		1,000
4	Current Expenses	13000		142,854
5	Equipment.....	07000		50
6	BRIM Premium.....	91300		<u>9,608</u>
7	Total.....		\$	1,064,626

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2018 Org 0220

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 575,930
3	Unclassified	09900	2,200
4	Current Expenses	13000	104,637
5	Repairs and Alterations.....	06400	500
6	Other Assets.....	69000	100
7	BRIM Premium.....	91300	<u>4,473</u>
8	Total.....		\$ 687,840

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2018 Org 0221

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,322,946
3	Unclassified	09900	314,700
4	Current Expenses	13000	11,165
5	Public Defender Corporations	35200	19,198,028
6	Appointed Counsel Fees (R).....	78800	10,723,115
7	BRIM Premium.....	91300	<u>9,594</u>
8	Total.....		\$ 31,579,548

9 Any unexpended balance remaining in the above
10 appropriation for Appointed Counsel Fees (fund 0226,
11 appropriation 78800) at the close of the fiscal year 2017 is
12 hereby reappropriated for expenditure during the fiscal year
13 2018.

14 The director shall have the authority to transfer funds
15 from the appropriation to Public Defender Corporations
16 (fund 0226, appropriation 35200) to Appointed Counsel
17 Fees (fund 0226, appropriation 78800).

*28-Committee for the Purchase of**Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Fund 0233 FY 2018 Org 0224

1	Personal Services and			
2	Employee Benefits.....	00100	\$	3,187
3	Current Expenses	13000		<u>868</u>
4	Total.....		\$	4,055

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2018 Org 0225

1 The Division of Highways, Division of Motor Vehicles,
2 Public Service Commission and other departments, bureaus,
3 divisions, or commissions operating from special revenue
4 funds and/or federal funds shall pay their proportionate
5 share of the public employees health insurance cost for their
6 respective divisions.

30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2018 Org 0228

1	Forensic Medical			
2	Examinations (R).....	68300	\$	137,954
3	Federal Funds/Grant Match (R).....	74900		<u>98,443</u>
4	Total.....		\$	236,397

5 Any unexpended balances remaining in the
6 appropriations for Forensic Medical Examinations (fund
7 0557, appropriation 68300) and Federal Funds/Grant Match
8 (fund 0557, appropriation 74900) at the close of the fiscal
9 year 2017 are hereby reappropriated for expenditure during
10 the fiscal year 2018.

31-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2018 Org 0233

1	Personal Services and			
2	Employee Benefits.....	00100	\$	642,679
3	Unclassified	09900		1,000
4	Current Expenses	13000		137,926
5	Repairs and Alterations.....	06400		100
6	Equipment.....	07000		2,500
7	BRIM Premium.....	91300		<u>7,976</u>
8	Total.....		\$	792,181

DEPARTMENT OF COMMERCE*32-Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2018 Org 0305

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,451,074
3	Unclassified	09900		21,435
4	Current Expenses	13000		334,903
5	Repairs and Alterations.....	06400		80,000
6	Equipment (R).....	07000		2,061
7	BRIM Premium.....	91300		<u>92,293</u>
8	Total.....		\$	2,981,766

9 Any unexpended balance remaining in the
10 appropriation for Equipment (fund 0250, appropriation
11 07000) at the close of the fiscal year 2017 is hereby
12 reappropriated for expenditure during the fiscal year 2018.

13 Out of the above appropriations a sum may be used to
14 match federal funds for cooperative studies or other funds
15 for similar purposes.

33-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2018 Org 0306

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,561,820
3	Unclassified	09900	28,173
4	Current Expenses	13000	49,140
5	Repairs and Alterations.....	06400	968
6	Mineral Mapping System (R)	20700	1,096,873
7	BRIM Premium.....	91300	<u>22,766</u>
8	Total.....		\$ 2,759,740

9 Any unexpended balance remaining in the appropriation
10 for Mineral Mapping System (fund 0253, appropriation
11 20700) at the close of the fiscal year 2017 is hereby
12 reappropriated for expenditure during the fiscal year 2018,
13 with the exception of fund 0253, fiscal year 2017,
14 appropriation 20700 (\$57,599) which shall expire on June
15 30, 2017.

16 The above Unclassified and Current Expense
17 appropriations include funding to secure federal and other
18 contracts and may be transferred to a special revolving fund
19 (fund 3105) for the purpose of providing advance funding
20 for such contracts.

34-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2018 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,261,006
3	Unclassified	09900	108,687
4	Save Our State (SOS)	05050	0
5	Current Expenses	13000	3,763,900
6	National Youth Science Camp.....	13200	241,570
7	Local Economic Development		
8	Partnerships (R)	13300	792,000
9	ARC Assessment	13600	152,585
10	Guaranteed Work Force Grant (R).....	24200	969,633

11	Mainstreet Program.....	79400	163,758
12	BRIM Premium.....	91300	2,345
13	Hatfield McCoy Recreational Trail	96000	<u>198,415</u>
14	Total.....		\$ 10,653,899

15 Any unexpended balances remaining in the
 16 appropriations for Unclassified – Surplus (fund 0256,
 17 appropriation 09700), Partnership Grants (fund 0256,
 18 appropriation 13100), Local Economic Development
 19 Partnerships (fund 0256, appropriation 13300), Guaranteed
 20 Work Force Grant (fund 0256, appropriation 24200),
 21 Industrial Park Assistance (fund 0256, appropriation
 22 48000), Small Business Development (fund 0256,
 23 appropriation 70300), Local Economic Development
 24 Assistance (fund 0256, appropriation 81900), and 4-H
 25 Camp Improvements (fund 0256, appropriation 94100) at
 26 the close of the fiscal year 2017 are hereby reappropriated
 27 for expenditure during the fiscal year 2018.

28 The above appropriation to Local Economic
 29 Development Partnerships (fund 0256, appropriation
 30 13300) shall be used by the West Virginia Development
 31 Office for the award of funding assistance to county and
 32 regional economic development corporations or authorities
 33 participating in the Certified Development Community
 34 Program developed under the provisions of W.Va. Code
 35 §5B-2-14. The West Virginia Development Office shall
 36 award the funding assistance through a matching grant
 37 program, based upon a formula whereby funding assistance
 38 may not exceed \$34,000 per county served by an economic
 39 development or redevelopment corporation or authority.

35-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2018 Org 0310

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 15,476,492

3	Unclassified	09900	184,711
4	Current Expenses	13000	170,047
5	Repairs and Alterations.....	06400	100
6	Equipment.....	07000	100
7	Buildings.....	25800	100
8	Litter Control		
9	Conservation Officers.....	56400	139,877
10	Upper Mud River Flood Control ...	65400	159,762
11	Other Assets.....	69000	100
12	Land (R).....	73000	100
13	Law Enforcement.....	80600	2,413,523
14	BRIM Premium.....	91300	<u>23,470</u>
15	Total.....		\$ 18,568,382

16 Any unexpended balances remaining in the
 17 appropriations for Buildings (fund 0265, appropriation
 18 25800), Land (fund 0265, appropriation 73000), and State
 19 Park Improvements – Surplus (fund 0265, appropriation
 20 76300) at the close of the fiscal year 2017 are hereby
 21 reappropriated for expenditure during the fiscal year 2018.

22 Any revenue derived from mineral extraction at any
 23 state park shall be deposited in a special revenue account of
 24 the Division of Natural Resources, first for bond debt
 25 payment purposes and with any remainder to be for park
 26 operation and improvement purposes.

36-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2018 Org 0314

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 9,205,577
3	Unclassified	09900	120,000
4	Current Expenses	13000	1,378,532
5	Coal Dust and		
6	Rock Dust Sampling.....	27000	474,050
7	BRIM Premium.....	91300	<u>75,110</u>
8	Total.....		\$ 11,253,269

9 Included in the above appropriation for Current
 10 Expenses (fund 0277, appropriation 13000) is \$500,000 to
 11 be used for coal mine training activities at an established
 12 mine training facility in southern West Virginia.

37-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2018 Org 0319

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 226,550
3	Unclassified	09900	3,551
4	Current Expenses	13000	<u>117,917</u>
5	Total.....		\$ 348,018

38-WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2018 Org 0323

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 51,728
3	Unclassified	09900	596
4	Current Expenses	13000	<u>7,334</u>
5	Total.....		\$ 59,658

39-Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2018 Org 0327

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 398,752
3	Unclassified	09900	3,500
4	Current Expenses	13000	<u>14,725</u>
5	Total.....		\$ 416,977

40-Office of Energy

(WV Code Chapter 5B)

Fund 0612 FY 2018 Org 0328

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 194,457
3	Unclassified	09900	15,204
4	Current Expenses	13000	1,026,720
5	BRIM Premium.....	91300	<u>3,604</u>
6	Total.....		\$ 1,239,985
7	From the above appropriation for Current Expenses		
8	(fund 0612, appropriation 13000) \$558,247 is for West		
9	Virginia University and \$308,247 is for Southern West		
10	Virginia Community and Technical College for the Mine		
11	Training and Energy Technologies Academy.		

DEPARTMENT OF EDUCATION*41-State Board of Education –**School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2018 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 321,931
3	Current Expenses	13000	<u>2,118,490</u>
4	Total.....		\$ 2,440,421

*42-State Board of Education –**State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2018 Org 0402

1 Personal Services and

2	Employee Benefits.....	00100	\$ 4,278,989
3	Technology System Specialist	06200	0
4	Teachers' Retirement		
5	Savings Realized.....	09500	34,638,000
6	Unclassified (R)	09900	300,000
7	Current Expenses (R).....	13000	2,518,992
8	Equipment.....	07000	5,000
9	Increased Enrollment	14000	2,650,000
10	Safe Schools.....	14300	4,911,959
11	Teacher Mentor.....	15800	550,000
12	National Teacher Certification (R)	16100	300,000
13	Buildings (R).....	25800	1,000
14	Allowance for County Transfers....	26400	64,212
15	Technology Repair		
16	and Modernization.....	29800	951,003
17	HVAC Technicians.....	35500	495,507
18	Early Retirement		
19	Notification Incentive	36600	300,000
20	MATH Program	36800	336,532
21	Assessment Programs	39600	1,339,588
22	21st Century Fellows	50700	274,899
23	English as a Second Language.....	52800	96,000
24	Teacher Reimbursement	57300	297,188
25	Hospitality Training	60000	267,123
26	Hi-Y Youth in Government	61600	100,000
27	High Acuity Special Needs (R)	63400	1,500,000
28	Foreign Student Education.....	63600	150,000
29	Principals Mentorship	64900	69,250
30	State Board of Education		
31	Administrative Costs	68400	266,152
32	Other Assets	69000	1,000
33	IT Academy (R)	72100	500,000
34	Land (R).....	73000	1,000
35	Early Literacy Program.....	75600	5,700,000
36	School Based Truancy		
37	Prevention (R).....	78101	2,000,000
38	Innovation in Education.....	78102	0
39	21st Century Learners (R).....	88600	1,706,441
40	BRIM Premium.....	91300	320,429

41	21st Century Assessment		
42	and Professional Development.....	93100	1,999,007
43	21st Century Technology		
44	Infrastructure Network		
45	Tools and Support.....	93300	7,636,586
46	Educational Program Allowance ...	99600	<u>516,250</u>
47	Total.....		\$ 77,042,107

48 The above appropriations include funding for the state
49 board of education and their executive office.

50 Any unexpended balances remaining in the
51 appropriations for Unclassified (fund 0313, appropriation
52 09900), Current Expenses (fund 0313, appropriation
53 13000), National Teacher Certification (fund 0313,
54 appropriation 16100), Buildings (fund 0313, appropriation
55 25800), High Acuity Special Needs (fund 0313,
56 appropriation 63400), IT Academy (fund 0313,
57 appropriation 72100), Land (fund 0313, appropriation
58 73000), School Based Truancy Prevention (fund 0313,
59 appropriation 78101), and 21st Century Learners (fund
60 0313, appropriation 88600) at the close of the fiscal year
61 2017 are hereby reappropriated for expenditure during the
62 fiscal year 2018.

63 The above appropriation for Teachers' Retirement
64 Savings Realized (fund 0313, appropriation 09500) shall be
65 transferred to the Employee Pension and Health Care
66 Benefit Fund (fund 2044).

67 The above appropriation for Hospitality Training (fund
68 0313, appropriation 60000), shall be allocated only to
69 entities that have a plan approved for funding by the
70 Department of Education, at the funding level determined
71 by the State Superintendent of Schools. Plans shall be
72 submitted to the State Superintendent of Schools to be
73 considered for funding.

74 From the above appropriation for Educational Program
75 Allowance (fund 0313, appropriation 99600), \$100,000

76 shall be expended for Webster County Board of Education
 77 for Hacker Valley; \$150,000 shall be for the Randolph
 78 County Board of Education for Pickens School; \$100,000
 79 shall be for the Preston County Board of Education for the
 80 Aurora School; \$100,000 shall be for the Fayette County
 81 Board of Education for Meadow Bridge; and \$66,250 is for
 82 Project Based Learning in STEM fields.

43-State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2018 Org 0402

1	Special Education – Counties	15900	\$ 7,271,757
2	Special Education – Institutions.....	16000	3,748,794
3	Education of Juveniles Held in		
4	Predispositional Juvenile		
5	Detention Centers	30200	591,646
6	Education of Institutionalized		
7	Juveniles and Adults (R).....	47200	<u>17,736,957</u>
8	Total.....		\$ 29,349,154

9 Any unexpended balance remaining in the appropriation
 10 for Education of Institutionalized Juveniles and Adults
 11 (fund 0314, appropriation 47200) at the close of the fiscal
 12 year 2017 is hereby reappropriated for expenditure during
 13 the fiscal year 2018.

14 From the above appropriations, the superintendent shall
 15 have authority to expend funds for the costs of special
 16 education for those children residing in out-of-state
 17 placements.

44-State Board of Education –

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2018 Org 0402

1	Other Current Expenses	02200	\$149,939,086
2	Advanced Placement.....	05300	553,954
3	Professional Educators.....	15100	843,200,570
4	Service Personnel.....	15200	286,915,321
5	Fixed Charges	15300	100,484,631
6	Transportation.....	15400	70,276,078
7	Professional Student		
8	Support Services	65500	36,952,999
9	Improved Instructional Programs ..	15600	49,131,108
10	21st Century Strategic		
11	Technology Learning Growth ...	93600	<u>20,756,981</u>
12	Basic Foundation		
13	Allowances		1,558,210,728
14	Less Local Share		(454,486,958)
15	Adjustments		<u>(2,441,341)</u>
16	Total Basic State Aid		1,101,282,429
17	Public Employees'		
18	Insurance Matching	01200	242,714,967
19	Teachers' Retirement System	01900	72,125,000
20	School Building Authority.....	45300	23,424,770
21	Retirement Systems –		
22	Unfunded Liability	77500	<u>343,963,000</u>
23	Total.....		\$1,783,510,166

45-State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2018 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,275,473
3	Unclassified	09900	268,800
4	Current Expenses	13000	882,131
5	Wood Products –		
6	Forestry Vocational Program...	14600	68,993

7	Albert Yanni Vocational Program	14700	131,951
8	Vocational Aid	14800	22,440,602
9	Adult Basic Education	14900	4,591,896
10	Program Modernization	30500	884,313
11	High School Equivalency		
12	Diploma Testing (R).....	72600	778,815
13	FFA Grant Awards.....	83900	11,496
14	Pre-Engineering Academy Program ..	84000	<u>265,294</u>
15	Total.....		\$ 31,599,764

16 Any unexpended balances remaining in the
 17 appropriations for GED Testing (fund 0390, appropriation
 18 33900) and High School Equivalency Diploma Testing
 19 (fund 0390, appropriation 72600) at the close of the fiscal
 20 year 2017 is hereby reappropriated for expenditure during
 21 the fiscal year 2018.

46-State Board of Education –

West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2018 Org 0403

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 11,304,805
3	Unclassified	09900	110,000
4	Current Expenses	13000	1,988,129
5	Repairs and Alterations.....	06400	85,000
6	Equipment.....	07000	70,000
7	Buildings (R).....	25800	85,000
8	Capital Outlay and		
9	Maintenance (R)	75500	82,500
10	BRIM Premium.....	91300	<u>124,890</u>
11	Total.....		\$ 13,850,324

12 Any unexpended balances remaining in the
 13 appropriations for Buildings (fund 0320, appropriation
 14 25800) and Capital Outlay and Maintenance (fund 0320,
 15 appropriation 75500) at the close of the fiscal year 2017 are

16 hereby reappropriated for expenditure during the fiscal year
17 2018.

DEPARTMENT OF EDUCATION AND THE ARTS

47-Department of Education and the Arts –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2018 Org 0431

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 514,428
3	Unclassified	09900	35,000
4	Center for Professional		
5	Development (R)	11500	1,490,833
6	Current Expenses	13000	6,562
7	WV Humanities Council.....	16800	250,000
8	Benedum Professional Development		
9	Collaborative (R)	42700	429,116
10	Governor's Honors Academy (R)....	47800	1,059,270
11	Educational Enhancements	69500	196,000
12	S.T.E.M. Education and		
13	Grant Program (R)	71900	490,286
14	Energy Express	86100	382,935
15	BRIM Premium.....	91300	4,870
16	Special Olympic Games.....	96600	<u>25,000</u>
17	Total.....		\$ 4,884,300

18 Any unexpended balances remaining in the
19 appropriations for Center for Professional Development
20 (fund 0294, appropriation 11500), Benedum Professional
21 Development Collaborative (fund 0294, appropriation
22 42700), Governor's Honors Academy (fund 0294,
23 appropriation 47800), and S.T.E.M. Education and Grant
24 Program (fund 0294, appropriation 71900) at the close of
25 the fiscal year 2017 are hereby reappropriated for
26 expenditure during the fiscal year 2018, with the exception

27 of fund 0294, fiscal year 2017, appropriation 42700
28 (\$66,416) which shall expire on June 30, 2017.

29 From the above appropriation for Educational
30 Enhancements (fund 0294, appropriation 69500), \$73,500
31 shall be used for the Clay Center and \$122,500 for
32 Reconnecting McDowell – Save the Children.

48-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2018 Org 0432

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,148,509
3	Current Expenses	13000	605,585
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	1
6	Unclassified (R)	09900	28,483
7	Buildings (R).....	25800	1
8	Other Assets	69000	1
9	Land (R).....	73000	1
10	Culture and History Programming.	73200	231,573
11	Capital Outlay and		
12	Maintenance (R)	75500	19,600
13	Historical Highway		
14	Marker Program.....	84400	57,548
15	BRIM Premium.....	91300	<u>36,371</u>
16	Total.....		\$ 4,128,673

17 Any unexpended balances remaining in the
18 appropriations for Unclassified (fund 0293, appropriation
19 09900), Buildings (fund 0293, appropriation 25800),
20 Capital Outlay, Repairs and Equipment (fund 0293,
21 appropriation 58900), Capital Improvements – Surplus
22 (fund 0293, appropriation 66100), Capital Outlay, Repairs
23 and Equipment – Surplus (fund 0293, appropriation 67700),
24 Land (fund 0293, appropriation 73000), and Capital Outlay
25 and Maintenance (fund 0293, appropriation 75500) at the

26 close of the fiscal year 2017 are hereby reappropriated for
27 expenditure during the fiscal year 2018.

28 The Current Expense appropriation includes funding for
29 the arts funds, department programming funds, grants, fairs
30 and festivals and Camp Washington Carver and shall be
31 expended only upon authorization of the Division of Culture
32 and History and in accordance with the provisions of
33 Chapter 5A, Article 3, and Chapter 12 of the Code.

49-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2018 Org 0433

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,208,032
3	Current Expenses	13000	137,674
4	Repairs and Alterations.....	06400	6,500
5	Services to Blind & Handicapped..	18100	161,717
6	BRIM Premium.....	91300	<u>16,734</u>
7	Total.....		\$ 1,530,657

50-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2018 Org 0439

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,245,141
3	Current Expenses	13000	20,146
4	Mountain Stage	40700	300,000
5	Capital Outlay and		
6	Maintenance (R)	75500	10,000
7	BRIM Premium.....	91300	<u>45,283</u>
8	Total.....		\$ 3,620,570

9 Any unexpended balance remaining in the appropriation
10 for Capital Outlay and Maintenance (fund 0300,

11 appropriation 75500) at the close of the fiscal year 2017 is
 12 hereby reappropriated for expenditure during the fiscal year
 13 2018.

51-State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2018 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 10,590,552
3	Independent Living Services	00900	429,418
4	Current Expenses	13000	545,202
5	Workshop Development	16300	1,817,427
6	Supported Employment		
7	Extended Services.....	20600	77,960
8	Ron Yost Personal		
9	Assistance Fund.....	40700	333,828
10	Employment Attendant		
11	Care Program.....	59800	131,575
12	BRIM Premium.....	91300	<u>72,396</u>
13	Total.....		\$ 13,998,358

14 From the above appropriation for Workshop
 15 Development (fund 0310, appropriation 16300), funds shall
 16 be used exclusively with the private nonprofit community
 17 rehabilitation program organizations known as work centers
 18 or sheltered workshops. The appropriation shall also be used
 19 to continue the support of the program, services, and
 20 individuals with disabilities currently in place at those
 21 organizations.

**DEPARTMENT OF
 ENVIRONMENTAL PROTECTION**

52-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2018 Org 0311

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 72,067
3	Current Expenses	13000	29,203
4	Repairs and Alterations.....	06400	100
5	Equipment.....	07000	300
6	Other Assets.....	69000	400
7	BRIM Premium.....	91300	<u>739</u>
8	Total.....		\$ 102,809

53-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,926,093
3	Water Resources Protection		
4	and Management.....	06800	566,284
5	Current Expenses	13000	96,242
6	Repairs and Alterations.....	06400	4,950
7	Unclassified	09900	25,049
8	Dam Safety	60700	210,959
9	West Virginia Stream		
10	Partners Program	63700	77,396
11	Meth Lab Cleanup	65600	200,073
12	Other Assets.....	69000	1,000
13	WV Contributions		
14	to River Commissions	77600	148,485
15	Office of Water Resources		
16	Non-Enforcement Activity	85500	<u>908,854</u>
17	Total.....		\$ 6,165,385

18 A portion of the appropriations for Current Expense
19 (fund 0273, appropriation 13000) and Dam Safety (fund
20 0273, appropriation 60700) may be transferred to the special
21 revenue fund Dam Safety Rehabilitation Revolving Fund

22 (fund 3025) for the state deficient dams rehabilitation
 23 assistance program.

54-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2018 Org 0325

1	Personal Services and			
2	Employee Benefits.....	00100	\$	61,108
3	Current Expenses	13000		12,462
4	Repairs and Alterations.....	06400		50
5	Equipment.....	07000		300
6	Other Assets.....	69000		200
7	BRIM Premium.....	91300		<u>2,153</u>
8	Total.....		\$	76,273

**DEPARTMENT OF HEALTH AND
 HUMAN RESOURCES**

55-Department of Health and Human Resources –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2018 Org 0501

1	Personal Services and			
2	Employee Benefits.....	00100	\$	373,601
3	Unclassified	09900		8,014
4	Current Expenses	13000		48,833
5	Women’s Commission (R)	19100		0
6	Commission for the Deaf			
7	and Hard of Hearing	70400		<u>215,479</u>
8	Total.....		\$	645,927

9 Any unexpended balance remaining in the appropriation
 10 for the Women’s Commission (fund 0400, appropriation
 11 19100) at the close of the fiscal year 2017 is hereby
 12 reappropriated for expenditure during the fiscal year 2018.

*56-Division of Health –**Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2018 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 12,048,586
3	Chief Medical Examiner.....	04500	5,954,317
4	Unclassified	09900	691,862
5	Current Expenses	13000	4,640,355
6	State Aid for Local and		
7	Basic Public Health Services... ..	18400	12,645,160
8	Safe Drinking Water Program (R)	18700	2,167,723
9	Women, Infants and Children.....	21000	38,621
10	Early Intervention	22300	8,134,060
11	Cancer Registry.....	22500	195,868
12	Statewide EMS		
13	Program Support (R)	38300	1,824,458
14	Black Lung Clinics	46700	170,885
15	Center for End of Life.....	54500	150,000
16	Vaccine for Children.....	55100	332,942
17	Tuberculosis Control.....	55300	364,556
18	Maternal and Child Health Clinics,		
19	Clinicians Medical Contracts		
20	and Fees (R).....	57500	6,327,015
21	Epidemiology Support	62600	1,492,573
22	Primary Care Support	62800	4,665,575
23	Sexual Assault		
24	Intervention and Prevention.....	72300	125,000
25	Health Right Free Clinics	72700	2,750,000
26	Capital Outlay and		
27	Maintenance (R)	75500	100,000
28	Maternal Mortality Review.....	83400	46,563
29	Diabetes Education and Prevention.....	87300	97,125
30	BRIM Premium.....	91300	228,111
31	State Trauma and		
32	Emergency Care System.....	91800	<u>1,986,847</u>
33	Total.....		\$ 67,178,202

34 Any unexpended balances remaining in the
35 appropriations for Safe Drinking Water Program (fund
36 0407, appropriation 18700), Statewide EMS Program
37 Support (fund 0407, appropriation 38300), Maternal and
38 Child Health Clinics, Clinicians and Medical Contracts and
39 Fees (fund 0407, appropriation 57500), Capital Outlay and
40 Maintenance (fund 0407, appropriation 75500), Emergency
41 Response Entities – Special Projects (fund 0407,
42 appropriation 82200), Assistance to Primary Health Care
43 Centers Community Health Foundation (fund 0407,
44 appropriation 84500), and Tobacco Education Program
45 (fund 0407, appropriation 90600) at the close of the fiscal
46 year 2017 are hereby reappropriated for expenditure during
47 the fiscal year 2018; Provided that on July 1, 2017, the
48 following reappropriated funds and amounts are to be
49 transferred to the Division of Human Services - Medical
50 Services Trust Fund, (fund 5185): Fund 0407, fiscal year
51 2007, appropriation 84500, Assistance to Primary Health
52 Care Centers Community Health Foundation, \$400,000;
53 fund 0407, fiscal year 2008, appropriation 84500,
54 Assistance to Primary Health Care Centers - Community
55 Health Foundation \$840,000; fund 0407, fiscal year 2009,
56 appropriation 84500, Assistance to Primary Health Care
57 Centers - Community Health Foundation, \$675,000; fund
58 0407, fiscal year 2010, appropriation 84500 Assistance to
59 Primary Health Care Centers - Community Health
60 Foundation, \$558,236.61; fund 0407, fiscal year 2008,
61 appropriation 82200, Emergency Response Entities –
62 Special Projects, \$77,062; fund 0407, fiscal year 2009,
63 appropriation 82200, Emergency Response Entities –
64 Special Projects \$81,176; fund 0407, fiscal year 2010,
65 appropriation 82200, Emergency Response Entities –
66 Special Projects \$40,141.23; fund 0407, fiscal year 2011,
67 appropriation 82200, Emergency Response Entities –
68 Special Projects \$93,192.02; fund 0407, fiscal year 2012,
69 appropriation 82200, Emergency Response Entities –
70 Special Projects \$50,610.02; fund 0407, fiscal year 2013,
71 appropriation 82200, Emergency Response Entities –
72 Special Projects \$67,152; fund 0407, fiscal year 2014,

73 appropriation 82200, Emergency Response Entities –
 74 Special Projects \$31,969.73; fund 0407, fiscal year 2007,
 75 appropriation 75500, Capital Outlay and Maintenance,
 76 \$91,095.33; fund 0407, fiscal year 2009, appropriation
 77 75500, Capital Outlay and Maintenance, \$128,084; fund
 78 0407, fiscal year 2010, appropriation 75500, Capital Outlay
 79 and Maintenance, \$518,934.53; fund 0407, fiscal year 2011,
 80 appropriation 75500, Capital Outlay and Maintenance,
 81 \$2,125,000; fund 0407, fiscal year 2012, appropriation
 82 75500, Capital Outlay and Maintenance, \$2,125,000; and
 83 fund 0407, fiscal year 2013, appropriation 75500, Capital
 84 Outlay and Maintenance, \$1,011,886.14.

85 From the above appropriation for Current Expenses
 86 (fund 0407, appropriation 13000), an amount not less than
 87 \$100,000 is for the West Virginia Cancer Coalition;
 88 \$50,000 shall be expended for the West Virginia Aids
 89 Coalition; \$100,000 is for Adolescent Immunization
 90 Education; \$73,065 is for informal dispute resolution
 91 relating to nursing home administrative appeals; and
 92 \$50,000 is for Hospital Hospitality House of Huntington.

93 From the above appropriation for Maternal and Child
 94 Health Clinics, Clinicians and Medical Contracts and Fees
 95 (fund 0407, appropriation 57500) up to \$400,000 may be
 96 transferred to the Breast and Cervical Cancer Diagnostic
 97 Treatment Fund (fund 5197) and \$11,000 is for the Marshall
 98 County Health Department for dental services.

57-Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2018 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,554,852
3	Current Expenses	13000	12,463
4	Behavioral Health Program (R)	21900	64,415,611
5	Family Support Act.....	22100	251,226

6	Institutional Facilities		
7	Operations (R)	33500	100,067,434
8	Substance Abuse		
9	Continuum of Care (R)	35400	5,000,000
10	Capital Outlay		
11	and Maintenance (R)	75500	950,000
12	Renaissance Program	80400	165,996
13	BRIM Premium	91300	<u>1,211,307</u>
14	Total		\$ 173,628,889

15 Any unexpended balances remaining in the
16 appropriations for Behavioral Health Program (fund 0525,
17 appropriation 21900), Institutional Facilities Operations
18 (fund 0525, appropriation 33500), Substance Abuse
19 Continuum of Care (fund 0525, appropriation 35400),
20 Capital Outlay (fund 0525, appropriation 51100),
21 Behavioral Health Program – Surplus (fund 0525,
22 appropriation 63100), Institutional Facilities Operations –
23 Surplus (fund 0525, appropriation 63200), Substance Abuse
24 Continuum of Care – Surplus (fund 0525, appropriation
25 72200), and Capital Outlay and Maintenance (fund 0525,
26 appropriation 75500) at the close of the fiscal year 2017 are
27 hereby reappropriated for expenditure during the fiscal year
28 2018.

29 Notwithstanding the provisions of Title I, section three
30 of this bill, the secretary of the Department of Health and
31 Human Resources shall have the authority to transfer funds
32 within the above appropriations: *Provided*, That no more
33 than five percent of the funds appropriated to one
34 appropriation may be transferred to other appropriations:
35 *Provided, however*, That no funds from other appropriations
36 shall be transferred to the personal services and employee
37 benefits appropriation.

38 Included in the above appropriation for Behavioral
39 Health Program (fund 0525, appropriation 21900) is
40 \$100,000 for the Healing Place of Huntington.

41 From the above appropriation for Institutional Facilities
 42 Operations (fund 0525, appropriation 33500), together with
 43 available funds from the Division of Health – Hospital
 44 Services Revenue Account (fund 5156, appropriation
 45 33500), on July 1, 2017, the sum of \$160,000 shall be
 46 transferred to the Department of Agriculture – Land
 47 Division – Farm Operating Fund (fund 1412) as advance
 48 payment for the purchase of food products; actual payments
 49 for such purchases shall not be required until such credits
 50 have been completely expended.

51 The above appropriation for Institutional Facilities
 52 Operations (fund 0525, appropriation 33500) contains prior
 53 year salary increases due to the Hartley court order in the
 54 amount of \$2,202,013 for William R. Sharpe Jr. Hospital,
 55 and \$2,067,984 for Mildred Mitchel-Bateman Hospital.

56 From the above appropriation for Substance Abuse
 57 Continuum of Care (fund 0525, appropriation 35400), the
 58 funding will be consistent with the goal areas outlined in the
 59 Comprehensive Substance Abuse Strategic Action Plan.

60 Additional funds have been appropriated in fund 5156,
 61 fiscal year 2018, organization 0506, for the operation of the
 62 institutional facilities. The secretary of the Department of
 63 Health and Human Resources is authorized to utilize up to
 64 ten percent of the funds from the Institutional Facilities
 65 Operations appropriation to facilitate cost effective and cost
 66 saving services at the community level.

58-Division of Health –

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2018 Org 0506

1	West Virginia Drinking Water Treatment			
2	Revolving Fund-Transfer	68900	\$	647,500

3 The above appropriation for Drinking Water Treatment
 4 Revolving Fund – Transfer shall be transferred to the West
 5 Virginia Drinking Water Treatment Revolving Fund or
 6 appropriate bank depository and the Drinking Water
 7 Treatment Revolving – Administrative Expense Fund as
 8 provided by Chapter 16 of the Code.

59-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2018 Org 0510

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,002,668
3	Unclassified	09900	4,024
4	Current Expenses	13000	330,029
5	BRIM Premium.....	91300	<u>10,056</u>
6	Total.....		\$ 1,346,777

60-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2018 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 43,080,824
3	Unclassified	09900	5,688,944
4	Current Expenses	13000	11,315,095
5	Child Care Development	14400	9,079,268
6	Medical Services Contracts and		
7	Office of Managed Care	18300	1,835,469
8	Medical Services.....	18900	448,532,081
9	Social Services.....	19500	145,947,791
10	Family Preservation Program	19600	1,565,000
11	Family Resource Networks.....	27400	1,762,464
12	Domestic Violence		
13	Legal Services Fund	38400	400,000
14	James “Tiger” Morton		
15	Catastrophic Illness Fund	45500	101,005

16	I/DD Waiver	46600	88,753,483
17	Child Protective		
18	Services Case Workers	46800	22,446,545
19	OSCAR and RAPIDS	51500	6,405,873
20	Title XIX Waiver for Seniors	53300	13,593,620
21	WV Teaching Hospitals		
22	Tertiary/Safety Net	54700	6,356,000
23	Child Welfare System	60300	1,250,959
24	In-Home Family Education	68800	1,000,000
25	WV Works		
26	Separate State Program.....	69800	1,935,000
27	Child Support Enforcement	70500	6,260,676
28	Medicaid Auditing	70600	606,750
29	Temporary Assistance for Needy		
30	Families/Maintenance		
31	of Effort	70700	22,969,096
32	Child Care –		
33	Maintenance of Effort Match ..	70800	5,693,743
34	Child and Family Services	73600	2,850,000
35	Grants for Licensed Domestic		
36	Violence Programs and		
37	Statewide Prevention	75000	2,500,000
38	Capital Outlay		
39	and Maintenance (R)	75500	11,875
40	Community Based Services and		
41	Pilot Programs for Youth.....	75900	1,000,000
42	Medical Services		
43	Administrative Costs	78900	35,609,925
44	Traumatic Brain Injury Waiver.....	83500	800,000
45	Indigent Burials (R)	85100	2,050,000
46	BRIM Premium.....	91300	834,187
47	Rural Hospitals Under 150 Beds ...	94000	2,596,000
48	Children’s Trust Fund – Transfer ..	95100	<u>220,000</u>
49	Total.....		<u>\$ 895,051,673</u>

50 Any unexpended balances remaining in the
51 appropriations for Capital Outlay and Maintenance (fund
52 0403, appropriation 75500) and Indigent Burials (fund
53 0403, appropriation 85100) at the close of the fiscal year

54 2017 are hereby reappropriated for expenditure during the
55 fiscal year 2018.

56 Notwithstanding the provisions of Title I, section three
57 of this bill, the secretary of the Department of Health and
58 Human Resources shall have the authority to transfer funds
59 within the above appropriations: *Provided*, That no more
60 than five percent of the funds appropriated to one
61 appropriation may be transferred to other appropriations:
62 *Provided, however*, That no funds from other appropriations
63 shall be transferred to the personal services and employee
64 benefits appropriation.

65 The secretary shall have authority to expend funds for
66 the educational costs of those children residing in out-of-
67 state placements, excluding the costs of special education
68 programs.

69 Included in the above appropriation for Social Services
70 (fund 0403, appropriation 19500) is funding for continuing
71 education requirements relating to the practice of social
72 work.

73 The above appropriation for Domestic Violence Legal
74 Services Fund (fund 0403, appropriation 38400) shall be
75 transferred to the Domestic Violence Legal Services Fund
76 (fund 5455).

77 The above appropriation for James “Tiger” Morton
78 Catastrophic Illness Fund (fund 0403, appropriation 45500)
79 shall be transferred to the James “Tiger” Morton
80 Catastrophic Illness Fund (fund 5454) as provided by
81 Article 5Q, Chapter 16 of the Code.

82 The above appropriation for WV Works Separate State
83 Program (fund 0403, appropriation 69800), shall be
84 transferred to the WV Works Separate State College
85 Program Fund (fund 5467), and the WV Works Separate
86 State Two-Parent Program Fund (fund 5468) as determined

87 by the secretary of the Department of Health and Human
88 Resources.

89 From the above appropriation for Child Support
90 Enforcement (fund 0403, appropriation 70500) an amount
91 not to exceed \$300,000 may be transferred to a local
92 banking depository to be utilized to offset funds determined
93 to be uncollectible.

94 From the above appropriation for the Grants for
95 Licensed Domestic Violence Programs and Statewide
96 Prevention (fund 0403, appropriation 75000), 50% of the
97 total shall be divided equally and distributed among the
98 fourteen (14) licensed programs and the West Virginia
99 Coalition Against Domestic Violence (WVCADV). The
100 balance remaining in the appropriation for Grants for
101 Licensed Domestic Violence Programs and Statewide
102 Prevention (fund 0403, appropriation 75000), shall be
103 distributed according to the formula established by the
104 Family Protection Services Board.

105 The above appropriation for Children’s Trust Fund –
106 Transfer (fund 0403, appropriation 95100) shall be
107 transferred to the Children’s Trust Fund (fund 5469, org
108 0511).

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

61-Department of Military Affairs and Public Safety –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2018 Org 0601

1	Personal Services and			
2	Employee Benefits.....	00100	\$	711,738
3	Unclassified (R).....	09900		21,719
4	Current Expenses	13000		66,492

5	Repairs and Alterations.....	06400	6,000
6	Equipment.....	07000	3,000
7	Fusion Center (R).....	46900	534,332
8	Other Assets.....	69000	3,000
9	Directed Transfer	70000	32,000
10	BRIM Premium.....	91300	11,938
11	WV Fire and EMS		
12	Survivor Benefit (R)	93900	200,000
13	Homeland State Security		
14	Administrative Agency (R)	95300	<u>531,683</u>
15	Total.....		\$ 2,121,902

16 Any unexpended balances remaining in the
 17 appropriations for Unclassified (fund 0430, appropriation
 18 09900), Fusion Center (fund 0430, appropriation 46900),
 19 Substance Abuse Program – Surplus (fund 0430,
 20 appropriation 69600), Justice Reinvestment Training –
 21 Surplus (fund 0430, appropriation 69900), WV Fire and
 22 EMS Survivor Benefit (fund 0430, appropriation 93900),
 23 and Homeland State Security Administrative Agency (fund
 24 0430, appropriation 95300) at the close of the fiscal year
 25 2017 are hereby reappropriated for expenditure during the
 26 fiscal year 2018, with the exception of fund 0430, fiscal year
 27 2017, appropriation 93900 (\$50,000) which shall expire on
 28 June 30, 2017.

29 The above appropriation for Directed Transfer (fund
 30 0430, appropriation 70000) shall be transferred to the Law-
 31 Enforcement, Safety and Emergency Worker Funeral
 32 Expense Payment Fund (fund 6003).

62-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2018 Org 0603

1	Unclassified (R)	09900	\$ 106,798
2	College Education Fund.....	23200	4,000,000

3	Civil Air Patrol.....	23400	249,219
4	Mountaineer ChalleNge Academy.....	70900	1,500,000
5	Armory Board Transfer	70015	2,317,555
6	Military Authority (R)	74800	<u>5,857,390</u>
7	Total.....		\$ 14,030,962

8 Any unexpended balance remaining in the
 9 appropriations for Unclassified (fund 0433, appropriation
 10 09900) and Military Authority (fund 0433, appropriation
 11 74800) at the close of the fiscal year 2017 is hereby
 12 reappropriated for expenditure during the fiscal year 2018.

13 From the above appropriations an amount approved by
 14 the Adjutant General and the secretary of Military Affairs
 15 and Public Safety may be transferred to the State Armory
 16 Board for operation and maintenance of National Guard
 17 Armories.

18 The adjutant general shall have the authority to transfer
 19 between appropriations.

20 From the above appropriation and other state and
 21 federal funding, the Adjutant General shall provide an
 22 amount not less than \$4,500,000 to the Mountaineer
 23 ChalleNge Academy to meet anticipated program demand.

63-Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2018 Org 0603

Personal Services and			
	Employee Benefits.....	00100	\$ 100,000
	Current Expenses	13000	<u>57,775</u>
	Total.....		\$ 157,775

64-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2018 Org 0605

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 382,952
3	Current Expenses	13000	294,559
4	Salaries of Members of		
5	West Virginia Parole Board.....	22700	593,029
6	BRIM Premium.....	91300	<u>5,747</u>
7	Total.....		\$ 1,276,287

8 The above appropriation for Salaries of Members of
9 West Virginia Parole Board (fund 0440, appropriation
10 22700) includes funding for salary, annual increment (as
11 provided for in W.Va. Code §5-5-1), and related employee
12 benefits of board members.

*65-Division of Homeland Security and**Emergency Management*

(WV Code Chapter 15)

Fund 0443 FY 2018 Org 0606

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,006,489
3	Unclassified	09900	26,342
4	Current Expenses	13000	51,674
5	Repairs and Alterations.....	06400	600
6	Radiological Emergency		
7	Preparedness	55400	17,230
8	Federal Funds/Grant Match (R).....	74900	660,991
9	Mine and Industrial Accident Rapid		
10	Response Call Center.....	78100	450,539
11	Early Warning Flood System (R) ..	87700	466,845
12	BRIM Premium.....	91300	20,786
13	WVU Charleston		
14	Poison Control Hotline	94400	<u>712,942</u>
15	Total.....		\$ 3,414,438

16 Any unexpended balances remaining in the
 17 appropriations for Federal Funds/Grant Match (fund 0443,
 18 appropriation 74900), Early Warning Flood System (fund
 19 0443, appropriation 87700), and Disaster Mitigation (fund
 20 0443, appropriation 95200) at the close of the fiscal year
 21 2017 are hereby reappropriated for expenditure during the
 22 fiscal year 2018, with the exception of fund 0443, fiscal year
 23 2017, appropriation 87700 (\$9,500) which shall expire on
 24 June 30, 2017.

66-Division of Corrections –

Central Office

(WV Code Chapters 25, 28, 49 and 62)

Fund 0446 FY 2018 Org 0608

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 593,431
3	Current Expenses	13000	<u>1,800</u>
4	Total.....		\$ 595,231

67-Division of Corrections –

Correctional Units

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 2018 Org 0608

1	Employee Benefits.....	01000	\$ 1,258,136
2	Children's Protection Act (R)	09000	838,437
3	Unclassified (R)	09900	1,578,800
4	Current Expenses (R).....	13000	21,151,011
5	Facilities Planning and		
6	Administration (R).....	38600	1,274,200
7	Charleston Correctional Center	45600	2,585,251
8	Beckley Correctional Center.....	49000	1,780,425
9	Huntington Work Release Center ..	49500	965,100
10	Anthony Correctional Center.....	50400	5,009,807

11	Huttonsville Correctional Center ...	51400	19,760,309
12	Northern Correctional Center	53400	6,738,979
13	Inmate Medical Expenses (R).....	53500	21,226,064
14	Pruntytown Correctional Center	54300	6,939,316
15	Corrections Academy	56900	1,556,666
16	Information Technology Services..	59901	1,616,491
17	Martinsburg Correctional Center ...	66300	3,515,195
18	Parole Services.....	68600	4,945,361
19	Special Services	68700	6,654,557
20	Investigative Services	71600	2,980,734
21	Capital Outlay and Maintenance (R)..	75500	2,000,000
22	Salem Correctional Center.....	77400	9,530,531
23	McDowell County		
24	Correctional Center.....	79000	2,542,590
25	Stevens Correctional Center	79100	7,863,195
26	Parkersburg Correctional Center....	82800	2,501,777
27	St. Mary's Correctional Center	88100	11,958,071
28	Denmar Correctional Center	88200	4,334,308
29	Ohio County Correctional Center ..	88300	1,753,224
30	Mt. Olive Correctional Complex ...	88800	18,789,864
31	Lakin Correctional Center	89600	8,658,905
32	BRIM Premium.....	91300	<u>2,359,770</u>
33	Total.....		\$ 184,667,074

34 Any unexpended balances remaining in the
35 appropriations for Children's Protection Act (fund 0450,
36 appropriation 09000), Unclassified – Surplus (fund 0450,
37 appropriation 09700), Unclassified (fund 0450,
38 appropriation 09900), Current Expenses (fund 0450,
39 appropriation 13000), Facilities Planning and
40 Administration (fund 0450, appropriation 38600), Inmate
41 Medical Expenses (fund 0450, appropriation 53500),
42 Capital Improvements – Surplus (fund 0450, appropriation
43 66100), Capital Outlay, Repairs and Equipment – Surplus
44 (fund 0450, appropriation 67700), Capital Outlay and
45 Maintenance (fund 0450, appropriation 75500), Security
46 System Improvements – Surplus (fund 0450, appropriation
47 75501), and Operating Expenses – Surplus (fund 0450,
48 appropriation 77900) at the close of the fiscal year 2017 are

49 hereby reappropriated for expenditure during the fiscal year
 50 2018, with the exception of fund 0450, fiscal year 2017,
 51 appropriation 09000 (\$100,000) which shall expire on June
 52 30, 2017.

53 The Commissioner of Corrections shall have the
 54 authority to transfer between appropriations to the
 55 individual correctional units above and may transfer funds
 56 from the individual correctional units to Current Expenses
 57 (fund 0450, appropriation 13000) or Inmate Medical
 58 Expenses (fund 0450, appropriation 53500).

59 From the above appropriation to Unclassified (fund
 60 0450, appropriation 09900), on July 1, 2017, the sum of
 61 \$300,000 shall be transferred to the Department of
 62 Agriculture – Land Division – Farm Operating Fund (fund
 63 1412) as advance payment for the purchase of food
 64 products; actual payments for such purchases shall not be
 65 required until such credits have been completely expended.

66 From the above appropriation to Current Expenses
 67 (fund 0450, appropriation 13000) payment shall be made to
 68 house Division of Corrections inmates in federal, county,
 69 and /or regional jails.

70 Any realized savings from Energy Savings Contract
 71 may be transferred to Facilities Planning and
 72 Administration (fund 0450, appropriation 38600).

68-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2018 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 56,281,783
3	Children’s Protection Act	09000	948,101
4	Current Expenses	13000	10,309,769
5	Repairs and Alterations.....	06400	450,523
6	Barracks Lease Payments	55600	237,898

7	Communications and		
8	Other Equipment (R)	55800	70,968
9	Trooper Retirement Fund.....	60500	4,565,197
10	Handgun Administration Expense ...	74700	67,179
11	Capital Outlay and		
12	Maintenance (R)	75500	250,000
13	Retirement Systems –		
14	Unfunded Liability	77500	24,675,000
15	Automated Fingerprint		
16	Identification System.....	89800	723,064
17	BRIM Premium.....	91300	<u>5,368,150</u>
18	Total.....		\$ 103,947,632

19 Any unexpended balances remaining in the
20 appropriations for Communications and Other Equipment
21 (fund 0453, appropriation 55800), and Capital Outlay and
22 Maintenance (fund 0453, appropriation 75500) at the close
23 of the fiscal year 2017 are hereby reappropriated for
24 expenditure during the fiscal year 2018.

25 From the above appropriation for Personal Services and
26 Employee Benefits (fund 0453, appropriation 00100), an
27 amount not less than \$25,000 shall be expended to offset the
28 costs associated with providing police services for the West
29 Virginia State Fair.

69-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2018 Org 0619

1	Current Expenses	13000	\$	64,021
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70-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2018 Org 0620

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 531,051
3	Current Expenses	13000	132,696
4	Repairs and Alterations.....	06400	1,804
5	Child Advocacy Centers (R).....	45800	1,701,671
6	Community Corrections (R)	56100	6,905,614
7	Statistical Analysis Program.....	59700	46,381
8	Sexual Assault Forensic		
9	Examination Commission.....	71400	76,231
10	Qualitative Analysis and Training		
11	for Youth Services (R).....	76200	332,018
12	Law Enforcement		
13	Professional Standards.....	83800	154,471
14	BRIM Premium.....	91300	<u>1,788</u>
15	Total.....		\$ 9,883,725

16 Any unexpended balances remaining in the appropriations
17 for Child Advocacy Centers (fund 0546, appropriation 45800),
18 Community Corrections (fund 0546, appropriation 56100),
19 and Qualitative Analysis and Training for Youth Services
20 (fund 0546, appropriation 76200) at the close of the fiscal year
21 2017 are hereby reappropriated for expenditure during the
22 fiscal year 2018, with the exception of fund 0546, fiscal year
23 2017, appropriation 56100 (\$172,000), and fund 0546, fiscal
24 year 2017, appropriation 76200 (\$29,878) which shall expire
25 on June 30, 2017.

26 From the above appropriation for Child Advocacy
27 Centers (fund 0546, appropriation 45800), the division may
28 retain an amount not to exceed four percent of the
29 appropriation for administrative purposes.

71-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2018 Org 0621

1	Statewide Reporting Centers	26200	\$ 6,279,447
2	Robert L. Shell Juvenile Center.....	26700	1,956,950

3	Resident Medical Expenses (R).....	53501	3,604,999
4	Central Office	70100	2,307,517
5	Capital Outlay and		
6	Maintenance (R)	75500	250,000
7	Gene Spadaro Juvenile Center	79300	2,128,385
8	BRIM Premium.....	91300	108,380
9	Kenneth Honey Rubenstein		
10	Juvenile Center (R).....	98000	4,926,863
11	Vicki Douglas Juvenile Center	98100	1,870,388
12	Northern Regional Juvenile Center	98200	2,876,302
13	Lorrie Yeager Jr. Juvenile Center ..	98300	1,909,246
14	Sam Perdue Juvenile Center	98400	2,003,196
15	Tiger Morton Center	98500	2,114,663
16	Donald R. Kuhn Juvenile Center ...	98600	4,057,994
17	J.M. "Chick" Buckbee		
18	Juvenile Center	98700	<u>2,017,395</u>
19	Total.....		\$ 38,411,725

20 Any unexpended balances remaining in the
21 appropriations for Resident Medical Expenses (fund 0570,
22 appropriation 53501), Capital Outlay and Maintenance
23 (fund 0570, appropriation 75500), and Kenneth Honey
24 Rubenstein Juvenile Center (fund 0570, appropriation
25 98000) at the close of the fiscal year 2017 are hereby
26 reappropriated for expenditure during the fiscal year 2018.

27 From the above appropriations, on July 1, 2017, the sum
28 of \$50,000 shall be transferred to the Department of
29 Agriculture – Land Division – Farm Operating Fund (fund
30 1412) as advance payment for the purchase of food
31 products; actual payments for such purchases shall not be
32 required until such credits have been completely expended.

33 The Director of Juvenile Services shall have the
34 authority to transfer between appropriations to the
35 individual juvenile centers above and may transfer funds
36 from the individual juvenile centers to Resident Medical
37 Expenses (fund 0570, appropriation 53501).

(WV Code Chapter 5F)

Fund 0585 FY 2018 Org 0622

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,772,420
3	Unclassified (R)	09900	21,991
4	Current Expenses	13000	139,232
5	Repairs and Alterations.....	06400	8,500
6	Equipment (R).....	07000	64,171
7	BRIM Premium.....	91300	<u>11,426</u>
8	Total.....		\$ 3,017,740

9 Any unexpended balances remaining in the
10 appropriations for Equipment (fund 0585, appropriation
11 07000), and Unclassified (fund 0585, appropriation 09900)
12 at the close of the fiscal year 2017 are hereby reappropriated
13 for expenditure during the fiscal year 2018.

DEPARTMENT OF REVENUE*73-Office of the Secretary*

(WV Code Chapter 11)

Fund 0465 FY 2018 Org 0701

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 486,146
3	Unclassified	09900	5,954
4	Current Expenses	13000	80,780
5	Repairs and Alterations.....	06400	1,262
6	Equipment.....	07000	8,000
7	Other Assets.....	69000	500
8	State Road fund – Transfer	70017	<u>0</u>
9	Total.....		\$ 582,642

10 Any unexpended balance remaining in the appropriation
11 for Unclassified – Total (fund 0465, appropriation 09600)
12 at the close of the fiscal year 2017 is hereby reappropriated
13 for expenditure during the fiscal year 2018.

74-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2018 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 16,265,639
3	Unclassified (R).....	09900	224,578
4	Current Expenses (R).....	13000	5,245,381
5	Repairs and Alterations.....	06400	10,000
6	Equipment.....	07000	50,000
7	Tax Technology Upgrade	09400	2,700,000
8	Multi State Tax Commission	65300	77,958
9	Other Assets.....	69000	10,000
10	BRIM Premium.....	91300	<u>14,560</u>
11	Total.....		\$ 24,598,116

12 Any unexpended balances remaining in the
13 appropriations for Personal Services and Employee Benefits
14 (fund 0470, appropriation 00100), Unclassified (fund 0470,
15 appropriation 09900), and Current Expenses (fund 0470,
16 appropriation 13000) at the close of the fiscal year 2017 are
17 hereby reappropriated for expenditure during the fiscal year
18 2018.

75-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2018 Org 0703

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 630,702
3	Unclassified (R).....	09900	<u>449</u>
4	Total.....		\$ 631,151

5 Any unexpended balance remaining in the appropriation
6 for Unclassified (fund 0595, appropriation 09900) at the
7 close of the fiscal year 2017 is hereby reappropriated for
8 expenditure during the fiscal year 2018.

76-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2018 Org 0709

1	Personal Services and			
2	Employee Benefits.....	00100	\$	424,872
3	Current Expenses (R).....	13000		92,572
4	Unclassified	09900		5,255
5	BRIM Premium.....	91300		<u>2,862</u>
6	Total.....		\$	525,561
7	Any unexpended balance remaining in the appropriation			
8	for Current Expenses (fund 0593, appropriation 13000) at			
9	the close of the fiscal year 2017 is hereby reappropriated for			
10	expenditure during the fiscal year 2018.			

*77-Division of Professional and Occupational Licenses –**State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 2018 Org 0933

1	Personal Services and			
2	Employee Benefits.....	00100	\$	7,200
3	Current Expenses	13000		<u>29,611</u>
4	Total.....		\$	36,811

DEPARTMENT OF TRANSPORTATION*78-State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2018 Org 0804

1	Personal Services and			
2	Employee Benefits.....	00100	\$	314,113
3	Current Expenses	13000		287,332

4	Other Assets (R).....	69000	1,303,277
5	BRIM Premium.....	91300	<u>188,356</u>
6	Total.....		\$ 2,093,078

7 Any unexpended balance remaining in the appropriation
 8 Other Assets (fund 0506, appropriation 69000) at the close
 9 of the fiscal year 2017 is hereby reappropriated for
 10 expenditure during the fiscal year 2018, with the exception
 11 of fund 0506, fiscal year 2017, appropriation 69000
 12 (\$32,483) which shall expire on June 30, 2017.

79-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2018 Org 0805

1	Equipment (R).....	07000	\$ 384,710
2	Current Expenses (R).....	13000	<u>1,878,279</u>
3	Total.....		\$ 2,262,989

4 Any unexpended balances remaining in the
 5 appropriations for Equipment (fund 0510, appropriation
 6 07000), Current Expenses (fund 0510, appropriation
 7 13000), Buildings (fund 0510, appropriation 25800), and
 8 Other Assets (fund 0510, appropriation 69000) at the close
 9 of the fiscal year 2017 are hereby reappropriated for
 10 expenditure during the fiscal year 2018, with the exception
 11 of fund 0510, fiscal year 2017, appropriation 07000
 12 (\$22,203), fund 0510, fiscal year 2017, appropriation 25800
 13 (\$5,281), and fund 0510, fiscal year 2017, appropriation
 14 69000 (\$5,000) which shall expire on June 30, 2017.

80-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2018 Org 0807

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 166,719

3	Current Expenses (R).....	13000	591,614
4	Repairs and Alterations.....	06400	100
5	BRIM Premium.....	91300	<u>4,148</u>
6	Total.....		\$ 762,581

7 Any unexpended balances remaining in the
 8 appropriations for Unclassified (fund 0582, appropriation
 9 09900) and Current Expenses (fund 0582, appropriation
 10 13000) at the close of the fiscal year 2017 are hereby
 11 reappropriated for expenditure during the fiscal year 2018.

DEPARTMENT OF VETERANS' ASSISTANCE

81-Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2018 Org 0613

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,807,393
3	Unclassified	09900	20,000
4	Current Expenses	13000	137,189
5	Repairs and Alterations.....	06400	5,000
6	Veterans' Field Offices.....	22800	248,345
7	Veterans' Nursing Home (R).....	28600	5,527,826
8	Veterans' Toll Free		
9	Assistance Line.....	32800	2,015
10	Veterans' Reeducation		
11	Assistance (R).....	32900	29,502
12	Veterans' Grant Program (R).....	34200	30,741
13	Veterans' Grave Markers.....	47300	10,254
14	Veterans' Transportation	48500	625,000
15	Veterans Outreach Programs	61700	160,001
16	Memorial Day Patriotic Exercise...	69700	20,000
17	Veterans Cemetery.....	80800	375,428
18	BRIM Premium.....	91300	<u>23,860</u>
19	Total.....		\$ 9,022,554

20 Any unexpended balances remaining in the
 21 appropriations for Veterans' Nursing Home (fund 0456,

22 appropriation 28600), Veterans’ Reeducation Assistance
 23 (fund 0456, appropriation 32900), Veterans’ Grant Program
 24 (fund 0456, appropriation 34200), Veterans’ Bonus –
 25 Surplus (fund 0456, appropriation 34400), and Educational
 26 Opportunities for Children of Deceased Veterans (fund
 27 0456, appropriation 85400) at the close of the fiscal year
 28 2017 are hereby reappropriated for expenditure during the
 29 fiscal year 2018, with the exception of fund 0456, fiscal year
 30 2017, appropriation 28600 (\$8,794), fund 0456, fiscal year
 31 2017, appropriation 32900 (\$1,702), and fund 0456, fiscal
 32 year 2017, appropriation 34200 (\$29,000) which shall
 33 expire on June 30, 2017.

82-Department of Veterans’ Assistance –

Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2018 Org 0618

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,093,492
3	Current Expenses.....	13000	<u>44,576</u>
4	Total.....		\$ 1,138,068

BUREAU OF SENIOR SERVICES

83-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2018 Org 0508

1	Transfer to Division of Human Services		
2	for Health Care		
3	and Title XIX Waiver		
4	for Senior Citizens.....	53900	\$ 21,583,766

5 The above appropriation for Transfer to Division of
 6 Human Services for Health Care and Title XIX Waiver for
 7 Senior Citizens (fund 0420, appropriation 53900) along

8 with the federal moneys generated thereby shall be used for
9 reimbursement for services provided under the program.

10 The above appropriation is in addition to funding
11 provided in fund 5405 for this program.

**WEST VIRGINIA COUNCIL FOR COMMUNITY
AND TECHNICAL COLLEGE EDUCATION**

84-West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2018 Org 0420

1	West Virginia Council for Community		
2	and Technical Education (R) ...	39200	\$ 723,410
3	Transit Training Partnership	78300	34,293
4	Community College		
5	Workforce Development (R) ...	87800	784,901
6	College Transition Program	88700	278,222
7	West Virginia Advance		
8	Workforce Development (R) ...	89300	3,116,749
9	Technical Program		
10	Development (R)	89400	<u>1,800,735</u>
11	Total		\$ 6,738,310

12 Any unexpended balances remaining in the appropriations
13 for West Virginia Council for Community and Technical
14 Education (fund 0596, appropriation 39200), Capital
15 Improvements – Surplus (fund 0596, appropriation 66100),
16 Community College Workforce Development (fund 0596,
17 appropriation 87800), West Virginia Advance Workforce
18 Development (fund 0596, appropriation 89300), and Technical
19 Program Development (fund 0596, appropriation 89400) at the
20 close of the fiscal year 2017 are hereby reappropriated for
21 expenditure during the fiscal year 2018, with the exception of

22 fund 0596, fiscal year 2017, appropriation 39200 (\$14,000),
 23 fund 0596, fiscal year 2017, appropriation 89300 (\$69,244), and
 24 fund 0596, fiscal year 2017, appropriation 89400 (\$45,964)
 25 which shall expire on June 30, 2017.

26 From the above appropriation for the Community
 27 College Workforce Development (fund 0596, appropriation
 28 87800), \$200,000 shall be expended on the Mine Training
 29 Program in Southern West Virginia.

30 Included in the above appropriation for West Virginia
 31 Advance Workforce Development (fund 0596,
 32 appropriation 89300) is \$200,000 to be used exclusively for
 33 advanced manufacturing and energy industry specific
 34 training programs.

85-Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2018 Org 0444

1	Mountwest Community		
2	and Technical College	48700	\$ 5,314,947

86-New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2018 Org 0445

1	New River Community		
2	and Technical College	35800	\$ 5,247,765

87-Pierpont Community and Technical College

(WV Code Chapter 18B)

Fund 0597 FY 2018 Org 0446

	Pierpont Community		
	and Technical College	93000	\$ 6,989,036

88-Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2018 Org 0447

- | | | | |
|---|-----------------------------|-------|--------------|
| 1 | Blue Ridge Community | | |
| 2 | and Technical College | 88500 | \$ 4,880,509 |

89-West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2018 Org 0464

- | | | | |
|---|--------------------------------|-------|--------------|
| 1 | West Virginia | | |
| 2 | University – Parkersburg | 47100 | \$ 9,086,528 |

90-Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2018 Org 0487

- | | | | |
|---|----------------------------------|-------|--------------|
| 1 | Southern West Virginia Community | | |
| 2 | and Technical College | 44600 | \$ 7,626,471 |

91-West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2018 Org 0489

- | | | | |
|---|----------------------------------|-------|--------------|
| 1 | West Virginia Northern Community | | |
| 2 | and Technical College | 44700 | \$ 6,583,128 |

92-Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2018 Org 0492

- | | | | |
|---|---------------------------------|-------|--------------|
| 1 | Eastern West Virginia Community | | |
| 2 | and Technical College | 41200 | \$ 1,751,421 |

93-BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2018 Org 0493

1	BridgeValley Community		
2	and Technical College	71700	\$ 7,158,055

HIGHER EDUCATION POLICY COMMISSION*94-Higher Education Policy Commission –**Administration –**Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2018 Org 0441

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,471,913
3	Current Expenses	13000	13,212
4	Higher Education Grant Program ..	16400	39,019,864
5	Tuition Contract Program (R).....	16500	1,224,564
6	Underwood-Smith Scholarship		
7	Program-Student Awards	16700	328,349
8	Facilities Planning and		
9	Administration (R).....	38600	1,749,992
10	PROMISE Scholarship – Transfer.	80000	18,500,000
11	HEAPS Grant Program (R).....	86700	5,007,764
12	BRIM Premium.....	91300	<u>16,651</u>
13	Total.....		\$ 68,332,309

14 Any unexpended balances remaining in the
 15 appropriations for Unclassified – Surplus (fund 0589,
 16 appropriation 09700), Tuition Contract Program (fund
 17 0589, appropriation 16500), Capital Improvements –
 18 Surplus (fund 0589, appropriation 66100), Capital Outlay
 19 and Maintenance (fund 0589, appropriation 75500), and
 20 HEAPS Grant Program (fund 0589, appropriation 86700) at

21 the close of the fiscal year 2017 are hereby reappropriated
 22 for expenditure during the fiscal year 2018, with the
 23 exception of fund 0589, fiscal year 2017, appropriation
 24 16500 (\$24,991) which shall expire on June 30, 2017.

25 The above appropriation for Facilities Planning and
 26 Administration (fund 0589, appropriation 38600) is for
 27 operational expenses of the West Virginia Education,
 28 Research and Technology Park between construction and
 29 full occupancy.

30 The above appropriation for Higher Education Grant
 31 Program (fund 0589, appropriation 16400) shall be
 32 transferred to the Higher Education Grant Fund (fund 4933,
 33 org 0441) established by W.Va. Code §18C-5-3.

34 The above appropriation for Underwood-Smith
 35 Scholarship Program-Student Awards (fund 0589,
 36 appropriation 16700) shall be transferred to the Underwood-
 37 Smith Teacher Scholarship and Loan Assistance Fund (fund
 38 4922, org 0441) established by W.Va. Code §18C-4-1.

39 The above appropriation for PROMISE Scholarship –
 40 Transfer (fund 0589, appropriation 80000) shall be
 41 transferred to the PROMISE Scholarship Fund (fund 4296,
 42 org 0441) established by W.Va. Code §18C-7-7.

95-Higher Education Policy Commission –

Administration -

*West Virginia Network for Educational Telecomputing
 (WVNET)*

(WV Code Chapter 18B9)

Fund 0551 FY 2018 Org 0495

1	WVNET.....	16900	\$ 1,578,941
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96-West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2018 Org 0463

1	WVU School of Health Science –		
2	Eastern Division	05600	\$ 2,093,146
3	WVU – School of Health Sciences	17400	14,443,996
4	WVU – School of Health Sciences –		
5	Charleston Division	17500	2,152,767
6	Rural Health Outreach Programs...	37700	158,372
7	West Virginia University		
8	School of Medicine		
9	BRIM Subsidy	46000	<u>1,203,087</u>
10	Total.....		\$ 20,051,368

11 The above appropriation for Rural Health Outreach
 12 Programs (fund 0343, appropriation 37700) includes rural
 13 health activities and programs; rural residency development
 14 and education; and rural outreach activities.

15 The above appropriation for West Virginia University
 16 School of Medicine BRIM Subsidy (fund 0343,
 17 appropriation 46000) shall be paid to the Board of Risk and
 18 Insurance Management as a general revenue subsidy against
 19 the “Total Premium Billed” to the institution as part of the
 20 full cost of their malpractice insurance coverage.

97-West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2018 Org 0463

1	West Virginia University	45900	\$ 91,057,983
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2	Jackson's Mill	46100	472,960
3	West Virginia University		
4	Institute of Technology.....	47900	7,436,007
5	State Priorities – Brownfield		
6	Professional Development.....	53100	314,188
7	West Virginia University –		
8	Potomac State	99400	<u>3,650,589</u>
9	Total.....		\$ 102,931,727

10 From the above appropriation for Jackson's Mill (fund
 11 0344, appropriation 46100) \$250,000 shall be used for the
 12 West Virginia State Fire Training Academy.

98-Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2018 Org 0471

1	Marshall Medical School	17300	\$ 11,859,733
2	Rural Health Outreach		
3	Programs (R).....	37700	163,219
4	Forensic Lab	37701	235,104
5	Center for Rural Health.....	37702	155,964
6	Marshall University Medical School		
7	BRIM Subsidy	44900	<u>909,673</u>
8	Total.....		\$ 13,323,693

9 Any unexpended balance remaining in the appropriation
 10 for Rural Health Outreach Program (fund 0347,
 11 appropriation 37700) at the close of the fiscal year 2017 is
 12 hereby reappropriated for expenditure during the fiscal year
 13 2018, with the exception of fund 0347, fiscal year 2017,
 14 appropriation 37700 (\$3,352) which shall expire on June 30,
 15 2017.

16 The above appropriation for Rural Health Outreach
 17 Programs (fund 0347, appropriation 37700) includes rural

18 health activities and programs; rural residency development
19 and education; and rural outreach activities.

20 The above appropriation for Marshall University
21 Medical School BRIM Subsidy (fund 0347, appropriation
22 44900) shall be paid to the Board of Risk and Insurance
23 Management as a general revenue subsidy against the
24 "Total Premium Billed" to the institution as part of the full
25 cost of their malpractice insurance coverage.

99-Marshall University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2018 Org 0471

1	Marshall University	44800	\$42,171,166
2	Luke Lee Listening Language		
3	and Learning Lab.....	44801	93,441
4	Vista E-Learning (R)	51900	229,019
5	State Priorities – Brownfield		
6	Professional Development (R)	53100	309,606
7	Marshall University Graduate College		
8	Writing Project (R)	80700	25,412
9	WV Autism Training Center (R) ...	93200	<u>1,671,280</u>
10	Total.....		\$44,499,924

11 Any unexpended balances remaining in the
12 appropriations for Vista E-Learning (fund 0348,
13 appropriation 51900), State Priorities – Brownfield
14 Professional Development (fund 0348, appropriation
15 53100), Marshall University Graduate College Writing
16 Project (fund 0348, appropriation 80700), and WV Autism
17 Training Center (fund 0348, appropriation 93200) at the
18 close of the fiscal year 2017 are hereby reappropriated for
19 expenditure during the fiscal year 2018, with the exception
20 of fund 0348, fiscal year 2017, appropriation 51900
21 (\$4,982), fund 0348, fiscal year 2017, appropriation 53100
22 (\$6,687), fund 0348, fiscal year 2017, appropriation 80700

23 (\$415), and fund 0348, fiscal year 2017, appropriation
 24 93200 (\$35,906) which shall expire on June 30, 2017.

100-West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2018 Org 0476

1	West Virginia School of		
2	Osteopathic Medicine	17200	\$ 6,487,489
3	Rural Health Outreach		
4	Programs (R).....	37700	160,659
5	West Virginia School of		
6	Osteopathic Medicine		
7	BRIM Subsidy	40300	153,405
8	Rural Health Initiative –		
9	Medical Schools Support.....	58100	<u>386,457</u>
10	Total.....		\$ 7,188,010

11 Any unexpended balance remaining in the appropriation
 12 for Rural Health Outreach Programs (fund 0336,
 13 appropriation 37700) at the close of fiscal year 2017 is
 14 hereby reappropriated for expenditure during the fiscal year
 15 2018, with the exception of fund 0336, fiscal year 2017,
 16 appropriation 37700 (\$3,367) which shall expire on June 30,
 17 2017.

18 The above appropriation for Rural Health Outreach
 19 Programs (fund 0336, appropriation 37700) includes rural
 20 health activities and programs; rural residency development
 21 and education; and rural outreach activities.

22 The above appropriation for West Virginia School of
 23 Osteopathic Medicine BRIM Subsidy (fund 0336,
 24 appropriation 40300) shall be paid to the Board of Risk and
 25 Insurance Management as a general revenue subsidy against
 26 the “Total Premium Billed” to the institution as part of the
 27 full cost of their malpractice insurance coverage.

101-Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2018 Org 0482

1 Bluefield State College 40800 \$ 5,379,199

102-Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2018 Org 0483

1 Concord University 41000 \$ 8,278,077

103-Fairmont State University

(WV Code Chapter 18B)

Fund 0360 FY 2018 Org 0484

1 Fairmont State University 41400 \$ 14,579,417

104-Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2018 Org 0485

1 Glenville State College 42800 \$ 5,622,099

105-Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2018 Org 0486

1 Shepherd University 43200 \$ 9,360,954

106-West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2018 Org 0488

1 West Liberty University..... 43900 \$ 7,592,683

107-West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2018 Org 0490

1 West Virginia State University 44100 \$ 9,514,960

2 West Virginia State University

3 Land Grant Match..... 95600 1,584,947

4 Total..... \$ 11,099,907

5 Total TITLE II, Section 1 – General Revenue

6 (Including claims against the state).... \$ 4,225,050,000

1 **Sec. 2. Appropriations from state road fund.** — From
 2 the state road fund there are hereby appropriated
 3 conditionally upon the fulfillment of the provisions set forth
 4 in Article 2, Chapter 11B of the Code the following
 5 amounts, as itemized, for expenditure during the fiscal year
 6 2018.

DEPARTMENT OF TRANSPORTATION

108-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2018 Org 0802

		State
	Appro-	Road
	priation	Fund
1 Personal Services and		
2 Employee Benefits.....	00100	\$ 23,278,949
3 Current Expenses	13000	16,192,150
4 Repairs and Alterations.....	06400	144,000

5	Equipment.....	07000	1,080,000
6	Buildings.....	25800	10,000
7	Other Assets.....	69000	2,600,000
8	BRIM Premium.....	91300	<u>73,630</u>
9	Total.....		\$ 43,378,729

109-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2018 Org 0803

1	Debt Service	04000	\$ 24,000,000
2	Maintenance	23700	359,278,000
3	Nonfederal Improvements	23701	231,400,000
4	Inventory Revolving	27500	4,000,000
5	Equipment Revolving.....	27600	15,000,000
6	General Operations	27700	45,995,000
7	Interstate Construction.....	27800	100,000,000
8	Other Federal Aid Programs.....	27900	362,000,000
9	Appalachian Programs	28000	120,000,000
10	Highway Litter Control	28200	1,727,000
11	Courtesy Patrol	28201	<u>5,000,000</u>
12	Total		\$ 1,268,400,000

13 The above appropriations are to be expended in
 14 accordance with the provisions of Chapters 17 and 17C of
 15 the Code.

16 The Commissioner of Highways shall have the
 17 authority to operate revolving funds within the State Road
 18 Fund for the operation and purchase of various types of
 19 equipment used directly and indirectly in the construction
 20 and maintenance of roads and for the purchase of
 21 inventories and materials and supplies.

22 There is hereby appropriated in addition to the above
 23 appropriations, sufficient money for the payment of claims,
 24 accrued or arising during this budgetary period, to be paid
 25 in accordance with Sections 17 and 18, Article 2, Chapter
 26 14 of the code.

27 It is the intent of the Legislature to capture and match
 28 all federal funds available for expenditure on the
 29 Appalachian highway system at the earliest possible time.
 30 Therefore, should amounts in excess of those appropriated
 31 be required for the purposes of Appalachian programs,
 32 funds in excess of the amount appropriated may be made
 33 available upon recommendation of the commissioner and
 34 approval of the Governor. Further, for the purpose of
 35 Appalachian programs, funds appropriated by appropriation
 36 may be transferred to other appropriations upon
 37 recommendation of the commissioner and approval of the
 38 Governor.

110-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2018 Org 0808

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,585,201
3	Current Expenses	13000	338,278
4	Repairs and Alterations.....	06400	3,000
5	Equipment.....	07000	15,500
6	BRIM Premium.....	91300	<u>10,000</u>
7	Total.....		\$ 1,951,979
8	Total TITLE II, Section 2 – State Road Fund		
9	(Including claims against the state).....		<u>\$1,314,293,957</u>

1 **Sec. 3. Appropriations from other funds.** — From the
 2 funds designated there are hereby appropriated conditionally
 3 upon the fulfillment of the provisions set forth in Article 2,
 4 Chapter 11B of the Code the following amounts, as itemized,
 5 for expenditure during the fiscal year 2018.

LEGISLATIVE

111-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2018 Org 2300

	Appro-		Other
	priation		Funds
1 Personal Services and			
2 Employee Benefits.....	00100	\$	498,020
3 Current Expenses	13000		133,903
4 Repairs and Alterations.....	06400		1,000
5 Economic Loss Claim			
6 Payment Fund.....	33400		2,360,125
7 Other Assets.....	69000		<u>3,700</u>
8 Total.....		\$	2,996,748

JUDICIAL

112-Supreme Court –

Family Court Fund

(WV Code Chapter 51)

Fund 1763 FY 2018 Org 2400

1 Current Expenses	13000	\$	1,600,000
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113-Supreme Court –

Court Advanced Technology Subscription Fund

(WV Code Chapter 51)

Fund 1704 FY 2018 Org 2400

1 Current Expenses	13000	\$	500,000
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114-Supreme Court –

Adult Drug Court Participation Fund

(WV Code Chapter 62)

Fund 1705 FY 2018 Org 2400

1 Current Expenses 13000 \$ 300,000

EXECUTIVE

115-Governor's Office –

Minority Affairs Fund

(WV Code Chapter 5)

Fund 1058 FY 2018 Org 0100

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 172,800
3	Current Expenses	13000	503,200
4	Martin Luther King, Jr.		
5	Holiday Celebration.....	03100	<u>8,926</u>
6	Total.....		\$ 684,926

116-Auditor's Office –

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2018 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 749,297
3	Unclassified	09900	15,139
4	Current Expenses	13000	715,291
5	Repairs and Alterations.....	06400	2,600
6	Equipment.....	07000	426,741
7	Cost of Delinquent Land Sales	76800	<u>1,341,168</u>
8	Total.....		\$ 3,250,236

9 There is hereby appropriated from this fund, in addition
 10 to the above appropriations if needed, the necessary amount
 11 for the expenditure of funds other than Personal Services
 12 and Employee Benefits to enable the division to pay the

13 direct expenses relating to land sales as provided in Chapter
14 11A of the West Virginia Code.

15 The total amount of these appropriations shall be paid
16 from the special revenue fund out of fees and collections as
17 provided by law.

117-Auditor's Office –

Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2018 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 588,283
3	Current Expenses	13000	282,030
4	Repairs and Alterations.....	06400	6,000
5	Equipment.....	07000	10,805
6	Other Assets.....	69000	50,000
7	Statutory Revenue Distribution	74100	<u>2,000,000</u>
8	Total.....		\$ 2,937,118

9 There is hereby appropriated from this fund, in addition
10 to the above appropriations if needed, the amount necessary
11 to meet the transfer of revenue distribution requirements to
12 provide a proportionate share of rebates back to the general
13 fund of local governments based on utilization of the
14 program in accordance with W.Va. Code §6-9-2b.

118-Auditor's Office –

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2018 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,375,836
3	Unclassified	09900	31,866

4	Current Expenses	13000	1,463,830
5	Repairs and Alterations.....	06400	12,400
6	Equipment.....	07000	394,700
7	Other Assets.....	69000	<u>900,000</u>
8	Total.....		\$ 5,178,632

119-Auditor's Office – Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2018 Org 1200

1	Current Expenses	13000	\$ 160,000
2	Other Assets.....	69000	<u>100,000</u>
3	Total.....		\$ 260,000

4 Fifty percent of the deposits made into this fund shall be
 5 transferred to the Treasurer's Office – Technology Support
 6 and Acquisition Fund (fund 1329, org 1300) for expenditure
 7 for the purposes described in W.Va. Code §12-3-10c.

120-Auditor's Office –

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2018 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,667,397
3	Current Expenses	13000	2,303,622
4	Repairs and Alterations.....	06400	5,500
5	Equipment.....	07000	650,000
6	Other Assets.....	69000	308,886
7	Statutory Revenue Distribution	74100	<u>4,000,000</u>
8	Total.....		\$ 9,935,405

9 There is hereby appropriated from this fund, in addition
 10 to the above appropriations if needed, the amount necessary
 11 to meet the transfer and revenue distribution requirements
 12 to the Purchasing Improvement Fund (fund 2264), the

13 Hatfield-McCoy Regional Recreation Authority, and the
14 State Park Operating Fund (fund 3265) per W.Va. Code
15 §12-3-10d.

121-Auditor's Office –

Chief Inspector's Fund

(WV Code Chapter 6)

Fund 1235 FY 2018 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,405,512
3	Current Expenses	13000	765,915
4	Equipment.....	07000	<u>50,000</u>
5	Total.....		\$ 4,221,427

122-Auditor's Office –

Volunteer Fire Department Workers'

Compensation Premium Subsidy Fund

(WV Code Chapters 12 and 33)

Fund 1239 FY 2018 Org 1200

1	Volunteer Fire Department Workers'		
2	Compensation Subsidy	83200	\$ 2,500,000

123-Treasurer's Office

College Prepaid Tuition and Savings Program

Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2018 Org 1300

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 774,769

3	Unclassified	09900	14,000
4	Current Expenses	13000	<u>619,862</u>
5	Total.....		\$ 1,408,631

124-Department of Agriculture –

Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,244,245
3	Unclassified	09900	37,425
4	Current Expenses	13000	1,356,184
5	Repairs and Alterations.....	06400	58,500
6	Equipment.....	07000	36,209
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 3,742,563

125-Department of Agriculture –

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 73,807
3	Unclassified	09900	10,476
4	Current Expenses	13000	<u>963,404</u>
5	Total.....		\$ 1,047,687

126-Department of Agriculture –

General John McCausland Memorial Farm Fund

(WV Code Chapter 19)

Fund 1409 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 67,000
3	Unclassified	09900	2,100
4	Current Expenses	13000	89,500
5	Repairs and Alterations.....	06400	36,400
6	Equipment.....	07000	<u>15,000</u>
7	Total.....		\$ 210,000

8 The above appropriations shall be expended in
9 accordance with Article 26, Chapter 19 of the Code.

127-Department of Agriculture –

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 309,248
3	Unclassified	09900	15,173
4	Current Expenses	13000	1,167,464
5	Repairs and Alterations.....	06400	238,722
6	Equipment.....	07000	249,393
7	Other Assets.....	69000	<u>20,000</u>
8	Total.....		\$ 2,000,000

128-Department of Agriculture –

Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 958,864
3	Unclassified	09900	45,807
4	Current Expenses	13000	3,410,542
5	Repairs and Alterations.....	06400	128,500
6	Equipment.....	07000	10,000

7	Other Assets.....	69000		<u>27,000</u>
8	Total.....			\$ 4,580,713

129-Department of Agriculture –

Integrated Predation Management Fund

(WV Code Chapter 7)

Fund 1465 FY 2018 Org 1400

1	Current Expenses	13000	\$	100,000
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130-Department of Agriculture –

West Virginia Spay Neuter Assistance Fund

(WV Code Chapter 19)

Fund 1481 FY 2018 Org 1400

1	Current Expenses	13000	\$	100
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131-Department of Agriculture –

Veterans and Warriors to Agriculture Fund

(WV Code Chapter 19)

Fund 1483 FY 2018 Org 1400

1	Current Expenses	13000	\$	7,500
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132-Department of Agriculture –

State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2018 Org 1400

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,169,194
3	Unclassified	09900		17,000

Ch. 1]	APPROPRIATIONS	2239
4	Current Expenses	13000 707,223
5	Repairs and Alterations.....	06400 57,500
6	Equipment.....	07000 1,000
7	Buildings.....	25800 1,000
8	Other Assets.....	69000 10,000
9	Land	73000 <u>1,000</u>
10	Total.....	\$ 1,963,917

133-Attorney General –

Antitrust Enforcement Fund

(WV Code Chapter 47)

Fund 1507 FY 2018 Org 1500

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 356,900
3	Current Expenses	13000	148,803
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	<u>1,000</u>
6	Total.....		\$ 507,703

134-Attorney General –

Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2018 Org 1500

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 210,226
3	Current Expenses	13000	54,615
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	<u>1,000</u>
6	Total.....		\$ 266,841

135-Attorney General –

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2018 Org 1500

1	Current Expenses	13000	\$	901,135
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136-Secretary of State –

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2018 Org 1600

1	Personal Services and			
2	Employee Benefits.....	00100	\$	991,051
3	Unclassified	09900		4,524
4	Current Expenses	13000		<u>8,036</u>
5	Total.....		\$	1,003,611

137-Secretary of State –

General Administrative Fees Account

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2018 Org 1600

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,769,898
3	Unclassified	09900		25,529
4	Current Expenses	13000		796,716
5	Technology Improvements	59900		<u>750,000</u>
6	Total.....		\$	4,342,143

DEPARTMENT OF ADMINISTRATION

138-Department of Administration –

Office of the Secretary –

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2018 Org 0201

1	Tobacco Settlement Securitization		
2	Trustee Pass Thru	65000	\$ 80,000,000

139-Department of Administration –

Office of the Secretary –

Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2018 Org 0201

1	Current Expenses	13000	\$ 34,638,000
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2 The above appropriation for Current Expenses (fund
3 2044, appropriation 13000) shall be transferred to the
4 Consolidated Public Retirement Board – West Virginia
5 Teachers’ Retirement System Employers Accumulation
6 Fund (fund 2601).

140-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2018 Org 0210

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 21,378,322
3	Unclassified	09900	382,354
4	Current Expenses	13000	13,378,766
5	Repairs and Alterations.....	06400	1,000
6	Equipment.....	07000	2,050,000
7	Other Assets.....	69000	<u>1,045,000</u>
8	Total.....		\$ 38,235,442

9 The total amount of these appropriations shall be paid
10 from a special revenue fund out of collections made by the

11 Division of Information Services and Communications as
12 provided by law.

13 Each spending unit operating from the General Revenue
14 Fund, from special revenue funds or receiving
15 reimbursement for postage from the federal government
16 shall be charged monthly for all postage meter service and
17 shall reimburse the revolving fund monthly for all such
18 amounts.

141-Division of Purchasing –

Vendor Fee Fund

(WV Code Chapter 5A)

Fund 2263 FY 2018 Org 0213

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 655,208
3	Unclassified	09900	2,382
4	Current Expenses	13000	238,115
5	Repairs and Alterations.....	06400	5,000
6	Equipment.....	07000	2,500
7	Other Assets.....	69000	2,500
8	BRIM Premium.....	91300	<u>810</u>
9	Total.....		\$ 906,515

142-Division of Purchasing –

Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2018 Org 0213

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 540,889
3	Unclassified	09900	5,562
4	Current Expenses	13000	393,066
5	Repairs and Alterations.....	06400	500
6	Equipment.....	07000	500

Fund 2440 FY 2018 Org 0222

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,942,590
3	Unclassified	09900	51,418
4	Current Expenses	13000	1,062,813
5	Repairs and Alterations.....	06400	5,000
6	Equipment.....	07000	20,000
7	Other Assets.....	69000	<u>60,000</u>
8	Total.....		\$ 5,141,821
9	The total amount of these appropriations shall be paid		
10	from a special revenue fund out of fees collected by the		
11	Division of Personnel.		

146-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2018 Org 0228

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 249,242
3	Unclassified	09900	4,023
4	Current Expenses	13000	297,528
5	Repairs and Alterations.....	06400	600
6	Equipment.....	07000	500
7	Other Assets.....	69000	<u>500</u>
8	Total.....		\$ 552,393

*147-Office of Technology –**Chief Technology Officer Administration Fund*

(WV Code Chapter 5A)

Fund 2531 FY 2018 Org 0231

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 399,911
3	Unclassified	09900	6,949
4	Current Expenses	13000	227,116

5	Repairs and Alterations.....	06400	1,000
6	Equipment.....	07000	50,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 694,976

9 From the above fund, the provisions of W.Va. Code
 10 §11B-2-18 shall not operate to permit expenditures in
 11 excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

148-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2018 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,464,328
3	Current Expenses	13000	282,202
4	Repairs and Alterations.....	06400	<u>53,000</u>
5	Total.....		\$ 1,799,530

149-Division of Forestry –

Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2018 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 224,433
3	Current Expenses	13000	87,036
4	Repairs and Alterations.....	06400	<u>11,250</u>
5	Total.....		\$ 322,719

150-Division of Forestry –

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2018 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 859,626
3	Current Expenses	13000	<u>435,339</u>
4	Total.....		\$ 1,294,965

151-Geological and Economic Survey –

Geological and Analytical Services Fund

(WV Code Chapter 29)

Fund 3100 FY 2018 Org 0306

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 37,966
3	Unclassified	09900	2,182
4	Current Expenses	13000	141,631
5	Repairs and Alterations.....	06400	50,000
6	Equipment.....	07000	20,000
7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$ 261,779

9 The above appropriations shall be used in accordance
10 with W.Va. Code §29-2-4.

152-West Virginia Development Office –

Department of Commerce –

Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2018 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,528,219
3	Unclassified	09900	30,000
4	Current Expenses	13000	<u>1,482,760</u>
5	Total.....		\$ 3,040,979

*153-West Virginia Development Office –
Office of Coalfield Community Development*

(WV Code Chapter 5B)

Fund 3162 FY 2018 Org 0307

1	Personal Services and			
2	Employee Benefits.....	00100	\$	430,724
3	Unclassified	09900		8,300
4	Current Expenses	13000		<u>399,191</u>
5	Total.....		\$	838,215

154-Division of Labor –

HVAC Fund

(WV Code Chapter 21)

Fund 3186 FY 2018 Org 0308

1	Personal Services and			
2	Employee Benefits.....	00100	\$	300,000
3	Unclassified	09900		4,000
4	Current Expenses	13000		85,000
5	Repairs and Alterations.....	06400		1,500
6	Buildings.....	25800		1,000
7	BRIM Premium.....	91300		<u>8,500</u>
8	Total.....		\$	400,000

155-Division of Labor –

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2018 Org 0308

1	Personal Services and			
2	Employee Benefits.....	00100	\$	3,019,374
3	Unclassified	09900		21,589

4	Current Expenses	13000	597,995
5	Repairs and Alterations.....	06400	15,000
6	Buildings.....	25800	5,000
7	BRIM Premium.....	91300	<u>8,500</u>
8	Total.....		\$ 3,667,458

*156-Division of Labor –**Elevator Safety Fund*

(WV Code Chapter 21)

Fund 3188 FY 2018 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 376,772
3	Unclassified	09900	2,261
4	Current Expenses	13000	44,112
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>8,500</u>
8	Total.....		\$ 434,645

*157-Division of Labor –**Steam Boiler Fund*

(WV Code Chapter 21)

Fund 3189 FY 2018 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 80,000
3	Unclassified	09900	1,000
4	Current Expenses	13000	15,000
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>1,000</u>
8	Total.....		\$ 100,000

*158-Division of Labor –**Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2018 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 184,380
3	Unclassified	09900	1,380
4	Current Expenses	13000	49,765
5	Repairs and Alterations.....	06400	1,500
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>8,500</u>
8	Total.....		\$ 246,525

*159-Division of Labor –**Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2018 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 179,316
3	Unclassified	09900	1,281
4	Current Expenses	13000	44,520
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>8,500</u>
8	Total.....		\$ 236,617

*160-Division of Labor –**State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2018 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 283,768
3	Unclassified	09900	1,847
4	Current Expenses	13000	43,700
5	Repairs and Alterations.....	06400	1,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>3,404</u>
8	Total.....		\$ 334,719

161-Division of Labor –

Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2018 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 424,965
3	Current Expenses	13000	227,000
4	Repairs and Alterations.....	06400	28,000
5	Equipment.....	07000	15,000
6	BRIM Premium.....	91300	<u>8,500</u>
7	Total.....		\$ 703,465

162-Division of Labor –

Bedding and Upholstery Fund

(WV Code Chapter 21)

Fund 3198 FY 2018 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 150,000
3	Unclassified	09900	2,000
4	Current Expenses	13000	43,000
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	<u>2,000</u>
8	Total.....		\$ 200,000

163-Division of Labor –

Psychophysiological Examiners Fund

(WV Code Chapter 21)

Fund 3199 FY 2018 Org 0308

1	Current Expenses	13000	\$	4,000
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164-Division of Natural Resources –

License Fund – Wildlife Resources

(WV Code Chapter 20)

Fund 3200 FY 2018 Org 0310

1	Wildlife Resources.....	02300	\$	5,551,895
2	Administration	15500		1,387,974
3	Capital Improvements and			
4	Land Purchase (R)	24800		1,387,973
5	Law Enforcement.....	80600		<u>5,551,895</u>
6	Total.....		\$	13,879,737

7 The total amount of these appropriations shall be paid
8 from a special revenue fund out of fees collected by the
9 Division of Natural Resources.

10 Any unexpended balance remaining in the appropriation for
11 Capital Improvements and Land Purchase (fund 3200,
12 appropriation 24800) at the close of the fiscal year 2017 is hereby
13 reappropriated for expenditure during the fiscal year 2018.

165-Division of Natural Resources –

Natural Resources Game Fish and Aquatic Life Fund

(WV Code Chapter 22)

Fund 3202 FY 2018 Org 0310

1	Current Expenses	13000	\$	125,000
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*166-Division of Natural Resources –**Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2018 Org 0310

1	Personal Services and			
2	Employee Benefits.....	00100	\$	678,109
3	Current Expenses	13000		201,930
4	Equipment.....	07000		<u>106,615</u>
5	Total.....		\$	986,654

*167-Division of Natural Resources –**Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2018 Org 0310

1	Personal Services and			
2	Employee Benefits.....	00100	\$	289,167
3	Current Expenses	13000		157,864
4	Repairs and Alterations.....	06400		15,016
5	Equipment.....	07000		8,300
6	Buildings.....	25800		8,300
7	Other Assets.....	69000		2,000,000
8	Land	73000		<u>31,700</u>
9	Total.....		\$	2,510,347

*168-Division of Natural Resources –**Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2018 Org 0310

1	Personal Services and			
2	Employee Benefits.....	00100	\$	62,704

Ch. 1]	APPROPRIATIONS	2253
3	Current Expenses	13000 64,778
4	Equipment.....	07000 1,297
5	Buildings.....	25800 <u>6,969</u>
6	Total.....	\$ 135,748

169-Division of Natural Resources –

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2018 Org 0310

1	Unclassified	09900 \$ 200
2	Current Expenses	13000 <u>19,800</u>
3	Total.....	\$ 20,000

170-Division of Miners' Health, Safety and Training –

Special Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2018 Org 0314

1	Personal Services and	
2	Employee Benefits.....	00100 \$ 471,606
3	WV Mining Extension Service	02600 150,000
4	Unclassified	09900 40,985
5	Current Expenses	13000 1,954,557
6	Buildings.....	25800 481,358
7	Land	73000 <u>1,000,000</u>
8	Total.....	\$ 4,098,506

171-Department of Commerce –

Office of the Secretary –

Broadband Enhancement Fund

Fund 3013 FY 2018 Org 0327

1	Current Expenses	13000 \$ 1,887,000
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*172-Office of Energy –
Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2018 Org 0328

1	Energy Assistance – Total	64700	\$	62,000
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DEPARTMENT OF EDUCATION

*173-State Board of Education –
Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2018 Org 0402

1	Personal Services and			
2	Employee Benefits.....	00100	\$	134,000
3	Unclassified	09900		1,000
4	Current Expenses	13000		<u>265,000</u>
5	Total.....		\$	400,000

*174-State Board of Education –
School Construction Fund*

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2018 Org 0402

1	SBA Construction Grants	24000	\$	35,845,818
2	Directed Transfer	70000		<u>1,371,182</u>
3	Total.....		\$	37,217,000

4 The above appropriation for Directed Transfer (fund
5 3951, appropriation 70000) shall be transferred to the
6 School Building Authority Fund (3959) for the
7 administrative expenses of the School Building Authority.

175-School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2018 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,085,152
3	Current Expenses	13000	246,880
4	Repairs and Alterations.....	06400	13,150
5	Equipment.....	07000	<u>26,000</u>
6	Total.....		\$ 1,371,182

DEPARTMENT OF EDUCATION AND THE ARTS*176-Office of the Secretary –**Lottery Education Fund Interest Earnings –**Control Account*

(WV Code Chapter 29)

Fund 3508 FY 2018 Org 0431

- 1 Any unexpended balance remaining in the appropriation
 2 for Educational Enhancements (fund 3508, appropriation
 3 69500) at the close of the fiscal year 2017 is hereby
 4 reappropriated for expenditure during the fiscal year 2018.

*177-Division of Culture and History –**Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2018 Org 0432

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 211,418
3	Current Expenses	13000	862,241
4	Equipment.....	07000	75,000
5	Buildings.....	25800	1,000

6	Other Assets.....	69000	52,328
7	Land.....	73000	<u>1,000</u>
8	Total.....		\$ 1,202,987

178-State Board of Rehabilitation –

Division of Rehabilitation Services –

West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

Fund 8664 FY 2018 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 119,738
3	Current Expenses.....	13000	2,180,122
4	Repairs and Alterations.....	06400	85,500
5	Equipment.....	07000	220,000
6	Buildings.....	25800	150,000
7	Other Assets.....	69000	<u>150,000</u>
8	Total.....		\$ 2,905,360

DEPARTMENT OF ENVIRONMENTAL PROTECTION

179-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2018 Org 0312

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 802,209
3	Current Expenses.....	13000	2,061,057
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	5,000
6	Other Assets.....	69000	<u>4,403</u>
7	Total.....		\$ 2,873,669

180-Division of Environmental Protection –

Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 692,784
3	Current Expenses	13000	195,569
4	Repairs and Alterations.....	06400	500
5	Equipment.....	07000	1,505
6	Unclassified	09900	3,072
7	Other Assets.....	69000	<u>2,000</u>
8	Total.....		\$ 895,430

*181-Division of Environmental Protection –**Air Pollution Education and Environment Fund*

(WV Code Chapter 22)

Fund 3024 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 935,324
3	Current Expenses	13000	1,238,610
4	Repairs and Alterations.....	06400	13,000
5	Equipment.....	07000	53,105
6	Unclassified	09900	2,900
7	Other Assets.....	69000	<u>20,000</u>
8	Total.....		\$ 2,262,939

*182-Division of Environmental Protection –**Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,350,829
3	Current Expenses	13000	16,402,506
4	Repairs and Alterations.....	06400	79,950

5	Equipment.....	07000	130,192
6	Other Assets.....	69000	<u>32,000</u>
7	Total.....		\$ 17,995,477

183-Division of Environmental Protection –

Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 143,906
3	Current Expenses	13000	<u>356,094</u>
4	Total.....		\$ 500,000

184-Division of Environmental Protection –

Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,321,164
3	Current Expenses	13000	1,257,758
4	Repairs and Alterations.....	06400	20,600
5	Equipment.....	07000	8,000
6	Unclassified	09900	44,700
7	Other Assets.....	69000	<u>15,000</u>
8	Total.....		\$ 4,667,222

185-Division of Environmental Protection –

Mining and Reclamation Operations Fund

(WV Code Chapter 22)

Fund 3324 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,035,449

*188-Division of Environmental Protection –**Solid Waste Reclamation and
Environmental Response Fund*

(WV Code Chapter 22)

Fund 3332 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 793,967
3	Current Expenses	13000	3,605,237
4	Repairs and Alterations.....	06400	25,000
5	Equipment.....	07000	31,500
6	Unclassified	09900	22,900
7	Other Assets.....	69000	<u>1,000</u>
8	Total.....		\$ 4,479,604

*189-Division of Environmental Protection –**Solid Waste Enforcement Fund*

(WV Code Chapter 22)

Fund 3333 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,041,424
3	Current Expenses	13000	1,020,229
4	Repairs and Alterations.....	06400	30,930
5	Equipment.....	07000	23,356
6	Unclassified	09900	37,145
7	Other Assets.....	69000	<u>25,554</u>
8	Total.....		\$ 4,178,638

*190-Division of Environmental Protection –**Air Pollution Control Fund*

(WV Code Chapter 22)

Fund 3336 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 5,667,421
3	Current Expenses	13000	1,518,704
4	Repairs and Alterations.....	06400	84,045
5	Equipment.....	07000	115,356
6	Unclassified	09900	5,580
7	Other Assets.....	69000	<u>52,951</u>
8	Total.....		\$ 7,444,057

*191-Division of Environmental Protection –**Environmental Laboratory**Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 295,444
3	Current Expenses	13000	216,288
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	6,500
6	Unclassified	09900	1,120
7	Other Assets.....	69000	<u>179,000</u>
8	Total.....		\$ 699,352

*192-Division of Environmental Protection –**Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2018 Org 0313

1	Current Expenses	13000	\$ 9,298,205
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*193-Division of Environmental Protection –**Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2018 Org 0313

1	Current Expenses	13000	\$	60,000
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*194-Division of Environmental Protection –**Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2018 Org 0313

1	Personal Services and			
2	Employee Benefits.....	00100	\$	646,395
3	Current Expenses	13000		2,735,112
4	Repairs and Alterations.....	06400		800
5	Equipment.....	07000		500
6	Unclassified	09900		400
7	Other Assets.....	69000		<u>2,500</u>
8	Total.....		\$	3,385,707

*195-Division of Environmental Protection –**Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2018 Org 0313

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,228,345
3	Current Expenses	13000		638,729
4	Repairs and Alterations.....	06400		30,112
5	Equipment.....	07000		23,725
6	Unclassified	09900		1,180
7	Other Assets.....	69000		<u>15,500</u>
8	Total.....		\$	1,937,591

*196-Oil and Gas Conservation Commission –**Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2018 Org 0315

1	Personal Services and			
2	Employee Benefits.....	00100	\$	157,224
3	Current Expenses	13000		161,225
4	Repairs and Alterations.....	06400		1,000
5	Equipment.....	07000		9,481
6	Other Assets.....	69000		<u>1,500</u>
7	Total.....		\$	330,430

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES***197-Division of Health –**Ryan Brown Addiction Prevention and Recovery Fund*

(WV Code Chapter 19)

Fund 5111 FY 2018 Org 0506

1	Current Expenses	13000	\$	22,000,000
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*198-Division of Health –**The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2018 Org 0506

1	Personal Services and			
2	Employee Benefits.....	00100	\$	876,771
3	Unclassified	09900		15,500
4	Current Expenses	13000		<u>1,257,788</u>
5	Total.....		\$	2,150,059

*199-Division of Health –**Hospital Services Revenue Account**Special Fund**Capital Improvement, Renovation and Operations*

(WV Code Chapter 16)

Fund 5156 FY 2018 Org 0506

1	Institutional Facilities Operations..	33500	\$ 56,708,911
2	Medical Services		
3	Trust Fund – Transfer	51200	<u>27,800,000</u>
4	Total.....		\$ 84,508,911

5 The total amount of these appropriations shall be paid
6 from the Hospital Services Revenue Account Special Fund
7 created by W.Va. Code §16-1-13, and shall be used for
8 operating expenses and for improvements in connection
9 with existing facilities.

10 Additional funds have been appropriated in fund 0525,
11 fiscal year 2018, organization 0506, for the operation of the
12 institutional facilities. The Secretary of the Department of
13 Health and Human Resources is authorized to utilize up to
14 ten percent of the funds from the appropriation for
15 Institutional Facilities Operations to facilitate cost effective
16 and cost saving services at the community level.

17 Necessary funds from the above appropriation may be
18 used for medical facilities operations, either in connection
19 with this fund or in connection with the appropriation
20 designated Institutional Facilities Operations in the
21 Consolidated Medical Services Fund (fund 0525,
22 organization 0506).

23 From the above appropriation to Institutional Facilities
24 Operations, together with available funds from the
25 Consolidated Medical Services Fund (fund 0525,

26 appropriation 33500) on July 1, 2017, the sum of \$160,000
 27 shall be transferred to the Department of Agriculture – Land
 28 Division – Farm Operating Fund (1412) as advance
 29 payment for the purchase of food products; actual payments
 30 for such purchases shall not be required until such credits
 31 have been completely expended.

200-Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2018 Org 0506

1	Personal Services and			
2	Employee Benefits.....	00100	\$	862,657
3	Unclassified	09900		18,114
4	Current Expenses	13000		<u>930,716</u>
5	Total.....		\$	1,811,487

201-Division of Health –

The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172 FY 2018 Org 0506

1	Personal Services and			
2	Employee Benefits.....	00100	\$	605,950
3	Unclassified	09900		7,113
4	Current Expenses	13000		<u>98,247</u>
5	Total.....		\$	711,310

202-Division of Health –

Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2018 Org 0506

1	Current Expenses	13000	\$	13,800
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203-Division of Health –

Lead Abatement Account

(WV Code Chapter 16)

Fund 5204 FY 2018 Org 0506

1	Personal Services and			
2	Employee Benefits.....	00100	\$	19,100
3	Unclassified	09900		373
4	Current Expenses	13000		<u>17,875</u>
5	Total.....		\$	37,348

204-Division of Health –

West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2018 Org 0506

1	Personal Services and			
2	Employee Benefits.....	00100	\$	707,545
3	Unclassified	09900		223,999
4	Current Expenses	13000		<u>27,993,549</u>
5	Total.....		\$	28,925,093

205-Division of Health –

Tobacco Control Special Fund

(WV Code Chapter 16)

Fund 5218 FY 2018 Org 0506

1	Current Expenses	13000	\$	7,579
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206-West Virginia Health Care Authority –

Health Care Cost Review Fund

(WV Code Chapter 16)

Fund 5375 FY 2018 Org 0507

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,033,821
3	Hospital Assistance.....	02500	600,000
4	Unclassified	09900	67,000
5	Current Expenses	13000	2,837,945
6	Repairs and Alterations.....	06400	25,000
7	Equipment.....	07000	50,000
8	Buildings.....	25800	25,000
9	Other Assets.....	69000	<u>100,000</u>
10	Total.....		\$ 6,738,766

11 The above appropriation is to be expended in
 12 accordance with and pursuant to the provisions of W.Va.
 13 Code §16-29B and from the special revolving fund
 14 designated Health Care Cost Review Fund.

15 The Health Care Authority is authorized to transfer up
 16 to \$1,500,000 from fund 5375 to the West Virginia Health
 17 Information Network Account (fund 5380) as authorized
 18 per W.Va. Code §16-29G-4.

207-West Virginia Health Care Authority –

Certificate of Need Program Fund

(WV Code Chapter 16)

Fund 5377 FY 2018 Org 0507

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 805,113
3	Current Expenses	13000	<u>774,967</u>
4	Total.....		\$ 1,580,080

208-West Virginia Health Care Authority –

West Virginia Health Information Network Account

(WV Code Chapter 16)

Fund 5380 FY 2018 Org 0507

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 729,000
3	Unclassified	09900	20,000
4	Current Expenses	13000	1,251,000
5	Technology		
6	Infrastructure Network	35100	<u>3,500,000</u>
7	Total.....		\$ 5,500,000

*209-Division of Human Services –**Health Care Provider Tax –*

Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2018 Org 0511

1	Medical Services.....	18900	\$198,381,008
2	Medical Services		
3	Administrative Costs	78900	<u>418,992</u>
4	Total.....		\$198,800,000

5 The above appropriation for Medical Services
6 Administrative Costs (fund 5090, appropriation 78900)
7 shall be transferred to a special revenue account in the
8 treasury for use by the Department of Health and Human
9 Resources for administrative purposes. The remainder of all
10 moneys deposited in the fund shall be transferred to the
11 West Virginia Medical Services Fund (fund 5084.)

*210-Division of Human Services –**Child Support Enforcement Fund*

(WV Code Chapter 48A)

Fund 5094 FY 2018 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 24,809,509
3	Unclassified	09900	380,000
4	Current Expenses	13000	<u>12,810,491</u>
5	Total.....		\$ 38,000,000

211-Division of Human Services –

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2018 Org 0511

1	Medical Services.....	18900	\$ 56,318,952
2	Medical Services		
3	Administrative Costs	78900	<u>548,723</u>
4	Total.....		\$ 56,867,675

5 The above appropriation to Medical Services shall be
6 used to provide state match of Medicaid expenditures as
7 defined and authorized in subsection (c) of W.Va. Code §9-
8 4A-2a. Expenditures from the fund are limited to the
9 following: payment of backlogged billings, funding for
10 services to future federally mandated population groups and
11 payment of the required state match for Medicaid
12 disproportionate share payments. The remainder of all
13 moneys deposited in the fund shall be transferred to the
14 Division of Human Services accounts.

212-Division of Human Services –

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2018 Org 0511

1	Unclassified	09900	\$ 7,000
2	Current Expenses	13000	<u>693,000</u>
3	Total.....		\$ 700,000

213-Division of Human Services –

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2018 Org 0511

1	Current Expenses	13000	\$	900,000
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214-Division of Human Services –

West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)

Fund 5467 FY 2018 Org 0511

1	Current Expenses	13000	\$	1,000,000
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215-Division of Human Services –

West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2018 Org 0511

1	Current Expenses	13000	\$	2,000,000
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216-Division of Human Services –

Marriage Education Fund

(WV Code Chapter 9)

Fund 5490 FY 2018 Org 0511

1	Personal Services and			
2	Employee Benefits.....	00100	\$	10,000
3	Current Expenses	13000		25,000
4	Total.....		\$	35,000

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

217-Department of Military Affairs and Public Safety –

Office of the Secretary –

Law-Enforcement, Safety and Emergency Worker

Funeral Expense Payment Fund

(WV Code Chapter 15)

Fund 6003 FY 2018 Org 0601

1	Current Expenses	13000	32,000
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218-State Armory Board –

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2018 Org 0603

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,643,528
3	Current Expenses	13000	650,000
4	Repairs and Alterations.....	06400	485,652
5	Equipment.....	07000	300,000
6	Buildings.....	25800	770,820
7	Other Assets.....	69000	100,000
8	Land	73000	<u>50,000</u>
9	Total.....		<u>\$ 4,000,000</u>

10 From the above appropriations, the Adjutant General
 11 may receive and expend funds to conduct operations and
 12 activities to include functions of the Military Authority. The
 13 Adjutant General may transfer funds between
 14 appropriations, except no funds may be transferred to
 15 Personal Services and Employee Benefits (fund 6057,
 16 appropriation 00100).

*219-Division of Homeland Security and
Emergency Management –*

West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2018 Org 0606

1	Current Expenses	13000	\$ 2,000,000
2	Any unexpended balance remaining in the appropriation		
3	for Unclassified – Total (fund 6295, appropriation 09600)		
4	at the close of fiscal year 2017 is hereby reappropriated for		
5	expenditure during the fiscal year 2018.		

220-West Virginia Division of Corrections –

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2018 Org 0608

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,013,793
3	Unclassified	09900	9,804
4	Current Expenses	13000	758,480
5	Equipment.....	07000	30,000
6	Other Assets.....	69000	<u>40,129</u>
7	Total.....		\$ 1,852,206

221-West Virginia State Police –

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2018 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,786,923

*224-West Virginia State Police –**Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 2018 Org 0612

1	Current Expenses	13000	\$	225,000
2	Repairs and Alterations.....	06400		20,000
3	Equipment.....	07000		250,000
4	Buildings.....	25800		40,000
5	Other Assets.....	69000		45,000
6	BRIM Premium.....	91300		<u>5,000</u>
7	Total.....		\$	585,000

*225-West Virginia State Police –**Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2018 Org 0612

1	Personal Services and			
2	Employee Benefits.....	00100	\$	236,881
3	Current Expenses	13000		51,443
4	Repairs and Alterations.....	06400		500
5	Equipment.....	07000		300,500
6	Other Assets.....	69000		300,500
7	BRIM Premium.....	91300		<u>18,524</u>
8	Total.....		\$	908,348

*226-West Virginia State Police –**Bail Bond Enforcer Account*

(WV Code Chapter 15)

Fund 6532 FY 2018 Org 0612

1	Current Expenses	13000	\$	8,300
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*227-West Virginia State Police –**State Police Academy Post Exchange*

(WV Code Chapter 15)

Fund 6544 FY 2018 Org 0612

1	Current Expenses	13000	\$ 160,000
2	Repairs and Alterations.....	06400	<u>40,000</u>
3	Total.....		\$ 200,000

228-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2018 Org 0615

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,971,039
3	Debt Service.....	04000	9,000,000
4	Current Expenses	13000	495,852
5	Repairs and Alterations.....	06400	4,000
6	Equipment.....	07000	<u>1,743</u>
7	Total.....		\$ 11,472,634

*229-Fire Commission –**Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2018 Org 0619

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,033,683
3	Unclassified	09900	3,800
4	Current Expenses	13000	1,249,550
5	Repairs and Alterations.....	06400	58,500
6	Equipment.....	07000	140,800
7	Other Assets.....	69000	12,000
8	BRIM Premium.....	91300	<u>50,000</u>
9	Total.....		\$ 4,548,333

*230-Division of Justice and Community Services –**WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2018 Org 0620

1	Personal Services and			
2	Employee Benefits.....	00100	\$	152,000
3	Unclassified	09900		750
4	Current Expenses	13000		1,846,250
5	Repairs and Alterations.....	06400		<u>1,000</u>
6	Total.....		\$	2,000,000

*231-Division of Justice and Community Services –**Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2018 Org 0620

1	Personal Services and			
2	Employee Benefits.....	00100	\$	21,865
3	Current Expenses	13000		<u>1,478,135</u>
4	Total.....		\$	1,500,000

*232-Division of Justice and Community Services –**Second Chance Driver's License Program Account*

(WV Code Chapter 17B)

Fund 6810 FY 2018 Org 0620

1	Current Expenses	13000	\$	25,000
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DEPARTMENT OF REVENUE*233-Division of Financial Institutions*

(WV Code Chapter 31A)

Fund 3041 FY 2018 Org 0303

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,503,751
3	Unclassified	09900	1,000
4	Current Expenses	13000	695,225
5	Repairs and Alterations.....	06400	100
6	Equipment.....	07000	14,000
7	Other Assets.....	69000	<u>15,000</u>
8	Total.....		\$ 3,229,076

234-Office of the Secretary –

State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2018 Org 0701

1	Directed Transfer	70000	\$ 20,000,000
2	The above appropriation for Directed Transfer shall be		
3	transferred to the Consolidated Public Retirement Board –		
4	West Virginia Public Employees Retirement System		
5	Employers Accumulation Fund (fund 2510).		

235-Tax Division –

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2018 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 23,459
3	Current Expenses	13000	<u>7,717</u>
4	Total.....		\$ 31,176

236-Tax Division –

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2018 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 655,203
3	Unclassified	09900	9,500
4	Current Expenses	13000	273,297
5	Repairs and Alterations.....	06400	7,000
6	Equipment.....	07000	<u>5,000</u>
7	Total.....		\$ 950,000

*237-Tax Division –**Wine Tax Administration Fund*

(WV Code Chapter 60)

Fund 7087 FY 2018 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 254,162
3	Current Expenses	13000	<u>5,406</u>
4	Total.....		\$ 259,568

*238-Tax Division –**Reduced Cigarette Ignition Propensity**Standard and Fire Prevention Act Fund*

(WV Code Chapter 47)

Fund 7092 FY 2018 Org 0702

1	Current Expenses	13000	\$ 35,000
2	Equipment.....	07000	<u>15,000</u>
3	Total.....		\$ 50,000

*239-Tax Division –**Local Sales Tax and Excise Tax**Administration Fund*

(WV Code Chapter 11)

Fund 7099 FY 2018 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,508,968
3	Unclassified	09900	10,000
4	Current Expenses	13000	784,563
5	Repairs and Alterations.....	06400	1,000
6	Equipment.....	07000	<u>5,000</u>
7	Total.....		\$ 2,309,531

*240-State Budget Office –**Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2018 Org 0703

1	Public Employees Insurance		
2	Reserve Fund – Transfer.....	90300	\$ 6,800,000
3	The above appropriation for Public Employees		
4	Insurance Reserve Fund – Transfer shall be transferred to		
5	the Medical Services Trust Fund (fund 5185, org 0511) for		
6	expenditure.		

*241-State Budget Office –**Public Employees Insurance Agency Financial Stability Fund*

(WV Code Chapter 11B)

Fund 7401 FY 2018 Org 0703

1	Retiree Premium Offset	80101	\$ 5,000,000
2	PEIA Reserve.....	80102	<u>10,000,000</u>
3	Total.....		\$ 15,000,000

4 The above appropriation shall be transferred to special
5 revenue funds to be utilized by the West Virginia Public

6 Employees Insurance Agency for the purposes of permitting
 7 the PEIA Finance Board to offset \$5 million in retiree
 8 premium increases. Additionally, \$10 million will be put
 9 into a reserve fund to stabilize and preserve the future
 10 solvency of PEIA. Such amount shall not be included in the
 11 calculation of the plan year aggregate premium cost-sharing
 12 percentages between employers and employees.

242-Insurance Commissioner –

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2018 Org 0704

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 721,117
3	Current Expenses	13000	1,357,201
4	Repairs and Alterations.....	06400	3,000
5	Equipment.....	07000	81,374
6	Buildings.....	25800	8,289
7	Other Assets.....	69000	<u>11,426</u>
8	Total.....		\$ 2,182,407

243-Insurance Commissioner –

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2018 Org 0704

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 552,228
3	Current Expenses	13000	202,152
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	34,225
6	Buildings.....	25800	4,865
7	Other Assets.....	69000	<u>19,460</u>
8	Total.....		\$ 817,930

*244-Insurance Commissioner –**Insurance Commission Fund*

(WV Code Chapter 33)

Fund 7152 FY 2018 Org 0704

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 23,039,727
3	Current Expenses	13000	8,797,758
4	Repairs and Alterations.....	06400	68,614
5	Equipment.....	07000	1,728,240
6	Buildings.....	25800	25,000
7	Other Assets.....	69000	<u>340,661</u>
8	Total.....		\$ 34,000,000

*245-Insurance Commissioner –**Workers' Compensation Old Fund*

(WV Code Chapter 23)

Fund 7162 FY 2018 Org 0704

1	Employee Benefits.....	01000	\$ 50,000
2	Current Expenses	13000	<u>250,500,000</u>
3	Total.....		\$ 250,550,000

*246-Insurance Commissioner –**Workers' Compensation Uninsured Employers' Fund*

(WV Code Chapter 23)

Fund 7163 FY 2018 Org 0704

1	Current Expenses	13000	\$ 15,000,000
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*247-Insurance Commissioner –**Self-Insured Employer Guaranty Risk Pool*

(WV Code Chapter 23)

Fund 7164 FY 2018 Org 0704

1	Current Expenses	13000	\$ 9,000,000
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*248-Insurance Commissioner –**Self-Insured Employer Security Risk Pool*

(WV Code Chapter 23)

Fund 7165 FY 2018 Org 0704

1	Current Expenses	13000	\$ 14,000,000
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249-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2018 Org 0706

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 247,523
3	Current Expenses	13000	144,844
4	Equipment.....	07000	<u>100</u>
5	Total.....		\$ 392,467

*250-Racing Commission –**Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2018 Org 0707

1	Medical Expenses – Total.....	24500	\$ 57,000
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2	The total amount of this appropriation shall be paid from
3	the special revenue fund out of collections of license fees
4	and fines as provided by law.

5 No expenditures shall be made from this fund except for
 6 hospitalization, medical care and/or funeral expenses for
 7 persons contributing to this fund.

251-Racing Commission –

Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2018 Org 0707

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 256,665
3	Current Expenses	13000	93,335
4	Other Assets.....	69000	<u>5,000</u>
5	Total.....		\$ 355,000

252-Racing Commission –

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2018 Org 0707

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,271,339
3	Current Expenses	13000	566,248
4	Repairs and Alterations.....	06400	7,000
5	Other Assets.....	69000	<u>50,000</u>
6	Total.....		\$ 2,894,587

253-Racing Commission –

*Administration, Promotion, Education, Capital Improvement
 and Greyhound Adoption Programs*

to include Spaying and Neutering Account

(WV Code Chapter 19)

Fund 7307 FY 2018 Org 0707

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 864,474
3	Current Expenses	13000	214,406
4	Other Assets.....	69000	<u>200,000</u>
5	Total.....		\$ 1,278,880

*254-Alcohol Beverage Control Administration –**Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2018 Org 0708

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 122,339
3	Current Expenses	13000	69,186
4	Repairs and Alterations.....	06400	7,263
5	Equipment.....	07000	10,000
6	Buildings.....	25800	100,000
7	Other Assets.....	69000	<u>100</u>
8	Total.....		\$ 308,888

9 To the extent permitted by law, four classified exempt
 10 positions shall be provided from Personal Services and
 11 Employee Benefits appropriation for field auditors.

255-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2018 Org 0708

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 5,413,237
3	Current Expenses	13000	2,890,577
4	Repairs and Alterations.....	06400	91,000
5	Equipment.....	07000	108,000
6	Buildings.....	25800	375,100
7	Purchase of Supplies for Resale.....	41900	72,500,000
8	Transfer Liquor Profits and Taxes .	42500	20,800,000

*258-Division of Motor Vehicles –**Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2018 Org 0802

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,362,799
3	Current Expenses	13000	4,374,083
4	Repairs and Alterations.....	06400	16,000
5	Equipment.....	07000	75,000
6	Other Assets.....	69000	10,000
7	BRIM Premium.....	91300	<u>73,629</u>
8	Total.....		\$ 7,911,511

*259-Division of Highways –**A. James Manchin Fund*

(WV Code Chapter 22)

Fund 8319 FY 2018 Org 0803

1	Current Expenses	13000	\$ 1,650,000
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DEPARTMENT OF VETERANS' ASSISTANCE*260-Veterans' Facilities Support Fund*

(WV Code Chapter 9A)

Fund 6703 FY 2018 Org 0613

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 94,210
3	Current Expenses	13000	2,255,997
4	Repairs and Alterations.....	06400	10,000
5	Equipment.....	07000	10,000
6	Other Assets.....	69000	<u>10,000</u>
7	Total.....		\$ 2,380,207

261-Department of Veterans' Assistance –

WV Veterans' Home –

Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2018 Org 0618

1	Current Expenses	13000	\$	700,000
2	Repairs and Alterations.....	06400		<u>50,000</u>
3	Total.....		\$	750,000

BUREAU OF SENIOR SERVICES

262-Bureau of Senior Services –

Community Based Service Fund

(WV Code Chapter 22)

Fund 5409 FY 2018 Org 0508

1	Personal Services and			
2	Employee Benefits.....	00100	\$	151,290
3	Current Expenses	13000		<u>10,348,710</u>
4	Total.....		\$	10,500,000

5 The total amount of these appropriations are funded
6 from annual table game license fees to enable the aged and
7 disabled citizens of West Virginia to stay in their homes
8 through the provision of home and community-based
9 services.

HIGHER EDUCATION POLICY COMMISSION

263-Higher Education Policy Commission –

System –

Tuition Fee Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2018 Org 0442

1	Debt Service.....	04000	\$ 27,716,974
2	General Capital Expenditures	30600	5,000,000
3	Facilities Planning		
4	and Administration	38600	<u>421,082</u>
5	Total.....		\$ 33,138,056

6 The total amount of these appropriations shall be paid
7 from the Special Capital Improvement Fund created in
8 W.Va. Code §18B-10-8. Projects are to be paid on a cash
9 basis and made available on July 1.

10 The above appropriations, except for Debt Service, may
11 be transferred to special revenue funds for capital
12 improvement projects at the institutions.

264-Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2018 Org 0442

1 Any unexpended balance remaining in the appropriation
2 for Capital Outlay (fund 4906, appropriation 51100) at the
3 close of the fiscal year 2017 is hereby reappropriated for
4 expenditure during the fiscal year 2018.

5 The appropriation shall be paid from available
6 unexpended cash balances and interest earnings accruing to
7 the fund. The appropriation shall be expended at the
8 discretion of the Higher Education Policy Commission and
9 the funds may be allocated to any institution within the
10 system.

11 The total amount of this appropriation shall be paid from
 12 the unexpended proceeds of revenue bonds previously
 13 issued pursuant to W.Va. Code §18-12B-8, which have
 14 since been refunded.

265-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2018 Org 0442

1 Any unexpended balance remaining in the appropriation
 2 for Capital Improvements – Total (fund 4908, appropriation
 3 95800) at the close of fiscal year 2017 is hereby
 4 reappropriated for expenditure during the fiscal year 2018.

5 The total amount of this appropriation shall be paid from
 6 the sale of the 2009 Series A Community and Technical
 7 College Capital Improvement Revenue Bonds and
 8 anticipated interest earnings.

266-West Virginia University –

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2018 Org 0463

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 10,274,340
3	Current Expenses	13000	4,524,300
4	Repairs and Alterations.....	06400	425,000
5	Equipment.....	07000	512,000
6	Buildings.....	25800	150,000
7	Other Assets.....	69000	<u>50,000</u>
8	Total.....		\$ 15,935,640

MISCELLANEOUS BOARDS AND COMMISSIONS*267-Board of Barbers and Cosmetologists –**Barbers and Beauticians Special Fund*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2018 Org 0505

1	Personal Services and			
2	Employee Benefits.....	00100	\$	504,497
3	Current Expenses	13000		<u>239,969</u>
4	Total.....		\$	744,466

5 The total amount of these appropriations shall be paid
6 from a special revenue fund out of collections made by the
7 Board of Barbers and Cosmetologists as provided by law.

*268-Hospital Finance Authority –**Hospital Finance Authority Fund*

(WV Code Chapter 16)

Fund 5475 FY 2018 Org 0509

1	Personal Services and			
2	Employee Benefits.....	00100	\$	85,981
3	Unclassified	09900		1,450
4	Current Expenses	13000		<u>57,740</u>
5	Total.....		\$	145,171

6 The total amount of these appropriations shall be paid
7 from the special revenue fund out of fees and collections as
8 provided by Article 29A, Chapter 16 of the Code.

*269-WV State Board of Examiners for Licensed Practical Nurses –**Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2018 Org 0906

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 430,324
3	Current Expenses	13000	<u>53,133</u>
4	Total.....		\$ 483,457

270-WV Board of Examiners for Registered Professional Nurses –

Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2018 Org 0907

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,081,694
3	Current Expenses	13000	295,339
4	Repairs and Alterations.....	06400	3,000
5	Equipment.....	07000	19,500
6	Other Assets.....	69000	<u>4,500</u>
7	Total.....		\$ 1,404,033

271-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2018 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 11,807,314
3	Unclassified	09900	147,643
4	Current Expenses	13000	2,594,398
5	Repairs and Alterations.....	06400	55,000
6	Equipment.....	07000	160,000
7	PSC Weight Enforcement.....	34500	4,370,453
8	Debt Payment/Capital Outlay	52000	350,000
9	BRIM Premium.....	91300	<u>150,040</u>
10	Total.....		\$ 19,634,848

11 The total amount of these appropriations shall be paid
 12 from a special revenue fund out of collections for special

13 license fees from public service corporations as provided by
 14 law.

15 The Public Service Commission is authorized to
 16 transfer up to \$500,000 from this fund to meet the expected
 17 deficiencies in the Motor Carrier Division (fund 8625, org
 18 0926) due to the amendment and reenactment of W.Va.
 19 Code §24A-3-1 by Enrolled House Bill Number 2715,
 20 Regular Session, 1997.

272-Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2018 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 284,198
3	Unclassified	09900	3,851
4	Current Expenses	13000	93,115
5	Repairs and Alterations.....	06400	<u>4,000</u>
6	Total.....		\$ 385,164

7 The total amount of these appropriations shall be paid
 8 from a special revenue fund out of receipts collected for or
 9 by the Public Service Commission pursuant to and in the
 10 exercise of regulatory authority over pipeline companies as
 11 provided by law.

273-Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2018 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,243,526
3	Unclassified	09900	29,233

4	Current Expenses	13000	577,557
5	Repairs and Alterations.....	06400	23,000
6	Equipment.....	07000	<u>50,000</u>
7	Total.....		\$ 2,923,316

8 The total amount of these appropriations shall be paid
 9 from a special revenue fund out of receipts collected for or
 10 by the Public Service Commission pursuant to and in the
 11 exercise of regulatory authority over motor carriers as
 12 provided by law.

274-Public Service Commission –

Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2018 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 743,372
3	Current Expenses	13000	276,472
4	Equipment.....	07000	9,872
5	BRIM Premium.....	91300	<u>4,660</u>
6	Total.....		\$ 1,034,376

275-Real Estate Commission –

Real Estate License Fund

(WV Code Chapter 30)

Fund 8635 FY 2018 Org 0927

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 582,413
3	Current Expenses	13000	285,622
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	<u>10,000</u>
6	Total.....		\$ 883,035

7 The total amount of these appropriations shall be paid
8 out of collections of license fees as provided by law.

276-WV Board of Examiners for Speech-Language

Pathology and Audiology –

Speech-Language Pathology and Audiology Operating Fund

(WV Code Chapter 30)

Fund 8646 FY 2018 Org 0930

1	Personal Services and			
2	Employee Benefits.....	00100	\$	73,190
3	Current Expenses	13000		<u>65,623</u>
4	Total.....		\$	138,813

277-WV Board of Respiratory Care –

Board of Respiratory Care Fund

(WV Code Chapter 30)

Fund 8676 FY 2018 Org 0935

1	Personal Services and			
2	Employee Benefits.....	00100	\$	79,643
3	Current Expenses	13000		51,047
4	Repairs and Alterations.....	06400		<u>400</u>
5	Total.....		\$	131,090

278-WV Board of Licensed Dietitians –

Dietitians Licensure Board Fund

(WV Code Chapter 30)

Fund 8680 FY 2018 Org 0936

1	Personal Services and			
2	Employee Benefits.....	00100	\$	15,950
3	Current Expenses	13000		<u>17,050</u>
4	Total.....		\$	33,000

*279-Massage Therapy Licensure Board –**Massage Therapist Board Fund*

(WV Code Chapter 30)

Fund 8671 FY 2018 Org 0938

1	Personal Services and			
2	Employee Benefits.....	00100	\$	104,418
3	Current Expenses	13000		<u>22,648</u>
4	Total.....		\$	127,066

*280-Economic Development Authority –**Cacapon and Beech Fork State Parks –**Lottery Revenue Debt Service*Fund 9067 FY 2018 Org 0944

1	Debt Service.....	04000	\$	1,400,000
2	The above appropriation for Debt Service (fund 9067,			
3	appropriation 04000) shall be paid from the cash balance			
4	remaining in the Cacapon and Beech Fork State Parks			
5	Lottery Revenue Debt Service Fund (9067).			

*281-Board of Medicine –**Medical Licensing Board Fund*

(WV Code Chapter 30)

Fund 9070 FY 2018 Org 0945

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,187,752
3	Current Expenses	13000		988,789
4	Repairs and Alterations.....	06400		<u>20,000</u>
5	Total.....		\$	2,196,541

*282-West Virginia Enterprise Resource Planning Board –
Enterprise Resource Planning System Fund*

(WV Code Chapter 12)

Fund 9080 FY 2018 Org 0947

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 6,713,066
3	Unclassified	09900	232,000
4	Current Expenses	13000	20,140,134
5	Repairs and Alterations.....	06400	300
6	Equipment.....	07000	213,000
7	Buildings.....	25800	2,000
8	Other Assets.....	69000	<u>199,500</u>
9	Total.....		\$ 27,500,000

283-Board of Treasury Investments –

Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

Fund 9152 FY 2018 Org 0950

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 782,889
3	Unclassified	09900	14,850
4	Current Expenses	13000	650,714
5	BRIM Premium.....	91300	36,547
6	Fees of Custodians, Fund Advisors		
7	and Fund Managers	93800	<u>3,500,000</u>
8	Total.....		\$ 4,985,000

9 There is hereby appropriated from this fund, in addition
10 to the above appropriation if needed, an amount of funds
11 necessary for the Board of Treasury Investments to pay the
12 fees and expenses of custodians, fund advisors and fund
13 managers for the consolidated fund of the State as provided
14 in Article 6C, Chapter 12 of the Code.

15 The total amount of these appropriations shall be paid
16 from the special revenue fund out of fees and collections as
17 provided by law.

18 Total TITLE II, Section 3 – Other Funds
19 (Including claims against the state)... \$ 1,491,793,726

1 **Sec. 4. Appropriations from lottery net profits.** — Net
2 profits of the lottery are to be deposited by the Director of the
3 Lottery to the following accounts in the amounts indicated.
4 The Director of the Lottery shall prorate each deposit of net
5 profits in the proportion the appropriation for each account
6 bears to the total of the appropriations for all accounts.

7 After first satisfying the requirements for Fund 2252, Fund
8 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the
9 Director of the Lottery shall make available from the
10 remaining net profits of the lottery any amounts needed to pay
11 debt service for which an appropriation is made for Fund 9065,
12 Fund 4297, Fund 3390, and Fund 3514 and is authorized to
13 transfer any such amounts to Fund 9065, Fund 4297, Fund
14 3390, and Fund 3514 for that purpose. Upon receipt of
15 reimbursement of amounts so transferred, the Director of the
16 Lottery shall deposit the reimbursement amounts to the
17 following accounts as required by this section.

284-Education, Arts, Sciences and Tourism –

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2018 Org 0211

	Appro-	Lottery
	priation	Funds
1 Debt Service – Total	31000	\$ 10,000,000

*285-West Virginia Development Office –**West Virginia Tourism Office*

(WV Code Chapter 5B)

Fund 3067 FY 2018 Org 0304

1	Tourism – Telemarketing Center...	46300	\$	82,080
2	Tourism – Advertising (R).....	61800		2,422,407
3	Tourism – Operations (R).....	66200		<u>3,951,872</u>
4	Total.....		\$	6,456,359

5 From the above appropriation for Tourism – Operations
 6 (fund 3067, appropriation 66200) funding shall be provided
 7 for the operation of the WV Film Office.

8 Any unexpended balances remaining in the
 9 appropriations for Tourism – Advertising (fund 3067,
 10 appropriation 61800), and Tourism – Operations (fund
 11 3067, appropriation 66200) at the close of the fiscal year
 12 2017 are hereby reappropriated for expenditure during the
 13 fiscal year 2018.

286-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2018 Org 0310

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,090,941
3	Current Expenses	13000		23,000
4	Pricketts Fort State Park	32400		106,560
5	Non-Game Wildlife (R).....	52700		365,540
6	State Parks and			
7	Recreation Advertising (R).....	61900		<u>494,578</u>
8	Total.....		\$	3,080,619

9 Any unexpended balances remaining in the
 10 appropriations for Unclassified (fund 3267, appropriation
 11 09900), Capital Outlay – Parks (fund 3267, appropriation

12 28800), Non-Game Wildlife (fund 3267, appropriation
 13 52700), and State Parks and Recreation Advertising (fund
 14 3267, appropriation 61900) at the close of the fiscal year
 15 2017 are hereby reappropriated for expenditure during the
 16 fiscal year 2018.

287-State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2018 Org 0402

1	FBI Checks	37200	\$ 108,860
2	Vocational Education		
3	Equipment Replacement.....	39300	800,000
4	Assessment Program (R)	39600	2,946,059
5	21st Century Technology		
6	Infrastructure Network Tools		
7	and Support (R)	93300	<u>14,151,287</u>
8	Total.....		\$ 18,006,206

9 Any unexpended balances remaining in the
 10 appropriations for Unclassified (fund 3951, appropriation
 11 09900), Current Expenses (fund 3951, appropriation
 12 13000), Assessment Program (fund 3951, appropriation
 13 39600), and 21st Century Technology Infrastructure
 14 Network Tools and Support (fund 3951, appropriation
 15 93300) at the close of the fiscal year 2017 are hereby
 16 reappropriated for expenditure during the fiscal year 2018.

288-State Department of Education –

School Building Authority –

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2018 Org 0402

1	Debt Service – Total	31000	\$ 6,414,437
2	Directed Transfer	70000	<u>11,585,563</u>
3	Total.....		\$ 18,000,000

4 The School Building Authority shall have the authority
 5 to transfer between the above appropriations in accordance
 6 with W.Va. Code §29-22-18.

289-Department of Education and the Arts –

Office of the Secretary –

Control Account –

Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2018 Org 0431

1	Unclassified (R)	09900	\$	9,483
2	Current Expenses	13000		110,617
3	Commission for National			
4	and Community Service	19300		348,254
5	Statewide STEM			
6	21st Century Academy	89700		130,000
7	Literacy Project (R)	89900		<u>350,000</u>
8	Total.....		\$	948,354

9 Any unexpended balances remaining in the
 10 appropriations for Unclassified (fund 3508, appropriation
 11 09900), Governor’s Honors Academy (fund 3508,
 12 appropriation 47800), Arts Programs (fund 3508,
 13 appropriation 50000), and Literacy Project (fund 3508,
 14 appropriation 89900) at the close of fiscal year 2017 are
 15 hereby reappropriated for expenditure during the fiscal year
 16 2018.

290-Division of Culture and History –

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2018 Org 0432

1	Huntington Symphony.....	02700	\$ 59,058
2	Preservation WV (R)	09200	491,921
3	Fairs and Festivals (R)	12200	1,346,814
4	Archeological Curation/Capital		
5	Improvements (R).....	24600	30,074
6	Historic Preservation Grants (R)....	31100	294,742
7	West Virginia Public Theater	31200	120,019
8	Greenbrier Valley Theater	42300	99,543
9	Theater Arts of West Virginia	46400	90,000
10	Marshall Artists Series.....	51800	36,005
11	Grants for Competitive		
12	Arts Program (R)	62400	580,800
13	West Virginia State Fair	65700	31,241
14	Save the Music.....	68000	24,000
15	Contemporary American		
16	Theater Festival	81100	57,281
17	Independence Hall	81200	27,277
18	Mountain State Forest Festival	86400	38,187
19	WV Symphony	90700	59,058
20	Wheeling Symphony.....	90800	59,058
21	Appalachian Children's Chorus.....	91600	<u>54,554</u>
22	Total.....		\$ 3,499,632

23 From the above appropriation for Preservation West
24 Virginia (fund 3534, appropriation 09200) funding shall be
25 provided to the African-American Heritage Family Tree
26 Museum (Fayette) \$2,673, Aracoma Story (Logan) \$29,703,
27 Arts Monongahela (Monongalia) \$11,881, Barbour County
28 Arts and Humanities Council \$891, Beckley Main Street
29 (Raleigh) \$2,970, Buffalo Creek Memorial (Logan) \$2,970,
30 Carnegie Hall (Greenbrier) \$46,899, Ceredo Historical
31 Society (Wayne) \$1,166, Ceredo Kenova Railroad Museum
32 (Wayne) \$1,166, Ceredo Museum (Wayne) \$720, Children's
33 Theatre of Charleston (Kanawha) \$3,127, Chuck Mathena
34 Center (Mercer) \$62,532, Collis P. Huntington Railroad
35 Historical Society (Cabell) \$5,940, Country Music Hall of
36 Fame and Museum (Marion) \$4,158, First Stage Children's
37 Theater Company \$1,166, Flannigan Murrell House
38 (Summers) \$3,780, Fort Ashby Fort (Mineral) \$891, Fort

39 New Salem (Harrison) \$2,198, Fort Randolph (Mason)
40 \$2,970, General Adam Stephen Memorial Foundation
41 (Berkeley) \$11,005, Grafton Mother's Day Shrine Committee
42 (Taylor) \$5,049, Hardy County Tour and Crafts Association
43 \$11,881, Heartwood in the Hills (Calhoun) \$5,040, Heritage
44 Farm Museum & Village (Cabell) \$29,703, Historic Fayette
45 Theater (Fayette) \$3,267, Historic Middleway Conservancy
46 (Jefferson) \$594, Jefferson County Black History
47 Preservation Society \$2,970, Jefferson County Historical
48 Landmark Commission \$4,752, Maddie Carroll House
49 (Cabell) \$4,455, Marshall County Historical Society \$5,049,
50 McCoy Theater (Hardy) \$11,881, Morgantown Theater
51 Company (Monongalia) \$11,881, Mountaineer Boys' State
52 (Lewis) \$5,940, Nicholas Old Main Foundation (Nicholas)
53 \$1,188, Norman Dillon Farm Museum (Berkeley) \$5,940,
54 Old Opera House Theater Company (Jefferson) \$8,910,
55 Parkersburg Arts Center (Wood) \$11,881, Pocahontas
56 Historic Opera House \$3,564, Raleigh County All Wars
57 Museum \$5,940, Rhododendron Girl's State (Ohio) \$5,940,
58 Roane County 4-H and FFA Youth Livestock Program
59 \$2,970, Scottish Heritage Society/N. Central WV (Harrison)
60 \$2,970, Society for the Preservation of McGrew House
61 (Preston) \$2,079, Southern West Virginia Veterans' Museum
62 \$3,393, Summers County Historic Landmark Commission
63 \$2,970, Those Who Served War Museum (Mercer) \$2,376,
64 Three Rivers Avian Center (Summers) \$5,310, Tug Valley
65 Arts Council (Mingo) \$2,970, Tug Valley Chamber of
66 Commerce Coal House (Mingo) \$1,188, Tunnelton Historical
67 Society (Preston) \$1,188, Veterans Committee for Civic
68 Improvement of Huntington (Wayne) \$2,970, West Virginia
69 Museum of Glass (Lewis) \$3,713, West Virginia Music Hall
70 of Fame (Kanawha) \$20,792, YMCA Camp Horseshoe
71 (Tucker) \$59,405, Youth Museum of Southern West Virginia
72 (Raleigh) \$7,128, Z.D. Ramsdell House (Wayne) \$720.

73 From the above appropriation for Fairs and Festivals (fund
74 3534, appropriation 12200) funding shall be provided to A
75 Princeton 4th (Mercer) \$1,800, African-American Cultural
76 Heritage Festival (Jefferson) \$2,970, Alderson 4th of July

77 Celebration (Greenbrier) \$2,970, Allegheny Echo
78 (Pocahontas) \$4,456, Alpine Festival/Leaf Peepers Festival
79 (Tucker) \$6,683, American Civil War (Grant) \$3,127,
80 American Legion Post 8 Veterans Day Parade (McDowell)
81 \$1,250, Angus Beef and Cattle Show (Lewis) \$891, Annual
82 Birch River Days (Nicholas) \$1,296, Annual Don Redman
83 Heritage Concert & Awards (Jefferson) \$938, Annual Ruddle
84 Park Jamboree (Pendleton) \$4,690, Antique Market Fair
85 (Lewis) \$1,188, Apollo Theater-Summer Program (Berkeley)
86 \$1,188, Apple Butter Festival (Morgan) \$3,564, Arkansaw
87 Homemaker's Heritage Weekend (Hardy) \$2,079, Armed
88 Forces Day-South Charleston (Kanawha) \$1,782, Arthurdale
89 Heritage New Deal Festival (Preston) \$2,970, Athens Town
90 Fair (Mercer) \$1,188, Augusta Fair (Randolph) \$2,970,
91 Autumn Harvest Fest (Monroe) \$2,448, Barbour County Fair
92 \$14,851, Barboursville Octoberfest (Cabell) \$2,970, Bass
93 Festival (Pleasants) \$1,099, Battelle District Fair
94 (Monongalia) \$2,970, Battle of Dry Creek (Greenbrier)
95 \$891, Battle of Point Pleasant Memorial Committee (Mason)
96 \$2,970, Belle Town Fair (Kanawha) \$2,673, Belleville
97 Homecoming (Wood) \$11,881, Bergoo Down Home Days
98 (Webster) \$1,485, Berkeley County Youth Fair \$10,990,
99 Black Bear 4K Mountain Bike Race (Kanawha) \$684, Black
100 Heritage Festival (Harrison) \$3,564, Black Walnut Festival
101 (Roane) \$5,940, Blast from the Past (Upshur) \$1,440, Blue-
102 Gray Reunion (Barbour) \$2,079, Boone County Fair \$5,940,
103 Boone County Labor Day Celebration \$2,376, Bradshaw Fall
104 Festival (McDowell) \$1,188, Brandonville Heritage Day
105 (Preston) \$1,048, Braxton County Fair \$6,832, Braxton
106 County Monster Fest / West Virginia Autumn Festival
107 \$1,485, Brooke County Fair \$2,079, Bruceton Mills Good
108 Neighbor Days (Preston) \$1,188, Buckwheat Festival
109 (Preston) \$5,050, Buffalo 4th of July Celebration (Putnam)
110 \$400, Buffalo October Fest (Putnam) \$3,240, Burlington
111 Apple Harvest Festival (Mineral) \$17,821, Burlington
112 Pumpkin Harvest Festival (Raleigh) \$2,970, Burnsville
113 Harvest Festival (Braxton) \$1,407, Cabell County Fair
114 \$5,940, Calhoun County Wood Festival \$1,188, Campbell's
115 Creek Community Fair (Kanawha) \$1,485, Cape Coalwood

116 Festival Association (McDowell) \$1,485, Capon Bridge
 117 Founders Day Festival (Hampshire) \$1,188, Capon Springs
 118 Ruritan 4th of July (Hampshire) \$684, Cass Homecoming
 119 (Pocahontas) \$1,188, Cedarville Town Festival (Gilmer)
 120 \$684, Celebration in the Park (Wood) \$2,376, Celebration of
 121 America (Monongalia) \$3,564, Ceredo Freedom Festival
 122 (Wayne) \$700, Chapmanville Apple Butter Festival (Logan)
 123 \$684, Chapmanville Fire Department 4th of July (Logan)
 124 \$1,782, Charles Town Christmas Festival (Jefferson) \$2,970,
 125 Charles Town Heritage Festival (Jefferson) \$2,970, Cherry
 126 River Festival (Nicholas) \$3,861, Chester Fireworks
 127 (Hancock) \$891, Chester 4th of July Festivities (Hancock)
 128 \$2,970, Chief Logan State Park-Civil War Celebration
 129 (Logan) \$4,752, Chilifest West Virginia State Chili
 130 Championship (Cabell) \$1,563, Christmas In Our Town
 131 (Marion) \$3,127, Christmas in Shepherdstown (Jefferson)
 132 \$2,376, Christmas in the Park (Brooke) \$2,970, Christmas in
 133 the Park (Logan) \$14,851, City of Dunbar Critter Dinner
 134 (Kanawha) \$5,940, City of Logan Polar Express (Logan)
 135 \$4,456, City of New Martinsville Festival of Memories
 136 (Wetzel) \$6,534, Clay County Golden Delicious Apple
 137 Festival \$4,158, Clay District Fair (Monongalia) \$1,080,
 138 Coal Field Jamboree (Logan) \$20,792, Coalton Days Fair
 139 (Randolph) \$4,158, Country Roads Festival (Fayette)
 140 \$1,188, Cowen Railroad Festival (Webster) \$2,079,
 141 Craigsville Fall Festival (Nicholas) \$2,079, Cruise into
 142 Princeton (Mercer) \$2,160, Culturefest World Music & Arts
 143 Festival (Mercer) \$4,690, Delbarton Homecoming (Mingo)
 144 \$2,079, Doddridge County Fair \$4,158, Dorcas Ice Cream
 145 Social (Grant) \$3,564, Durbin Days (Pocahontas) \$2,970,
 146 Elbert/Filbert Reunion Festival (McDowell) \$891, Elkins
 147 Randolph County 4th of July Car Show (Randolph) \$1,188,
 148 Fairview 4th of July Celebration (Marion) \$684, Farm Safety
 149 Day (Preston) \$1,188, Farmer's Day Festival (Monroe)
 150 \$2,330, Farmers' Day Parade (Wyoming) \$720, Fenwick
 151 Mountain Old Time Community Festival (Nicholas) \$2,880,
 152 FestivALL Charleston (Kanawha) \$11,881, Flatwoods Days
 153 (Braxton) \$700, Flemington Day Fair and Festival (Taylor)
 154 \$2,079, Follansbee Community Days (Brooke) \$4,900, Fort

155 Gay Mountain Heritage Days (Wayne) \$2,970, Fort Henry
156 Days (Ohio) \$3,148, Fort Henry Living History (Ohio)
157 \$1,563, Fort New Salem Spirit of Christmas Festival
158 (Harrison) \$2,432, Frankford Autumnfest (Greenbrier)
159 \$2,970, Franklin Fishing Derby (Pendleton) \$4,456,
160 Freshwater Folk Festival (Greenbrier) \$2,970, Friends
161 Auxiliary of W.R. Sharpe Hospital (Lewis) \$2,970, Frontier
162 Days (Harrison) \$1,782, Frontier Fest/Canaan Valley
163 (Taylor) \$2,970, Fund for the Arts-Wine & All that Jazz
164 Festival (Kanawha) \$1,485, Gassaway Days Celebration
165 (Braxton) \$2,970, Gilbert Elementary Fall Blast (Mingo)
166 \$2,188, Gilbert Kiwanis Harvest Festival (Mingo) \$2,376,
167 Gilbert Spring Fling (Mingo) \$3,595, Gilmer County Farm
168 Show \$2,376, Grant County Arts Council \$1,188, Grape
169 Stomping Wine Festival (Nicholas) \$1,188, Great Greenbrier
170 River Race (Pocahontas) \$5,940, Greater Quinwood Days
171 (Greenbrier) \$781, Guyandotte Civil War Days (Cabell)
172 \$5,940, Hamlin 4th of July Celebration (Lincoln) \$2,970,
173 Hampshire Civil War Celebration Days (Hampshire) \$684,
174 Hampshire County 4th of July Celebration \$11,881,
175 Hampshire County Fair \$5,002, Hampshire Heritage Days
176 (Hampshire) \$2,376, Hancock County Oldtime Fair \$2,970,
177 Hardy County Commission - 4th of July \$5,940, Hatfield
178 McCoy Matewan Reunion Festival (Mingo) \$12,330,
179 Hatfield McCoy Trail National ATV and Dirt Bike Weekend
180 (Wyoming) \$2,970, Heat'n the Hills Chilifest (Lincoln)
181 \$2,970, Heritage Craft Festival (Monroe) \$1,044, Heritage
182 Days Festival (Roane) \$891, Hilltop Festival (Cabell) \$684,
183 Hilltop Festival of Lights (McDowell) \$1,188, Hinton
184 Railroad Days (Summers) \$4,347, Holly River Festival
185 (Webster) \$891, Hometown Mountain Heritage Festival
186 (Fayette) \$2,432, Hundred 4th of July (Wetzel) \$4,307,
187 Hundred American Legion Earl Kiger Post Bluegrass Festival
188 (Wetzel) \$1,188, Hurricane 4th of July Celebration (Putnam)
189 \$2,970, Jaeger Town Fair (McDowell) \$891, Irish Heritage
190 Festival of West Virginia (Raleigh) \$2,970, Irish Spring
191 Festival (Lewis) \$684, Italian Heritage Festival-Clarksburg
192 (Harrison) \$17,821, Jackson County Fair \$2,970, Jamboree
193 (Pocahontas) \$2,970, Jane Lew Arts and Crafts Fair (Lewis)

194 \$684, Jefferson County Fair Association \$14,851, Jersey
195 Mountain Ruritan Pioneer Days (Hampshire) \$684, John
196 Henry Days Festival (Monroe) \$4,698, Johnnie Johnson
197 Blues and Jazz Festival (Marion) \$2,970, Johnstown
198 Community Fair (Harrison) \$1,485, Junior Heifer Preview
199 Show (Lewis) \$1,188, Kanawha Coal Riverfest-St. Albans
200 4th of July Festival (Kanawha) \$2,970, Keeper of the
201 Mountains-Kayford (Kanawha) \$1,485, Kenova Autumn
202 Festival (Wayne) \$4,377, Kermit Fall Festival (Mingo)
203 \$1,782, Keystone Reunion Gala (McDowell) \$1,563, King
204 Coal Festival (Mingo) \$2,970, Kingwood Downtown Street
205 Fair and Heritage Days (Preston) \$1,188, L.Z. Rainelle West
206 Virginia Veterans Reunion (Greenbrier) \$2,970, Lady of
207 Agriculture (Preston) \$684, Larry Joe Harless Center
208 Octoberfest Hatfield McCoy Trail (Mingo) \$5,940, Larry Joe
209 Harless Community Center Spring Middle School Event
210 (Mingo) \$2,970, Last Blast of Summer (McDowell) \$2,970,
211 Lewis County Fair Association \$2,079, Lewisburg Shanghai
212 (Greenbrier) \$1,188, Lincoln County Fall Festival \$4,752,
213 Lincoln County Winterfest \$2,970, Lindsie Veterans' Day
214 Parade \$720, Little Levels Heritage Festival (Pocahontas)
215 \$1,188, Lost Creek Community Festival (Harrison) \$4,158,
216 Main Street Arts Festival (Upshur) \$3,127, Main Street
217 Martinsburg Chocolate Fest and Book Fair (Berkeley)
218 \$2,813, Mannington District Fair (Marion) \$3,564, Maple
219 Syrup Festival (Randolph) \$684, Marion County FFA Farm
220 Fest \$1,485, Marmet Labor Day Celebration (Kanawha)
221 \$3,078, Marshall County Antique Power Show \$1,485,
222 Marshall County Fair \$4,456, Mason County Fair \$2,970,
223 Mason Dixon Festival (Monongalia) \$4,158, Matewan
224 Massacre Reenactment (Mingo) \$5,004, Matewan-Magnolia
225 Fair (Mingo) \$15,932, McARTS-McDowell County
226 \$11,881, McDowell County Fair \$1,485, McGrew House
227 History Day (Preston) \$1,188, McNeill's Rangers (Mineral)
228 \$4,752, Meadow Bridge Hometown Festival (Fayette) \$743,
229 Meadow River Days Festival (Greenbrier) \$1,782, Mercer
230 Bluestone Valley Fair (Mercer) \$1,188, Mercer County Fair
231 \$1,188, Mercer County Heritage Festival \$3,474, Mid Ohio
232 Valley Antique Engine Festival (Wood) \$1,782, Milton

233 Christmas in the Park (Cabell) \$1,485, Milton 4th of July
234 Celebration (Cabell) \$1,485, Mineral County Fair \$1,040,
235 Mineral County Veterans Day Parade \$891, Molasses
236 Festival (Calhoun) \$1,188, Monongahfest (Marion) \$3,752,
237 Moon Over Mountwood Fishing Festival (Wood) \$1,782,
238 Morgan County Fair-History Wagon \$891, Moundsville Bass
239 Festival (Marshall) \$2,376, Moundsville July 4th Celebration
240 (Marshall) \$2,970, Mount Liberty Fall Festival (Barbour)
241 \$1,485, Mountain Fest (Monongalia) \$11,881, Mountain
242 Festival (Mercer) \$2,747, Mountain Heritage Arts and Crafts
243 Festival (Jefferson) \$2,970, Mountain Music Festival
244 (McDowell) \$1,485, Mountain State Apple Harvest Festival
245 (Berkeley) \$4,456, Mountain State Arts & Crafts Fair Cedar
246 Lakes (Jackson) \$26,732, Mountaineer Hot Air Balloon
247 Festival (Monongalia) \$2,376, Mullens Dogwood Festival
248 (Wyoming) \$4,158, Multi-Cultural Festival of West Virginia
249 (Kanawha) \$11,881, Music and Barbecue - Banks District
250 VFD (Upshur) \$1,278, New Cumberland Christmas Parade
251 (Hancock) \$1,782, New Cumberland 4th of July (Hancock)
252 \$2,970, New River Bridge Day Festival (Fayette) \$23,762,
253 Newburg Volunteer Fireman's Field Day (Preston) \$684,
254 Nicholas County Fair \$2,970, Nicholas County Potato
255 Festival \$2,079, Oak Leaf Festival (Fayette) \$6,253, Oceana
256 Heritage Festival (Wyoming) \$3,564, Oglebay City Park -
257 Festival of Lights (Ohio) \$47,524, Oglebay Festival (Ohio)
258 \$5,940, Ohio County Country Fair \$5,346, Ohio River Fest
259 (Jackson) \$4,320, Ohio Valley Beef Association (Wood)
260 \$1,485, Ohio Valley Black Heritage Festival (Ohio) \$3,267,
261 Old Central City Fair (Cabell) \$2,970, Old Century City Fair
262 (Barbour) \$1,250, Old Tyme Christmas (Jefferson) \$1,425,
263 Paden City Labor Day Festival (Wetzel) \$3,861, Parkersburg
264 Homecoming (Wood) \$8,754, Patty Fest (Monongalia)
265 \$1,188, Paw District Fair (Marion) \$2,079, Pax Reunion
266 Committee (Fayette) \$2,970, Pendleton County 4-H
267 Weekend \$1,188, Pendleton County Committee for Arts
268 \$8,910, Pendleton County Fair \$6,253, Pennsboro Country
269 Road Festival (Ritchie) \$1,188, Petersburg 4th of July
270 Celebration (Grant) \$11,881, Petersburg HS Celebration
271 (Grant) \$5,940, Piedmont-Annual Back Street Festival

272 (Mineral) \$2,376, Pinch Reunion (Kanawha) \$891, Pine
273 Bluff Fall Festival (Harrison) \$2,376, Pine Grove 4th of July
274 Festival (Wetzel) \$4,158, Pineville Festival (Wyoming)
275 \$3,564, Pleasants County Agriculture Youth Fair \$2,970,
276 Poca Heritage Days (Putnam) \$1,782, Pocahontas County
277 Pioneer Days \$4,158, Point Pleasant Stern Wheel Regatta
278 (Mason) \$2,970, Pratt Fall Festival (Kanawha) \$1,485,
279 Princeton Autumnfest (Mercer) \$1,563, Princeton Street Fair
280 (Mercer) \$2,970, Putnam County Fair \$2,970, Quartets on
281 Parade (Hardy) \$2,376, Rainelle Fall Festival (Greenbrier)
282 \$3,127, Rand Community Center Festival (Kanawha) \$1,485,
283 Randolph County Community Arts Council \$1,782,
284 Randolph County Fair \$4,158, Randolph County Ramp and
285 Rails \$1,188, Ranson Christmas Festival (Jefferson) \$2,970,
286 Ranson Festival (Jefferson) \$2,970, Renick Liberty Festival
287 (Greenbrier) \$684, Ripley 4th of July (Jackson) \$8,910,
288 Ritchie County Fair and Exposition \$2,970, Ritchie County
289 Pioneer Days \$684, River City Festival (Preston) \$684,
290 Roane County Agriculture Field Day \$1,782, Rock the Park
291 (Kanawha) \$3,240, Rocket Boys Festival (Raleigh) \$1,710,
292 Romney Heritage Days (Hampshire) \$1,876, Ronceverte
293 River Festival (Greenbrier) \$2,970, Rowlesburg Labor Day
294 Festival (Preston) \$684, Rupert Country Fling (Greenbrier)
295 \$1,876, Saint Spyridon Greek Festival (Harrison) \$1,485,
296 Salem Apple Butter Festival (Harrison) \$2,376, Sistersville
297 4th of July (Tyler) \$3,267, Skirmish on the River (Mingo)
298 \$1,250, Smoke on the Water (Wetzel) \$1,782, South
299 Charleston Summerfest (Kanawha) \$5,940, Southern Wayne
300 County Fall Festival \$684, Spirit of Grafton Celebration
301 (Taylor) \$5,940, Springfield Peach Festival (Hampshire)
302 \$738, St. Albans City of Lights - December (Kanawha)
303 \$2,970, Sternwheel Festival (Wood) \$1,782, Stoco Reunion
304 (Raleigh) \$1,485, Stonewall Jackson Heritage Arts & Crafts
305 Jubilee (Lewis) \$6,534, Stonewall Jackson's Roundhouse
306 Raid (Berkeley) \$7,200, Storytelling Festival (Lewis) \$400,
307 Strawberry Festival (Upshur) \$17,821, Sylvester Big Coal
308 River Festival \$1,944, Tacy Fair (Barbour) \$684, Taste of
309 Parkersburg (Wood) \$2,970, Taylor County Fair \$3,267,
310 Terra Alta VFD 4th of July Celebration (Preston) \$684, The

311 Gathering at Sweet Creek (Wood) \$1,782, Three Rivers Coal
312 Festival (Marion) \$4,604, Thunder on the Tygart - Mothers'
313 Day Celebration (Taylor) \$8,910, Town of Delbarton 4th of
314 July Celebration (Mingo) \$1,782, Town of Fayetteville
315 Heritage Festival (Fayette) \$4,456, Town of Matoaka Hog
316 Roast (Mercer) \$684, Town of Rivesville 4th of July Festival
317 (Marion) \$3,127, Town of Winfield - Putnam County
318 Homecoming \$3,240, St. Albans Train Fest (Kanawha)
319 \$6,120, Treasure Mountain Festival (Pendleton) \$14,851, Tri-
320 County Fair (Grant) \$22,548, Tucker County Arts Festival
321 and Celebration \$10,692, Tucker County Fair \$2,821,
322 Tucker County Health Fair \$1,188, Tunnelton Depot Days
323 (Preston) \$684, Tunnelton Volunteer Fire Department
324 Festival (Preston) \$684, Turkey Festival (Hardy) \$1,782,
325 Tyler County Fair \$3,088, Tyler County 4th of July \$400,
326 Tyler County OctoberFest \$720, Union Community Irish
327 Festival (Barbour) \$648, Uniquely West Virginia Festival
328 (Morgan) \$1,188, Upper Kanawha Valley Oktoberfest
329 (Kanawha) \$1,485, Upper Ohio Valley Italian Festival (Ohio)
330 \$7,128, Upshur County Youth Livestock Show \$1,440,
331 Valley District Fair (Preston) \$2,079, Veterans Welcome
332 Home Celebration (Cabell) \$938, Vietnam Veterans of
333 America # 949 Christmas Party (Cabell) \$684, Volcano Days
334 at Mountwood Park (Wood) \$2,970, War Homecoming Fall
335 Festival (McDowell) \$891, Wardensville Fall Festival
336 (Hardy) \$2,970, Wayne County Fair \$2,970, Wayne County
337 Fall Festival \$2,970, Webster County Fair \$3,600, Webster
338 County Wood Chopping Festival \$8,910, Webster Wild
339 Water Weekend \$1,188, Weirton July 4th Celebration
340 (Hancock) \$11,881, Welcome Home Family Day (Wayne)
341 \$1,900, Wellsburg 4th of July Celebration (Brooke) \$4,456,
342 Wellsburg Apple Festival of Brooke County \$2,970, West
343 Virginia Blackberry Festival (Harrison) \$2,970, West
344 Virginia Chestnut Festival (Preston) \$684, West Virginia
345 Coal Festival (Boone) \$5,940, West Virginia Coal Show
346 (Mercer) \$1,563, West Virginia Dairy Cattle Show (Lewis)
347 \$5,940, West Virginia Dandelion Festival (Greenbrier)
348 \$2,970, West Virginia Day at the Railroad Museum (Mercer)
349 \$1,800, West Virginia Fair and Exposition (Wood) \$4,812,

350 West Virginia Fireman's Rodeo (Fayette) \$1,485, West
 351 Virginia Oil and Gas Festival (Tyler) \$6,534, West Virginia
 352 Peach Festival (Hampshire) \$3,240, West Virginia Polled
 353 Hereford Association (Braxton) \$891, West Virginia Poultry
 354 Festival (Hardy) \$2,970, West Virginia Pumpkin Festival
 355 (Cabell) \$5,940, West Virginia State Folk Festival (Gilmer)
 356 \$2,970, West Virginia Water Festival - City of Hinton
 357 (Summers) \$9,144, Weston VFD 4th of July Firemen Festival
 358 (Lewis) \$1,188, Wetzel County Autumnfest \$3,267, Wetzel
 359 County Town and Country Days \$10,098, Wheeling Celtic
 360 Festival (Ohio) \$1,166, Wheeling City of Lights (Ohio)
 361 \$4,752, Wheeling Sternwheel Regatta (Ohio) \$5,940,
 362 Wheeling Vintage Raceboat Regatta (Ohio) \$11,881,
 363 Whipple Community Action (Fayette) \$1,485, Wileyville
 364 Homecoming (Wetzel) \$2,376, Wine Festival and Mountain
 365 Music Event (Harrison) \$2,970, Winter Festival of the Waters
 366 (Berkeley) \$2,970, Wirt County Fair \$1,485, Wirt County
 367 Pioneer Days \$1,188, Wyoming County Civil War Days
 368 \$1,296, Youth Stockman Beef Expo (Lewis) \$1,188.

369 Any unexpended balances remaining in the appropriations
 370 for Preservation West Virginia (fund 3534, appropriation
 371 09200), Fairs and Festivals (fund 3534, appropriation 12200),
 372 Archeological Curation/Capital Improvements (fund 3534,
 373 appropriation 24600), Historic Preservation Grants (fund
 374 3534, appropriation 31100), Grants for Competitive Arts
 375 Program (fund 3534, appropriation 62400), and Project
 376 ACCESS (fund 3534, appropriation 86500) at the close of the
 377 fiscal year 2017 are hereby reappropriated for expenditure
 378 during the fiscal year 2018.

379 Any Fairs & Festivals awards shall be funded in addition
 380 to, and not in lieu of, individual grant allocations derived from
 381 the Arts Council and the Cultural Grant Program allocations.

291-Library Commission –

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2018 Org 0433

1	Books and Films	17900	\$	360,784
2	Services to Libraries	18000		550,000
3	Grants to Public Libraries	18200		9,439,571
4	Digital Resources	30900		219,992
5	Infomine Network.....	88400		<u>852,729</u>
6	Total.....			\$ 11,423,076

7 Any unexpended balance remaining in the appropriation
 8 for Libraries – Special Projects (fund 3559, appropriation
 9 62500) at the close of fiscal year 2017 is hereby
 10 reappropriated for expenditure during the fiscal year 2018.

*292-Bureau of Senior Services –**Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2018 Org 0508

1	Personal Services and			
2	Employee Benefits.....	00100	\$	193,505
3	Current Expenses	13000		332,095
4	Repairs and Alterations.....	06400		1,000
5	Local Programs Service			
6	Delivery Costs	20000		2,435,250
7	Silver Haired Legislature	20200		18,500
8	Transfer to Division of			
9	Human Services for Health Care			
10	and Title XIX Waiver			
11	for Senior Citizens	53900		12,982,692
12	Roger Tompkins Alzheimer's			
13	Respite Care.....	64300		2,296,601
14	WV Alzheimer's Hotline	72400		45,000
15	Regional Aged and			
16	Disabled Resource Center	76700		425,000
17	Senior Services Medicaid Transfer	87100		14,502,312
18	Legislative Initiatives			
19	for the Elderly	90400		9,671,239

20	Long Term Care Ombudsman	90500	297,226
21	BRIM Premium.....	91300	7,152
22	In-Home Services and Nutrition		
23	for Senior Citizens.....	91700	<u>4,320,941</u>
24	Total.....		\$47,528,513

25 Any unexpended balance remaining in the appropriation for
 26 Senior Citizen Centers and Programs (fund 5405, appropriation
 27 46200) at the close of the fiscal year 2017 is hereby
 28 reappropriated for expenditure during the fiscal year 2018.

29 Included in the above appropriation for Current
 30 Expenses (fund 5405, appropriation 13000), is funding to
 31 support an in-home direct care workforce registry.

32 The above appropriation for Transfer to Division of
 33 Human Services for Health Care and Title XIX Waiver for
 34 Senior Citizens (appropriation 53900) along with the federal
 35 moneys generated thereby shall be used for reimbursement
 36 for services provided under the program.

293-Higher Education Policy Commission –

Lottery Education –

Higher Education Policy Commission –

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2018 Org 0441

1	RHI Program and Site Support (R)	03600	\$ 1,912,491
2	RHI Program and Site Support –		
3	RHEP Program Administration...	03700	146,653
4	RHI Program and Site Support –		
5	Grad Med Ed and		
6	Fiscal Oversight (R).....	03800	87,110
7	Minority Doctoral Fellowship (R) .	16600	129,604
8	Health Sciences Scholarship (R)....	17600	220,690

9	Vice Chancellor for Health Sciences –		
10	Rural Health		
11	Residency Program (R)	60100	62,725
12	WV Engineering, Science, and		
13	Technology Scholarship		
14	Program	86800	<u>452,831</u>
15	Total.....		\$ 3,012,104

16 Any unexpended balances remaining in the
17 appropriations for RHI Program and Site Support (fund
18 4925, appropriation 03600), RHI Program and Site Support
19 – Grad Med Ed and Fiscal Oversight (fund 4925,
20 appropriation 03800), Minority Doctoral Fellowship (fund
21 4925, appropriation 16600), Health Sciences Scholarship
22 (fund 4925, appropriation 17600), and Vice Chancellor for
23 Health Sciences – Rural Health Residency Program (fund
24 4925, appropriation 60100) at the close of fiscal year 2017
25 are hereby reappropriated for expenditure during the fiscal
26 year 2018.

27 The above appropriation for WV Engineering, Science,
28 and Technology Scholarship Program (appropriation 86800)
29 shall be transferred to the West Virginia Engineering, Science
30 and Technology Scholarship Fund (fund 4928, org 0441)
31 established by W.Va. Code §18C-6-1.

294-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2018 Org 0442

1	Debt Service – Total	31000	\$ 5,000,000
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2 Any unexpended balance remaining in the appropriation
3 for Capital Outlay and Improvements – Total (fund 4908,
4 appropriation 84700) at the close of fiscal year 2017 is
5 hereby reappropriated for expenditure during the fiscal year
6 2018.

*295-Higher Education Policy Commission –**Lottery Education –**West Virginia University – School of Medicine*

(WV Code Chapter 18B)

Fund 4185 FY 2018 Org 0463

1	WVU Health Sciences –		
2	RHI Program and		
3	Site Support (R).....	03500	\$ 1,107,466
4	MA Public Health Program and		
5	Health Science		
6	Technology (R).....	62300	52,387
7	Health Sciences Career		
8	Opportunities Program (R).....	86900	319,587
9	HSTA Program (R).....	87000	1,630,169
10	Center for Excellence		
11	in Disabilities (R).....	96700	<u>292,554</u>
12	Total.....		\$ 3,402,163

13 Any unexpended balances remaining in the
14 appropriations for WVU Health Sciences – RHI Program
15 and Site Support (fund 4185, appropriation 03500), MA
16 Public Health Program and Health Science Technology
17 (fund 4185, appropriation 62300), Health Sciences Career
18 Opportunities Program (fund 4185, appropriation 86900),
19 HSTA Program (fund 4185, appropriation 87000), and
20 Center for Excellence in Disabilities (fund 4185,
21 appropriation 96700) at the close of fiscal year 2017 are
22 hereby reappropriated for expenditure during the fiscal year
23 2018.

*296-Higher Education Policy Commission –**Lottery Education –**Marshall University – School of Medicine*

(WV Code Chapter 18B)

Fund 4896 FY 2018 Org 0471

1	Marshall Medical School –		
2	RHI Program and		
3	Site Support (R).....	03300	\$ 396,249
4	Vice Chancellor for Health Sciences –		
5	Rural Health		
6	Residency Program (R)	60100	<u>163,858</u>
7	Total.....		<u>\$ 560,107</u>

8 Any unexpended balances remaining in the
9 appropriations for Marshall Medical School – RHI Program
10 and Site Support (fund 4896, appropriation 03300) and Vice
11 Chancellor for Health Sciences – Rural Health Residency
12 Program (fund 4896, appropriation 60100) at the close of
13 fiscal year 2017 are hereby reappropriated for expenditure
14 during the fiscal year 2018.

15 Total TITLE II,
16 Section 4 – Lottery Revenue ... \$130,917,133

1 **Sec. 5. Appropriations from state excess lottery**
2 **revenue fund.** — In accordance with W.Va. Code §29-22-
3 18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-
4 22b, the following appropriations shall be deposited and
5 disbursed by the Director of the Lottery to the following
6 accounts in this section in the amounts indicated.

7 After first funding the appropriations required by W.Va.
8 Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-
9 27a and §29-25-22b, the Director of the Lottery shall
10 provide funding from the State Excess Lottery Revenue
11 Fund for the remaining appropriations in this section to the
12 extent that funds are available. In the event that revenues to
13 the State Excess Lottery Revenue Fund are sufficient to
14 meet all the appropriations required made pursuant to this
15 section, then the Director of the Lottery shall then provide
16 the funds available for fund 5365, appropriation 18900.

*297-Lottery Commission –**Refundable Credit*Fund 7207 FY 2018 Org 0705

		Excess
	Appro-	Lottery
	priation	Funds
1 Directed Transfer	70000	\$ 10,000,000
2 The above appropriation shall be transferred to the		
3 General Revenue Fund to provide reimbursement for the		
4 refundable credit allowable under W.Va. Code §11-21-21.		
5 The amount of the required transfer shall be determined		
6 solely by the State Tax Commissioner and shall be		
7 completed by the Director of the Lottery upon the		
8 commissioner's request.		

*298-Lottery Commission –**General Purpose Account*Fund 7206 FY 2018 Org 0705

1 General Revenue Fund – Transfer	70011	\$ 65,000,000
2 The above appropriation shall be transferred to the		
3 General Revenue Fund as determined by the Director of the		
4 Lottery in accordance with W.Va. Code §29-22-18a.		

*299-Higher Education Policy Commission –**Education Improvement Fund*Fund 4295 FY 2018 Org 0441

1 PROMISE Scholarship – Transfer	80000	\$ 29,000,000
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2 The above appropriation shall be transferred to the
3 PROMISE Scholarship Fund (fund 4296, org 0441)
4 established by W.Va. Code §18C-7-7.

5 The Legislature has explicitly set a finite amount of
6 available appropriations and directed the administrators of
7 the Program to provide for the award of scholarships within
8 the limits of available appropriations.

300-Economic Development Authority –

Economic Development Project Fund

Fund 9065 FY 2018 Org 0944

1 Debt Service – Total 31000 \$ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f),
3 excess lottery revenues are authorized to be transferred to
4 the lottery fund as reimbursement of amounts transferred to
5 the economic development project fund pursuant to section
6 four of this title and W.Va. Code §29-22-18, subsection (f).

301-Department of Education –

School Building Authority

Fund 3514 FY 2018 Org 0402

1 Debt Service – Total 31000 \$ 19,000,000

302-West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2018 Org 0316

1 Directed Transfer 70000 \$ 46,000,000

2 The above appropriation shall be allocated pursuant to
3 W.Va. Code §29-22-18d and §31-15-9.

303-Higher Education Policy Commission –

Higher Education Improvement Fund

Fund 4297 FY 2018 Org 0441

- 1 Directed Transfer 70000 \$ 15,000,000
- 2 The above appropriation shall be transferred to fund
- 3 4903, org 0442 as authorized by Senate Concurrent
- 4 Resolution No. 41.

304-Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2018 Org 0310

1	Current Expenses (R).....	13000	\$ 2,438,300
2	Repairs and Alterations (R)	06400	2,161,200
3	Equipment (R).....	07000	200,000
4	Buildings (R).....	25800	100,000
5	Other Assets (R).....	69000	<u>100,500</u>
6	Total.....		\$ 5,000,000

7 Any unexpended balances remaining in the above
 8 appropriations for Repairs and Alterations (fund 3277,
 9 appropriation 06400), Equipment (fund 3277, appropriation
 10 07000), Unclassified – Total (fund 3277, appropriation
 11 09600), Unclassified (fund 3277, appropriation 09900),
 12 Current Expenses (fund 3277, appropriation 13000),
 13 Buildings (fund 3277, appropriation 25800), and Other
 14 Assets (fund 3277, appropriation 69000) at the close of the
 15 fiscal year 2017 are hereby reappropriated for expenditure
 16 during the fiscal year 2018.

305-Racing Commission –

Fund 7308 FY 2018 Org 0707

- 1 Special Breeders Compensation
- 2 (WVC §29-22-18a, subsection (l))... 21800 \$ 2,000,000

*306-Lottery Commission –**Distributions to Statutory Funds and Purposes*Fund 7213 FY 2018 Org 0705

1	Parking Garage Fund – Transfer....	70001	\$	500,000
2	2004 Capitol Complex Parking Garage			
3	Fund – Transfer	70002		254,147
4	Capitol Dome and			
5	Improvements Fund – Transfer....	70003		2,155,201
6	Capitol Renovation and			
7	Improvement Fund – Transfer.....	70004		2,795,627
8	Development Office			
9	Promotion Fund – Transfer.....	70005		1,524,887
10	Research Challenge			
11	Fund – Transfer	70006		2,033,184
12	Tourism Promotion			
13	Fund – Transfer	70007		5,659,115
14	Cultural Facilities and Capitol			
15	Resources Matching Grant			
16	Program Fund – Transfer.....	70008		1,433,371
17	Workers' Compensation Debt			
18	Reduction Fund – Transfer	70009		2,750,000
19	State Debt Reduction			
20	Fund – Transfer	70010		20,000,000
21	General Revenue Fund – Transfer	70011		9,763,472
22	West Virginia Racing Commission			
23	Racetrack Video			
24	Lottery Account.....	70012		4,066,363
25	Historic Resort Hotel Fund.....	70013		34,200
26	Licensed Racetrack			
27	Regular Purse Fund	70014		<u>10,111,678</u>
28	Total.....			\$ 63,081,245

307-Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2018 Org 0100

1 Any unexpended balance remaining in the appropriation
2 for Publication of Papers and Transition Expenses – Lottery
3 Surplus (fund 1046, appropriation 06600) at the close of the
4 fiscal year 2017 is hereby reappropriated for expenditure
5 during the fiscal year 2018.

308-West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2018 Org 0307

1 Any unexpended balances remaining in the
2 appropriations for Unclassified – Total (fund 3170,
3 appropriation 09600), Recreational Grants or Economic
4 Development Loans (fund 3170, appropriation 25300), and
5 Connectivity Research and Development – Lottery Surplus
6 (fund 3170, appropriation 92300) at the close of the fiscal
7 year 2017 are hereby reappropriated for expenditure during
8 the fiscal year 2018.

309-Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2018 Org 0441

1 Any unexpended balance remaining in the appropriation
2 for Advanced Technology Centers (fund 4932,
3 appropriation 02800) at the close of the fiscal year 2017 is
4 hereby reappropriated for expenditure during the fiscal year
5 2018.

310-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2018 Org 0511

1 Medical Services..... 18900 \$24,506,170

311-Division of Corrections –

Correctional Units

(WV Code Chapters 25, 28, 49 and 62)

Fund 6283 FY 2018 Org 0608

1 Any unexpended balance remaining in the appropriation
2 for Capital Outlay and Maintenance (fund 6283,
3 appropriation 75500) at the close of the fiscal year 2017 is
4 hereby reappropriated for expenditure during the fiscal year
5 2018.

6 Total TITLE II, Section 5 –

7 Excess Lottery Funds..... \$ 297,587,415

1 **Sec. 6. Appropriations of federal funds.** — In
2 accordance with Article 11, Chapter 4 of the Code from
3 federal funds there are hereby appropriated conditionally
4 upon the fulfillment of the provisions set forth in Article 2,
5 Chapter 11B of the Code the following amounts, as
6 itemized, for expenditure during the fiscal year 2018.

LEGISLATIVE

312-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2018 Org 2300

**Appro- Federal
piation Funds**

1 Economic Loss Claim

2 Payment Fund..... 33400 \$ 2,360,125

JUDICIAL*313-Supreme Court*Fund 8867 FY 2018 Org 2400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,008,000
3	Current Expenses	13000	<u>1,992,000</u>
4	Total.....		\$ 4,000,000

EXECUTIVE*314-Governor's Office*

(WV Code Chapter 5)

Fund 8742 FY 2018 Org 0100

1	Current Expenses – Total.....	13000	\$ 225,000
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315-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,563,760
3	Unclassified	09900	50,534
4	Current Expenses	13000	3,828,661
5	Repairs and Alterations.....	06400	650,000
6	Equipment.....	07000	910,500
7	Other Assets.....	69000	<u>50,000</u>
8	Total.....		\$ 7,053,455

*316-Department of Agriculture –**Meat Inspection Fund*

(WV Code Chapter 19)

Fund 8737 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 610,830
3	Unclassified	09900	8,755
4	Current Expenses	13000	136,012
5	Repairs and Alterations.....	06400	5,500
6	Equipment.....	07000	<u>114,478</u>
7	Total.....		\$ 875,575

317-Department of Agriculture –

State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 97,250
3	Current Expenses	13000	<u>14,099,974</u>
4	Total.....		\$ 14,197,224

318-Department of Agriculture –

Land Protection Authority

Fund 8896 FY 2018 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 46,526
3	Unclassified	09900	5,004
4	Current Expenses	13000	<u>448,920</u>
5	Total.....		\$ 500,450

319-Secretary of State –

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2018 Org 1600

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 210,240
3	Unclassified	09900	7,484

4	Current Expenses	13000	415,727
5	Repairs and Alterations.....	06400	15,000
6	Other Assets.....	69000	<u>100,000</u>
7	Total.....		\$ 748,451

DEPARTMENT OF COMMERCE

320-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2018 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,578,347
3	Unclassified	09900	51,050
4	Current Expenses	13000	5,232,560
5	Repairs and Alterations.....	06400	155,795
6	Equipment.....	07000	100,000
7	Other Assets.....	69000	<u>1,808,300</u>
8	Total.....		\$ 8,926,052

321-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2018 Org 0306

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 54,432
3	Unclassified	09900	2,803
4	Current Expenses	13000	195,639
5	Repairs and Alterations.....	06400	5,000
6	Equipment.....	07000	7,500
7	Other Assets.....	69000	<u>15,000</u>
8	Total.....		\$ 280,374

322-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2018 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 745,981
3	Unclassified	09900	50,000
4	Current Expenses	13000	<u>4,504,019</u>
5	Total.....		\$ 5,300,000

323-West Virginia Development Office –

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8901 FY 2018 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 497,289
3	Repairs and Alterations.....	06400	250
4	Equipment.....	07000	6,000
5	Unclassified	09900	106,795
6	Current Expenses	13000	<u>10,069,166</u>
7	Total.....		\$ 10,679,500

324-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2018 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 384,072
3	Unclassified	09900	5,572
4	Current Expenses	13000	167,098
5	Repairs and Alterations.....	06400	<u>500</u>
6	Total.....		\$ 557,242

325-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2018 Org 0310

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 7,912,218

3	Unclassified	09900	107,693
4	Current Expenses	13000	5,556,594
5	Repairs and Alterations.....	06400	289,400
6	Equipment.....	07000	1,815,182
7	Buildings.....	25800	951,000
8	Other Assets.....	69000	4,951,000
9	Land	73000	<u>6,001,000</u>
10	Total.....		\$ 27,584,087

326-Division of Miners' Health,

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2018 Org 0314

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 613,177
3	Current Expenses	13000	<u>150,000</u>
4	Total.....		\$ 763,177

327-WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2018 Org 0323

1	Unclassified	09900	\$ 5,127
2	Current Expenses	13000	507,530
3	Reed Act 2002 – Unemployment		
4	Compensation.....	62200	2,850,000
5	Reed Act 2002 –		
6	Employment Services.....	63000	<u>1,650,000</u>
7	Total.....		\$ 5,012,657

8 Pursuant to the requirements of 42 U.S.C. 1103, Section
9 903 of the Social Security Act, as amended, and the
10 provisions of W.Va. Code §21A-9-9, the above
11 appropriation to Unclassified and Current Expenses shall be
12 used by WorkForce West Virginia for the specific purpose

13 of administration of the state's unemployment insurance
 14 program or job service activities, subject to each and every
 15 restriction, limitation or obligation imposed on the use of
 16 the funds by those federal and state statutes.

328-Office of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2018 Org 0328

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 411,574
3	Unclassified	09900	7,350
4	Current Expenses	13000	<u>2,816,076</u>
5	Total.....		\$ 3,235,000

DEPARTMENT OF EDUCATION

329-State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2018 Org 0402

	Personal Services and		
	Employee Benefits.....	00100	\$ 5,628,855
	Unclassified	09900	2,000,000
	Current Expenses	13000	212,367,820
	Repairs and Alterations.....	06400	10,000
	Equipment.....	07000	10,000
	Other Assets.....	69000	<u>10,000</u>
	Total.....		\$220,026,675

330-State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2018 Org 0402

Personal Services and		
Employee Benefits.....	00100	\$ 1,812,648
Unclassified	09900	1,150,500
Current Expenses	13000	143,281,265
Repairs and Alterations.....	06400	20,000
Equipment.....	07000	100,000
Other Assets.....	69000	<u>25,000</u>
Total.....		\$ 146,389,413

*331-State Board of Education –**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2018 Org 0402

1 Personal Services and		
2 Employee Benefits.....	00100	\$ 1,519,972
3 Unclassified	09900	155,000
4 Current Expenses	13000	14,320,081
5 Repairs and Alterations.....	06400	10,000
6 Equipment.....	07000	10,000
7 Other Assets.....	69000	<u>10,000</u>
8 Total.....		\$ 16,025,053

*332-State Board of Education –**Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2018 Org 0402

1 Personal Services and		
2 Employee Benefits.....	00100	\$ 3,344,940
3 Unclassified	09900	1,000,000
4 Current Expenses	13000	108,346,390
5 Repairs and Alterations.....	06400	10,000
6 Equipment.....	07000	10,000

7	Other Assets.....	69000	<u>10,000</u>
8	Total.....		\$112,721,330

DEPARTMENT OF EDUCATION AND THE ARTS

333-Department of Education and the Arts –

Office of the Secretary

(WV Code Chapter 5F)

Fund 8841 FY 2018 Org 0431

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 416,675
3	Current Expenses	13000	5,587,325
4	Repairs and Alterations.....	06400	<u>1,000</u>
5	Total.....		\$ 6,005,000

334-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2018 Org 0432

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 743,046
3	Current Expenses	13000	1,947,372
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	1,000
6	Buildings.....	25800	1,000
7	Other Assets.....	69000	1,000
8	Land.....	73000	<u>360</u>
9	Total.....		\$ 2,694,778

335-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2018 Org 0433

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 333,648

3	Current Expenses	13000	1,076,162
4	Equipment.....	07000	<u>543,406</u>
5	Total.....		\$ 1,953,216

336-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2018 Org 0439

1	Equipment.....	07000	\$ 750,000
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337-State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2018 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 11,248,930
3	Current Expenses	13000	54,485,940
4	Repairs and Alterations.....	06400	350,400
5	Equipment.....	07000	<u>1,275,870</u>
6	Total.....		\$ 67,361,140

338-State Board of Rehabilitation –

Division of Rehabilitation Services –

Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2018 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 13,730,634
3	Current Expenses	13000	11,383,206
4	Repairs and Alterations.....	06400	1,100
5	Equipment.....	07000	<u>83,350</u>
6	Total.....		\$ 25,198,290

DEPARTMENT OF ENVIRONMENTAL PROTECTION*339-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2018 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 29,177,068
3	Current Expenses	13000	190,201,007
4	Repairs and Alterations.....	06400	738,283
5	Equipment.....	07000	1,725,238
6	Unclassified	09900	2,201,827
7	Other Assets.....	69000	2,154,416
8	Land	73000	<u>100,000</u>
9	Total.....		\$226,297,839

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*340-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2018 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 750,876
3	Unclassified	09900	73,307
4	Current Expenses	13000	<u>6,630,103</u>
5	Total.....		\$ 7,454,286

*341-Division of Health –**Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2018 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 13,744,404

3	Unclassified	09900	947,948
4	Current Expenses	13000	79,110,551
5	Equipment.....	07000	456,972
6	Buildings.....	25800	155,000
7	Other Assets.....	69000	<u>380,000</u>
8	Total.....		\$ 94,794,875

342-Division of Health –

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2018 Org 0506

1	West Virginia Drinking Water Treatment		
2	Revolving Fund – Transfer.....	68900	\$ 16,000,000

343-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2018 Org 0507

1	Unclassified	09900	\$ 9,966
2	Current Expenses	13000	<u>986,649</u>
3	Total.....		\$ 996,615

344-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2018 Org 0510

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 625,349
3	Unclassified	09900	5,482
4	Current Expenses	13000	<u>140,389</u>
5	Total.....		\$ 771,220

345-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2018 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 68,943,213
3	Unclassified.....	09900	22,855,833
4	Current Expenses.....	13000	72,070,005
5	Medical Services	18900	3,234,265,405
6	Medical Services		
7	Administrative Costs	78900	132,045,119
8	CHIP Administrative Costs	85601	3,333,752
9	CHIP Services.....	85602	47,422,974
10	Federal Economic Stimulus.....	89100	<u>20,000,000</u>
11	Total.....		\$3,600,936,301

**DEPARTMENT OF MILITARY AFFAIRS AND
PUBLIC SAFETY**

346-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2018 Org 0601

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 439,636
3	Unclassified	09900	250,000
4	Current Expenses	13000	24,307,690
5	Repairs and Alterations.....	06400	3,000
6	Other Assets.....	69000	<u>5,000</u>
7	Total.....		\$ 25,005,326

347-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 8726 FY 2018 Org 0603

1	Unclassified	09900	\$ 982,705
2	Mountaineer ChalleNGe Academy....	70900	4,550,000
3	Martinsburg Starbase	74200	410,000

4	Charleston Starbase.....	74300	400,000
5	Military Authority.....	74800	<u>91,927,900</u>
6	Total.....		\$ 98,270,605

7 The Adjutant General shall have the authority to transfer
8 between appropriations.

348-Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2018 Org 0603

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,350,000
3	Current Expenses	13000	300,000
4	Equipment.....	07000	<u>350,000</u>
5	Total.....		\$ 2,000,000

349-Division of Homeland Security and

Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2018 Org 0606

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 721,650
3	Current Expenses	13000	20,429,281
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	<u>100,000</u>
6	Total.....		\$ 21,255,931

350-Division of Corrections

(WV Code Chapters 25, 28, 49 and 62)

Fund 8836 FY 2018 Org 0608

1	Unclassified	09900	\$ 1,100
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2	Current Expenses	13000	<u>108,900</u>
3	Total.....		\$ 110,000

351-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2018 Org 0612

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,435,539
3	Current Expenses	13000	2,125,971
4	Repairs and Alterations.....	06400	42,000
5	Equipment.....	07000	2,502,285
6	Buildings.....	25800	750,500
7	Other Assets.....	69000	144,500
8	Land	73000	<u>500</u>
9	Total.....		\$ 8,001,295

352-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2018 Org 0619

1	Current Expenses	13000	\$ 80,000
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353-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 8803 FY 2018 Org 0620

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,056,170
3	Unclassified	09900	25,185
4	Current Expenses	13000	18,774,373
5	Repairs and Alterations.....	06400	<u>1,750</u>
6	Total.....		\$ 19,857,478

DEPARTMENT OF REVENUE*354-Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2018 Org 0704

1	Current Expenses	13000	\$ 3,000,000
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DEPARTMENT OF TRANSPORTATION*355-Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2018 Org 0802

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 501,394
3	Current Expenses	13000	13,671,640
4	Repairs and Alterations.....	06400	<u>500</u>
5	Total.....		\$ 14,173,534

356-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2018 Org 0805

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 702,637
3	Current Expenses	13000	9,161,605
4	Repairs and Alterations.....	06400	2,500
5	Equipment.....	07000	4,726,958
6	Buildings.....	25800	750,000
7	Other Assets.....	69000	<u>250,000</u>
8	Total.....		\$ 15,593,700

357-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2018 Org 0806

1	Current Expenses	13000	\$	200,000
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DEPARTMENT OF VETERANS' ASSISTANCE*358-Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 8858 FY 2018 Org 0613

1	Personal Services and			
2	Employee Benefits.....	00100	\$	2,751,100
3	Current Expenses	13000		3,925,900
4	Repairs and Alterations.....	06400		50,000
5	Equipment.....	07000		200,000
6	Buildings.....	25800		600,000
7	Other Assets.....	69000		100,000
8	Land	73000		<u>100,000</u>
9	Total.....		\$	7,727,000

*359-Department of Veterans' Assistance –**Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2018 Org 0618

1	Personal Services and			
2	Employee Benefits.....	00100	\$	877,915
3	Current Expenses	13000		844,092
4	Repairs and Alterations.....	06400		220,000
5	Equipment.....	07000		198,000
6	Buildings.....	25800		296,000
7	Other Assets.....	69000		20,000
8	Land	73000		<u>10,000</u>
9	Total.....		\$	2,466,007

BUREAU OF SENIOR SERVICES*360-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2018 Org 0508

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 721,393
3	Current Expenses	13000	13,811,853
4	Repairs and Alterations.....	06400	<u>3,000</u>
5	Total.....		\$ 14,536,246

MISCELLANEOUS BOARDS AND COMMISSIONS*361-Public Service Commission –**Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2018 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,286,913
3	Current Expenses	13000	368,953
4	Repairs and Alterations.....	06400	40,000
5	Equipment.....	07000	<u>750,000</u>
6	Total.....		\$ 2,445,866

*362-Public Service Commission –**Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2018 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 596,600
3	Current Expenses	13000	124,628
4	Equipment.....	07000	<u>3,000</u>

5	Unclassified	09900	<u>4,072</u>
6	Total.....		\$ 728,300

363-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2018 Org 0941

1	Personal Services and		
2	Employee Benefits.....	00100 \$	159,235
3	Current Expenses	13000	631,365
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	3,000
6	Other Assets.....	69000	2,000
7	Total.....		<u>\$ 800,600</u>

8	Total TITLE II, Section 6 -		
9	Federal Funds		<u>\$ 4,874,926,288</u>

1 **Sec. 7. Appropriations from federal block grants.** —
 2 The following items are hereby appropriated from federal
 3 block grants to be available for expenditure during the fiscal
 4 year 2018.

364-West Virginia Development Office –

Community Development

Fund 8746 FY 2018 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100 \$	648,117
3	Unclassified	09900	375,000
4	Current Expenses	13000	<u>36,476,883</u>
5	Total.....		<u>\$ 37,500,000</u>

365-Department of Commerce

West Virginia Development Office –

Office of Economic Opportunity –

*Community Services*Fund 8902 FY 2018 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 362,389
3	Unclassified	09900	125,000
4	Current Expenses	13000	12,002,111
5	Repairs and Alterations.....	06400	1,500
6	Equipment.....	07000	<u>9,000</u>
7	Total.....		\$ 12,500,000

*366-WorkForce West Virginia –**Workforce Investment Act*Fund 8749 FY 2018 Org 0323

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 2,112,606
3	Unclassified	09900	23,023
4	Current Expenses	13000	39,263,511
5	Repairs and Alterations.....	06400	1,600
6	Equipment.....	07000	500
7	Buildings.....	25800	<u>1,100</u>
8	Total.....		\$ 41,402,340

*367-Division of Health –**Maternal and Child Health*Fund 8750 FY 2018 Org 0506

	Personal Services and		
	Employee Benefits.....	00100	\$ 2,124,294
	Unclassified	09900	110,017
	Current Expenses	13000	<u>8,767,420</u>
	Total.....		\$ 11,001,731

*368-Division of Health –**Preventive Health*

Fund 8753 FY 2018 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 162,320
3	Unclassified	09900	22,457
4	Current Expenses	13000	1,895,366
5	Equipment.....	07000	<u>165,642</u>
6	Total.....		\$ 2,245,785

*369-Division of Health –**Substance Abuse Prevention and Treatment*Fund 8793 FY 2018 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 822,766
3	Unclassified	09900	115,924
4	Current Expenses	13000	<u>10,653,740</u>
5	Total.....		\$ 11,592,430

*370-Division of Health –**Community Mental Health Services*Fund 8794 FY 2018 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 936,557
3	Unclassified	09900	33,533
4	Current Expenses	13000	<u>2,383,307</u>
5	Total.....		\$ 3,353,397

*371-Division of Human Services –**Energy Assistance*Fund 8755 FY 2018 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,514,312
3	Unclassified	09900	350,000

4	Current Expenses	13000	<u>33,181,300</u>
5	Total.....		\$ 35,045,612

372-Division of Human Services –

Social Services

Fund 8757 FY 2018 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 14,231,684
3	Unclassified	09900	171,982
4	Current Expenses	13000	<u>2,870,508</u>
5	Total.....		\$ 17,274,174

373-Division of Human Services –

Temporary Assistance for Needy Families

Fund 8816 FY 2018 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 18,297,327
3	Unclassified	09900	1,250,000
4	Current Expenses	13000	<u>105,847,136</u>
5	Total.....		\$ 125,394,463

374-Division of Human Services –

Child Care and Development

Fund 8817 FY 2018 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 4,676,841
3	Unclassified	09900	350,000
4	Current Expenses	13000	<u>31,999,456</u>
5	Total.....		\$ 37,026,297

375-Division of Justice and Community Services –

Juvenile Accountability Incentive

Fund 8829 FY 2018 Org 0620

1	Personal Services and		
2	Employee Benefits.....	00100 \$	1,648
3	Current Expenses	13000	48,351
4	Repairs and Alterations.....	06400	<u>1</u>
5	Total.....		<u>\$ 50,000</u>
6	Total TITLE II, Section 7 –		
7	Federal Block Grants.....		<u>\$ 334,386,229</u>

1 **Sec. 8. Awards for claims against the state.** — There
2 are hereby appropriated for fiscal year 2018, from the fund
3 as designated, in the amounts as specified, general revenue
4 funds in the amount of \$930,144, special revenue funds in
5 the amount of \$458,734, and state road funds in the amount
6 of \$563,249 for payment of claims against the state.

1 **Sec. 9. Appropriations from general revenue surplus**
2 **accrued.** — The following items are hereby appropriated
3 from the state fund, general revenue, and are to be available
4 for expenditure during the fiscal year 2018 out of surplus
5 funds only, accrued from the fiscal year ending June 30,
6 2017, subject to the terms and conditions set forth in this
7 section.

8 It is the intent and mandate of the Legislature that the
9 following appropriations be payable only from surplus as of
10 July 31, 2017 from the fiscal year ending June 30, 2017,
11 only after first meeting requirements of W.Va. Code §11B-
12 2-20(b).

13 In the event that surplus revenues available on July 31,
14 2017, are not sufficient to meet the appropriations made
15 pursuant to this section, then the appropriations shall be
16 made to the extent that surplus funds are available as of the
17 date mandated to meet the appropriations in this section and
18 shall be allocated first to provide the necessary funds to
19 meet the first appropriation of this section and each
20 subsequent appropriation in the order listed in this section.

376-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2018 Org 0211

- 1 Capital Outlay, Repairs and
- 2 Equipment – Surplus 67700 \$ 8,000,000

377-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2018 Org 0511

- 1 Medical Services – Surplus..... 63300 \$ 30,159,358

378-State Auditor –

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2018 Org 1200

- 1 Volunteer Fire Department Workers’
- 2 Compensation Subsidy –
- 3 Surplus ##### \$ 2,000,000

379-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2018 Org 0702

- 1 Enhanced Enforcement and
- 2 Auditing - Surplus ##### \$ 750,000
- 3 Total TITLE II, Section 9 –
- 4 Surplus Accrued \$ 40,909,358

1 **Sec. 10. Appropriations from lottery net profits**
 2 **surplus accrued.** — The following item is hereby

3 appropriated from the lottery net profits, and is to be
4 available for expenditure during the fiscal year 2018 out of
5 surplus funds only, as determined by the director of lottery,
6 accrued from the fiscal year ending June 30, 2017, subject
7 to the terms and conditions set forth in this section.

8 It is the intent and mandate of the Legislature that the
9 following appropriation be payable only from surplus
10 accrued from the fiscal year ending June 30, 2017.

11 In the event that surplus revenues available from the
12 fiscal year ending June 30, 2017, are not sufficient to meet
13 the appropriation made pursuant to this section, then the
14 appropriation shall be made to the extent that surplus funds
15 are available.

380-Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2018 Org 0508

1	Senior Services Medicaid Transfer –		
2	Lottery Surplus	68199	<u>\$ 15,500,000</u>
3	Total TITLE II, Section 10 –		
4	Surplus Accrued		<u>\$ 15,500,000</u>

1 **Sec. 11. Appropriations from state excess lottery**
2 **revenue surplus accrued.** — The following item is hereby
3 appropriated from the state excess lottery revenue fund, and
4 is to be available for expenditure during the fiscal year 2018
5 out of surplus funds only, as determined by the director of
6 lottery, accrued from the fiscal year ending June 30, 2017,
7 subject to the terms and conditions set forth in this section.

8 It is the intent and mandate of the Legislature that the
9 following appropriation be payable only from surplus
10 accrued from the fiscal year ending June 30, 2017.

11 In the event that surplus revenues available from the
 12 fiscal year ending June 30, 2017, are not sufficient to meet
 13 the appropriation made pursuant to this section, then the
 14 appropriation shall be made to the extent that surplus funds
 15 are available.

381-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2018 Org 0511

1	Medical Services –		
2	Lottery Surplus	68100	<u>\$ 26,900,000</u>
3	Total TITLE II, Section 11 –		
4	Surplus Accrued		<u>\$ 26,900,000</u>

1 **Sec. 12. Special revenue appropriations.** — There are
 2 hereby appropriated for expenditure during the fiscal year
 3 2018 appropriations made by general law from special
 4 revenues which are not paid into the state fund as general
 5 revenue under the provisions of W.Va. Code §12-2-2:
 6 *Provided*, That none of the money so appropriated by this
 7 section shall be available for expenditure except in
 8 compliance with the provisions of W.Va. Code §12-2 and 3,
 9 and W.Va. Code §11B-2, unless the spending unit has filed
 10 with the director of the budget and the legislative auditor
 11 prior to the beginning of each fiscal year:

12 (a) An estimate of the amount and sources of all
 13 revenues accruing to such fund; and

14 (b) A detailed expenditure schedule showing for what
 15 purposes the fund is to be expended.

16 During Fiscal Year 2018, the following funds are hereby
 17 available and are to be transferred to the Department of
 18 Health and Human Resources, Division of Human Services
 19 – Medical Services Trust Fund (fund 5185) from available
 20 balances per the following:

*382-Treasurer's Office –
Banking Services Fund
(WV Code Chapter 12)*

Fund 1322 FY 2018 Org 1300

1 Directed Transfer 70000 \$1,209,197.40

*383-Department of Administration -
Office of the Secretary -
State Employee Sick Leave Fund
(WV Code Chapter 5)*

Fund 2045 FY 2018 Org 0201

1 Directed Transfer 70000 \$ 454,906.67

*384-Department of Administration -
Office of the Secretary -
Gifts, Grants and Donations
(WV Code Chapter 5A)*

Fund 2046 FY 2018 Org 0201

1 Directed Transfer 70000 \$ 80,000

*385-Department of Administration -
Division of Personnel -
Civil Service Emergency Employment Fund
(WV Code Chapter 29)*

Fund 2444 FY 2018 Org 0222

1	Directed Transfer	70000	\$	264.96
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386-Department of Health and Human Resources -

Division of Health -

Breast and Cervical Diagnostic and Treatment Fund

(WV Code Chapter 16)

Fund 5197 FY 2018 Org 0506

1	Directed Transfer	70000	\$	1,393,767.75
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2	Total TITLE II, Section 12 –			
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3	Directed Transfer			<u>\$3,138,136.78</u>
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1 **Sec. 13. State improvement fund appropriations.** —
2 Bequests or donations of nonpublic funds, received by the
3 Governor on behalf of the state during the fiscal year 2018,
4 for the purpose of making studies and recommendations
5 relative to improvements of the administration and
6 management of spending units in the executive branch of
7 state government, shall be deposited in the state treasury in
8 a separate account therein designated state improvement
9 fund.

10 There are hereby appropriated all moneys so deposited
11 during the fiscal year 2018 to be expended as authorized by
12 the Governor, for such studies and recommendations which
13 may encompass any problems of organization, procedures,
14 systems, functions, powers or duties of a state spending unit
15 in the executive branch, or the betterment of the economic,
16 social, educational, health and general welfare of the state
17 or its citizens.

1 **Sec. 14. Specific funds and collection accounts.** — A
2 fund or collection account which by law is dedicated to a
3 specific use is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection account
5 and shall be expended according to the provisions of Article
6 3, Chapter 12 of the Code.

1 **Sec. 15. Appropriations for refunding erroneous**
2 **payment.** — Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he or
7 she shall issue his or her requisition upon the Auditor for the
8 refunding of the proper amount. The Auditor shall issue his
9 or her warrant to the Treasurer and the Treasurer shall pay
10 the warrant out of the fund into which the amount was
11 originally paid.

1 **Sec. 16. Sinking fund deficiencies.** — There is hereby
2 appropriated to the Governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia housing development
5 fund which is under the supervision and control of the
6 municipal bond commission as provided by W.Va. Code
7 §31-18-20b, or in the funds of the municipal bond
8 commission because of the failure of any state agency for
9 either general obligation or revenue bonds or any local
10 taxing district for general obligation bonds to remit funds
11 necessary for the payment of interest and sinking fund
12 requirements. The Governor is authorized to transfer from
13 time to time such amounts to the municipal bond
14 commission as may be necessary for these purposes.

15 The municipal bond commission shall reimburse the
16 state of West Virginia through the Governor from the first
17 remittance collected from the West Virginia housing
18 development fund or from any state agency or local taxing
19 district for which the Governor advanced funds, with
20 interest at the rate carried by the bonds for security or
21 payment of which the advance was made.

1 **Sec. 17. Appropriations for local governments.** —
2 There are hereby appropriated for payment to counties,
3 districts and municipal corporations such amounts as will be

4 necessary to pay taxes due counties, districts and municipal
5 corporations and which have been paid into the treasury:

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 18. Total appropriations.** — Where only a total
2 sum is appropriated to a spending unit, the total sum shall
3 include personal services and employee benefits, annual
4 increment, current expenses, repairs and alterations,
5 buildings, equipment, other assets, land, and capital outlay,
6 where not otherwise specifically provided and except as
7 otherwise provided in TITLE I – GENERAL
8 PROVISIONS, Sec. 3.

1 **Sec. 19. General school fund.** — The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with W.Va.
5 Code §18-9A-16.

TITLE III - ADMINISTRATION

§1. Appropriations conditional

§2. Constitutionality

TITLE III – ADMINISTRATION

1 **Sec. 1. Appropriations conditional.** — The
2 expenditure of the appropriations made by this act, except
3 those appropriations made to the legislative and judicial
4 branches of the state government, are conditioned upon the
5 compliance by the spending unit with the requirements of
6 Article 2, Chapter 11B of the Code.

7 Where spending units or parts of spending units have
8 been absorbed by or combined with other spending units, it
9 is the intent of this act that appropriations and
10 reappropriations shall be to the succeeding or later spending
11 unit created, unless otherwise indicated.

1 **Sec. 2. Constitutionality.** — If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of this
4 act which remains, but the remaining portion shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

CHAPTER 2

**(H. B. 111 - By Mr. Speaker (Mr. Armstead) and
Delegate Miley)
[By Request of the Executive]**

[Passed June 9, 2017; in effect ninety days from passage.]
[Approved by the Governor on June 19, 2017.]

AN ACT to amend and reenact §11-10-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-10C-2 of said code, all relating generally to tax procedures and administration; requiring a notice of lien to include the lien expiration date; providing for additional circumstances in which the Tax Commissioner may withdraw tax liens; providing for the release, withdrawal or termination of lien under certain circumstances; and deleting inoperative language.

Be it enacted by the Legislature of West Virginia:

That §11-10-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-10C-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-12. Liens, release; subordination; foreclosure; withdrawal.

1 (a) *General.* — Any tax, additions to tax, penalties or
2 interest due and payable under this article or any of the other
3 articles of this chapter to which this article is applicable is a
4 debt due this state. It is a personal obligation of the taxpayer
5 and is a lien upon the real and personal property of the
6 taxpayer.

7 (b) *Duration of lien.* — The lien created by this section
8 continues until the liability for the tax, additions to tax,
9 penalties and interest is satisfied or upon the expiration of
10 ten years from the date the tax, additions to tax, penalties
11 and interest are due and payable under section eight of this
12 article or the date the tax return is filed, whichever is later.

13 (c) *Recordation.* — The lien created by this section is
14 subject to the restrictions and conditions embodied in article
15 ten-c, chapter thirty-eight of this code and any amendment
16 made or which may hereafter be made thereto: *Provided,*
17 That the notice of lien shall indicate the date the tax,
18 additions to tax, penalties and interest are due and payable
19 under section eight of this article or the date the tax return
20 was filed and the lien expiration date.

21 (d) *Release or subordination.* — The Tax
22 Commissioner, pursuant to rules prescribed by him or her,
23 may issue his or her certificate of release of any lien created
24 pursuant to this section when the debt is adequately secured
25 by bond or other security. He or she shall issue his or her
26 certificate of release when the debt secured has been
27 satisfied. The certificate of release shall be issued in
28 duplicate. One copy shall be forwarded to the taxpayer and
29 the other copy shall be forwarded to the clerk of the county
30 commission of the county wherein the lien is recorded. The
31 clerk of the county commission shall record the release
32 without payment of any fee and the recordation is a release
33 and full discharge of the lien. The Tax Commissioner may
34 issue his or her certificate of release of the lien as to all or
35 any part of the property subject to the lien, or may
36 subordinate the lien to any other lien or interest, but only if
37 there is paid to the state an amount not less than the value

38 of the interest of the state in the property, or if the interest
39 of the state in the property has no value.

40 (e) *Foreclosure.* — The Tax Commissioner may
41 enforce any lien created and recorded under this section,
42 against any property subject to the lien by civil action in the
43 circuit court of the county wherein the property is located,
44 in order to subject the property to the payment of the tax
45 secured by the lien. All persons having liens upon or having
46 any interest in the property shall be made parties to the
47 action. The court may appoint a receiver or commissioner
48 who shall ascertain and report all liens, claims and interests
49 in and upon the property, the validity, amount and priority
50 of each. The court shall, after notice to all parties, proceed
51 to adjudicate all matters involved therein, shall determine
52 the validity, amount and priorities of all liens, claims and
53 interests in and upon the property and shall decree a sale of
54 the property by the sheriff or any commissioner to whom
55 the action is referred, and shall decree distribution of the
56 proceeds of the sale according to the findings of the court in
57 respect to the interests of the parties.

58 (f) *Discharge of lien.* — A sale of property against
59 which the state has a lien under this section, made pursuant
60 to an instrument creating a lien on the property or made
61 pursuant to a statutory lien on the property, or made
62 pursuant to a judicial order to enforce any judgment in any
63 civil action, shall be made subject to and without disturbing
64 the state tax lien if the state tax lien was recorded more than
65 thirty days before the sale, unless:

66 (1) The Tax Commissioner is made a party to the civil
67 action;

68 (2) The Tax Commissioner is given notice of the sale in
69 writing not less than fifteen days prior to sale; or

70 (3) The Tax Commissioner consents to the sale. The
71 notice shall contain the name of the owner of the property

72 and the Social Security number or federal employer
73 identification number of the owner.

74 (g) *Withdrawal of lien.* —

75 (1) The Tax Commissioner or the Tax Commissioner's
76 designee may withdraw a tax lien upon making one or more
77 of the following determinations:

78 (A) The lien was recorded prematurely, inadvertently or
79 otherwise erroneously; or

80 (B) The taxpayer voluntarily and through due diligence
81 paid the lien, fulfilled a payment plan agreement, fulfilled
82 the terms of an offer in compromise, timely provided
83 supporting documentation or paid the lien in good faith.

84 (2) A withdrawal of the lien shall be issued in duplicate.
85 One copy shall be forwarded to the taxpayer and the other
86 copy shall be forwarded to the clerk of the county
87 commission of the county wherein the lien is recorded. The
88 clerk of the county commission shall record the withdrawal
89 of lien without payment of any fee.

90 (h) *Release of lien.* — Subject to such rules as the Tax
91 Commissioner may prescribe, pursuant to article three, chapter
92 twenty-nine-a of this code, the Tax Commissioner shall issue
93 a certificate of release of any lien imposed with respect to any
94 tax or fee administered under this article not later than sixty
95 days after the day on which the Tax Commissioner finds that
96 the liability for the amount assessed, together with all interest
97 and additions to tax in respect thereof, has been fully satisfied:
98 *Provided,* That subject to such rules as the Tax Commissioner
99 may prescribe pursuant to article three, chapter twenty-nine-a
100 of this code, the Tax Commissioner shall withdraw, release or
101 otherwise terminate any lien imposed with respect to any tax
102 or fee administered under this article, upon the determining
103 that the lien is unenforceable, or in accordance with such other
104 criteria as the Tax Commissioner may prescribe pursuant to
105 rule.

CHAPTER 38. LIENS.**ARTICLE 10C. STATE AND LOCAL TAX LIENS.****§38-10C-2. Notices of liens of state, political subdivisions and municipalities to be filed; indexes; withdrawal release.**

1 It is the duty of the Tax Commissioner, or the proper
2 officers of the political subdivisions of the state for its
3 subdivisions and of the proper officers of the municipalities
4 for the municipalities, having liens, to file a notice of the
5 liens in the office of the clerk of the county commission of
6 the county in which the property of the taxpayer against
7 whom the lien is claimed, is situate, stating in the notice
8 what amount of money is owing to the State of West
9 Virginia, the political subdivision or the municipality, on
10 account of the lien from the taxpayer owing the money; and
11 the clerk of the county commission of the county shall, upon
12 the filing of notice, index the lien in the judgment or tax lien
13 docket in his or her office as a tax lien against the taxpayer
14 in favor of the State of West Virginia, the political
15 subdivision or the municipality. Upon the determination of
16 the Tax Commissioner or the Tax Commissioner's designee
17 that the lien should be withdrawn, a withdrawal of the lien
18 shall be issued in duplicate. One copy shall be forwarded to
19 the taxpayer, and the other copy shall be forwarded to the
20 clerk of the county commission of the county wherein the
21 lien is recorded. The clerk of the county commission shall
22 record the withdrawal of lien without payment of any fee.
23 Upon the satisfaction of the lien, a release of the lien for
24 recordation shall be signed and delivered to the taxpayer by
25 the proper officer. The signature of the Tax Commissioner
26 or the Tax Commissioner's designee on the notice and on
27 the release or withdrawal may be either a properly
28 acknowledged manual signature or a facsimile signature
29 authenticated pursuant to the filing of an affidavit and a
30 manual signature with the Secretary of State in the manner
31 specified in section two, article fourteen, chapter six of this
32 code. The facsimile signature has the same legal effect as
33 the manual signature.

CHAPTER 3

**(S. B. 1014 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed June 9, 2017; in effect ninety days from passage.]
[Approved by the Governor on June 19, 2017.]

AN ACT to repeal §30-3E-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5-19 of said code; to amend and reenact §30-3-5 of said code; to amend and reenact §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-6, §30-3E-7, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-15, §30-3E-16 and §30-3E-17 of said code; to amend said code by adding thereto a new section, designated §30-3E-12a; and to amend and reenact §33-15-14 of said code, all relating to physician assistants; modifying board membership; substituting “collaborating physician” for “supervising physician”; defining terms; modifying the prescriptive authority of physician assistants; eliminating certain recertification requirements; eliminating the continuous national certification requirement; prohibiting an insurance plan from limiting the practice of physician assistants; adding requirements for practice agreements; granting physician assistants signatory authority on certain forms; and making conforming amendments.

Be it enacted by the Legislature of West Virginia:

That §30-3E-8 of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-19 of said code be amended and reenacted; that §30-3-5 of said code be amended and reenacted; that §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-6, §30-3E-7, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-15, §30-3E-16 and §30-3E-17 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated

§30-3E-12a; and that §33-15-14 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-19. Death registration.

1 (a) A certificate of death for each death which occurs in
2 this state shall be filed with the section of vital statistics, or
3 as otherwise directed by the State Registrar, within five days
4 after death, and prior to final disposition, and shall be
5 registered if it has been completed and filed in accordance
6 with this section.

7 (1) If the place of death is unknown, but the dead body
8 is found in this state, the place where the body was found
9 shall be shown as the place of death.

10 (2) If the date of death is unknown, it shall be
11 approximated. If the date cannot be approximated, the date
12 found shall be shown as the date of death.

13 (3) If death occurs in a moving conveyance in the
14 United States and the body is first removed from the
15 conveyance in this state, the death shall be registered in this
16 state and the place where it is first removed shall be
17 considered the place of death.

18 (4) If death occurs in a moving conveyance while in
19 international waters or air space or in a foreign country or
20 its air space and the body is first removed from the
21 conveyance in this state, the death shall be registered in this
22 state but the certificate shall show the actual place of death
23 insofar as can be determined.

24 (5) In all other cases, the place where death is
25 pronounced shall be considered the place where death
26 occurred.

27 (b) The funeral director or other person who assumes
28 custody of the dead body shall:

29 (1) Obtain the personal data from the next of kin or the
30 best qualified person or source available including the
31 deceased person's social security number or numbers,
32 which shall be placed in the records relating to the death and
33 recorded on the certificate of death;

34 (2) Within forty-eight hours after death, provide the
35 certificate of death containing sufficient information to
36 identify the decedent to the physician nurse responsible for
37 completing the medical certification as provided in
38 subsection (c) of this section; and

39 (3) Upon receipt of the medical certification, file the
40 certificate of death: *Provided*, That for implementation of
41 electronic filing of death certificates, the person who
42 certifies to cause of death will be responsible for filing the
43 electronic certification of cause of death as directed by the
44 State Registrar and in accordance with legislative rule.

45 (c) The medical certification shall be completed and
46 signed within twenty-four hours after receipt of the
47 certificate of death by the physician, physician assistant or
48 advanced practice registered nurse in charge of the patient's
49 care for the illness or condition which resulted in death
50 except when inquiry is required pursuant to chapter sixty-
51 one, article twelve or other applicable provisions of this
52 code.

53 (1) In the absence of the physician, physician assistant
54 or advanced practice registered nurse or with his or her
55 approval, the certificate may be completed by his or her
56 associate physician, any physician who has been placed in
57 a position of responsibility for any medical coverage of the
58 decedent, the chief medical officer of the institution in
59 which death occurred, or the physician who performed an
60 autopsy upon the decedent, provided inquiry is not required
61 pursuant to chapter sixty-one, article twelve of this code.

62 (2) The person completing the cause of death shall attest
63 to its accuracy either by signature or by an approved
64 electronic process.

65 (d) When inquiry is required pursuant to article twelve,
66 chapter sixty-one or other applicable provisions of this
67 code, the state Medical Examiner or designee or county
68 medical examiner or county coroner in the jurisdiction
69 where the death occurred or where the body was found shall
70 determine the cause of death and shall complete the medical
71 certification within forty-eight hours after taking charge of
72 the case.

73 (1) If the cause of death cannot be determined within
74 forty-eight hours after taking charge of the case, the medical
75 examiner shall complete the medical certification with a
76 "Pending" cause of death to be amended upon completion
77 of medical investigation.

78 (2) After investigation of a report of death for which
79 inquiry is required, if the state Medical Examiner or
80 designee or county medical examiner or county coroner
81 decline jurisdiction, the state Medical Examiner or designee
82 or county medical examiner or county coroner may direct
83 the decedent's family physician or the physician who
84 pronounces death to complete the certification of death:
85 *Provided*, That the physician is not civilly liable for
86 inaccuracy or other incorrect statement of death unless the
87 physician willfully and knowingly provides information he
88 or she knows to be false.

89 (e) When death occurs in an institution and the person
90 responsible for the completion of the medical certification
91 is not available to pronounce death, another physician may
92 pronounce death. If there is no physician available to
93 pronounce death, then a designated licensed health
94 professional who views the body may pronounce death,
95 attest to the pronouncement by signature or an approved
96 electronic process and, with the permission of the person
97 responsible for the medical certification, release the body to

198 the funeral director or other person for final disposition:
199 *Provided*, That if the death occurs in an institution during
200 court-ordered hospitalization, in a correctional facility or
201 under custody of law-enforcement authorities, the death
202 shall be reported directly to a medical examiner or coroner
203 for investigation, pronouncement and certification.

204 (f) If the cause of death cannot be determined within the
205 time prescribed, the medical certification shall be completed
206 as provided by legislative rule. The attending physician or
207 medical examiner, upon request, shall give the funeral
208 director or other person assuming custody of the body
209 notice of the reason for the delay, and final disposition of
210 the body may not be made until authorized by the attending
211 physician, medical examiner or other persons authorized by
212 this article to certify the cause of death.

213 (g) Upon receipt of autopsy results, additional scientific
214 study, or where further inquiry or investigation provides
215 additional information that would change the information
216 on the certificate of death from that originally reported, the
217 certifier or any State Medical Examiner who provides such
218 inquiry under authority of article twelve, chapter sixty-one
219 of this code shall immediately file a supplemental report of
220 cause of death or other information with the section of vital
221 statistics to amend the record, but only for purposes of
222 accuracy.

223 (h) When death is presumed to have occurred within this
224 state but the body cannot be located, a certificate of death
225 may be prepared by the state Registrar only upon receipt of
226 an order of a court of competent jurisdiction which shall
227 include the finding of facts required to complete the
228 certificate of death. The certificate of death will be marked
229 "Presumptive" and will show on its face the date of death as
230 determined by the court and the date of registration, and
231 shall identify the court and the date of the order.

232 (i) The local registrar shall transmit each month to the
233 county clerk of his or her county a copy of the certificates

134 of all deaths occurring in the county, and if any person dies
135 in a county other than the county within the state in which
136 the person last resided prior to death, then the state Registrar
137 shall furnish a copy of the death certificate to the clerk of
138 the county commission of the county where the person last
139 resided, from which copies the clerk shall compile a register
140 of deaths, in a form prescribed by the state Registrar. The
141 register shall be a public record.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-5. West Virginia Board of Medicine powers and duties continued; appointment and terms of members; vacancies; removal.

1 The West Virginia Board of Medicine has assumed,
2 carried on and succeeded to all the duties, rights, powers,
3 obligations and liabilities heretofore belonging to or
4 exercised by the Medical Licensing Board of West Virginia.
5 All the rules, orders, rulings, licenses, certificates, permits
6 and other acts and undertakings of the medical licensing
7 board of West Virginia as heretofore constituted have
8 continued as those of the West Virginia Board of Medicine
9 until they expired or were amended, altered or revoked. The
10 board remains the sole authority for the issuance of licenses
11 to practice medicine and surgery and to practice podiatry
12 and to practice as physician assistants in this state under the
13 supervision of physicians licensed under this article. The
14 board shall continue to be a regulatory and disciplinary
15 body for the practice of medicine and surgery and the
16 practice of podiatry and for physician assistants in this state.

17 The board shall consist of sixteen members. One
18 member shall be the state health officer ex officio, with the
19 right to vote as a member of the board. The other fifteen
20 members shall be appointed by the Governor, with the
21 advice and consent of the Senate. Eight of the members shall

22 be appointed from among individuals holding the degree of
23 doctor of medicine and two shall hold the degree of doctor
24 of podiatric medicine. Two members shall be physician
25 assistants licensed by the board. Each of these members
26 must be duly licensed to practice his or her profession in this
27 state on the date of appointment and must have been
28 licensed and actively practicing that profession for at least
29 five years immediately preceding the date of appointment.
30 Three lay members shall be appointed to represent health
31 care consumers. Neither the lay members nor any person of
32 the lay members' immediate families shall be a provider of
33 or be employed by a provider of health care services. The
34 state health officer's term shall continue for the period that
35 he or she holds office as state health officer. Each other
36 member of the board shall be appointed to serve a term of
37 five years: *Provided*, That the members of the Board of
38 Medicine holding appointments on the effective date of this
39 section shall continue to serve as members of the Board of
40 Medicine until the expiration of their term unless sooner
41 removed. Each term shall begin on October 1 of the
42 applicable year and a member may not be appointed to more
43 than two consecutive full terms on the board.

44 A person is not eligible for membership on the board
45 who is a member of any political party executive committee
46 or, with the exception of the state health officer, who holds
47 any public office or public employment under the federal
48 government or under the government of this state or any
49 political subdivision thereof.

50 In making appointments to the board, the Governor
51 shall, so far as practicable, select the members from
52 different geographical sections of the state. When a vacancy
53 on the board occurs and less than one year remains in the
54 unexpired term, the appointee shall be eligible to serve the
55 remainder of the unexpired term and two consecutive full
56 terms on the board.

57 No member may be removed from office by the
58 Governor except for official misconduct, incompetence,

59 neglect of duty or gross immorality: *Provided*, That the
60 expiration, surrender or revocation of the professional
61 license by the board of a member of the board shall cause
62 the membership to immediately and automatically
63 terminate.

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-1. Definitions.

1 As used in this article:

2 (1) “Advance duties” means medical acts that require
3 additional training beyond the basic education program
4 training required for licensure as a physician assistant.

5 (2) “Alternate collaborating physician” means one or
6 more physicians licensed in this state and designated by the
7 collaborating physician to provide collaboration with a
8 physician assistant in accordance with an authorized
9 practice agreement.

10 (3) “Approved program” means an educational program
11 for physician assistants approved and accredited by the
12 Accreditation Review Commission on Education for the
13 Physician Assistant or its successor. Prior to 2001, approval
14 and accreditation would have been by either the Committee
15 on Allied Health Education and Accreditation or the
16 Accreditation Review Commission on Education for the
17 Physician Assistant.

18 (4) “Boards” means the West Virginia Board of
19 Medicine and the West Virginia Board of Osteopathic
20 Medicine.

21 (5) “Chronic condition” means a condition which lasts
22 three months or more, generally cannot be prevented by
23 vaccines, can be controlled but not cured by medication and
24 does not generally disappear. These conditions include, but

25 are not limited to, arthritis, asthma, cardiovascular disease,
26 cancer, diabetes, epilepsy and seizures and obesity.

27 (6) “Collaborating physician” means a doctor of
28 medicine, osteopathy or podiatry fully licensed, by the
29 appropriate board in this state, without restriction or
30 limitation, who collaborates with physician assistants.

31 (7) “Collaboration” means overseeing the activities of,
32 and accepting responsibility for, the medical services
33 rendered by a physician assistant. Constant physical
34 presence of the collaborating physician is not required as
35 long as the collaborating physician and physician assistant
36 are, or can be, easily in contact with one another by
37 telecommunication. Collaboration does not require the
38 personal presence of the collaborating physician at the place
39 or places where services are rendered.

40 (8) “Endorsement” means a summer camp or volunteer
41 endorsement authorized under this article.

42 (9) “Health care facility” means any licensed hospital,
43 nursing home, extended care facility, state health or mental
44 institution, clinic or physician’s office.

45 (10) “Hospital” means a facility licensed pursuant to
46 article five-b, chapter sixteen of this code and any acute-
47 care facility operated by the state government that primarily
48 provides inpatient diagnostic, treatment or rehabilitative
49 services to injured, disabled or sick persons under the
50 supervision of physicians and includes psychiatric
51 hospitals.

52 (11) “License” means a license issued by either of the
53 boards pursuant to the provisions of this article.

54 (12) “Licensee” means a person licensed pursuant to the
55 provisions of this article.

56 (13) “Physician” means a doctor of allopathic or
57 osteopathic medicine who is fully licensed pursuant to the

58 provisions of either article three or article fourteen of this
59 chapter to practice medicine and surgery in this state.

60 (14) "Physician assistant" means a person who meets
61 the qualifications set forth in this article and is licensed
62 pursuant to this article to practice medicine under
63 collaboration.

64 (15) "Practice agreement" means a document that is
65 executed between a collaborating physician and a physician
66 assistant pursuant to the provisions of this article, and is
67 filed with and approved by the appropriate licensing board.

§30-3E-2. Powers and duties of the boards.

1 In addition to the powers and duties set forth in this code
2 for the boards, the boards shall:

3 (1) Establish the requirements for licenses and
4 temporary licenses pursuant to this article;

5 (2) Establish the procedures for submitting, approving
6 and rejecting applications for licenses and temporary
7 licenses;

8 (3) Propose rules for legislative approval in accordance
9 with the provisions of article three, chapter twenty-nine-a of
10 this code to implement the provisions of this article;

11 (4) Compile and publish an annual report that includes
12 a list of currently licensed physician assistants, their
13 collaborating physicians and their locations in the state; and

14 (5) Take all other actions necessary and proper to
15 effectuate the purposes of this article.

§30-3E-3. Rulemaking.

1 (a) The boards shall propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to implement the
4 provisions of this article, including:

5 (1) The extent to which physician assistants may
6 practice in this state;

7 (2) The extent to which physician assistants may
8 pronounce death;

9 (3) Requirements for licenses and temporary licenses;

10 (4) Requirements for practice agreements;

11 (5) Requirements for continuing education;

12 (6) Conduct of a licensee for which discipline may be
13 imposed;

14 (7) The eligibility and extent to which a physician
15 assistant may prescribe at the direction of his or her
16 collaborating physician, including:

17 A state formulary classifying those categories of drugs
18 which shall not be prescribed by a physician assistant,
19 including, but not limited to, Schedules I and II of the
20 Uniform Controlled Substances Act, antineoplastics,
21 radiopharmaceuticals and general anesthetics. Drugs listed
22 under Schedule III shall be limited to a thirty-day supply
23 without refill. In addition to the above referenced provisions
24 and restrictions and pursuant to a practice agreement as set
25 forth in this article, the rules shall permit the prescribing of
26 an annual supply of any drug, with the exception of
27 controlled substances, which is prescribed for the treatment
28 of a chronic condition, other than chronic pain management.
29 For the purposes of this section, a chronic condition is a
30 condition which lasts three months or more, generally
31 cannot be prevented by vaccines, can be controlled but not
32 cured by medication and does not generally disappear.
33 These conditions, with the exception of chronic pain,
34 include, but are not limited to, arthritis, asthma,
35 cardiovascular disease, cancer, diabetes, epilepsy and
36 seizures, and obesity;

37 (8) The authority a collaborating physician may
38 delegate for prescribing, dispensing and administering of
39 controlled substances, prescription drugs or medical devices
40 if the practice agreement includes:

41 (A) A notice of intent to delegate prescribing of
42 controlled substances, prescription drugs or medical
43 devices;

44 (B) An attestation that all prescribing activities of the
45 physician assistant shall comply with applicable federal and
46 state law governing the practice of physician assistants;

47 (C) An attestation that all medical charts or records shall
48 contain a notation of any prescriptions written by a
49 physician assistant;

50 (D) An attestation that all prescriptions shall include the
51 physician assistant's name and the collaborating physician's
52 name, business address and business telephone number
53 legibly written or printed; and

54 (E) An attestation that the physician assistant has
55 successfully completed each of the requirements established
56 by the appropriate board to be eligible to prescribe pursuant
57 to a practice agreement accompanied by the production of
58 any required documentation establishing eligibility;

59 (9) A fee schedule; and

60 (10) Any other rules necessary to effectuate the
61 provisions of this article.

62 (b) The boards may propose emergency rules pursuant
63 to article three, chapter twenty-nine-a of this code to ensure
64 conformity with this article.

§30-3E-4. License to practice as a physician assistant.

1 (a) A person seeking licensure as a physician assistant
2 shall apply to the Board of Medicine or to the Board of

3 Osteopathic Medicine. The appropriate board shall issue a
4 license to practice as a physician assistant with the
5 collaboration of that board's licensed physicians or
6 podiatrists.

7 (b) A license may be granted to a person who:

8 (1) Files a complete application;

9 (2) Pays the applicable fees;

10 (3) Demonstrates to the board's satisfaction that he or
11 she:

12 (A) Obtained a baccalaureate or master's degree from
13 an accredited program of instruction for physician
14 assistants;

15 (B) Prior to July 1, 1994, graduated from an approved
16 program of instruction in primary health care or surgery; or

17 (C) Prior to July 1, 1983, was certified by the Board of
18 Medicine as a physician assistant then classified as "Type
19 B";

20 (4) Has passed the Physician Assistant National
21 Certifying Examination administered by the National
22 Commission on Certification of Physician Assistants;

23 (5) Has a current certification from the National
24 Commission on Certification of Physician Assistants;

25 (6) Is mentally and physically able to engage safely in
26 practice as a physician assistant;

27 (7) Has not had a physician assistant license,
28 certification or registration in any jurisdiction suspended or
29 revoked;

30 (8) Is not currently subject to any limitation, restriction,
31 suspension, revocation or discipline concerning a physician
32 assistant license, certification or registration in any

33 jurisdiction: *Provided*, That if a board is made aware of any
34 problems with a physician assistant license, certification or
35 registration and agrees to issue a license, certification or
36 registration notwithstanding the provisions of this
37 subdivision or subdivision (7) of this subsection;

38 (9) Is of good moral character; and

39 (10) Has fulfilled any other requirement specified by the
40 appropriate board.

41 (c) A board may deny an application for a physician
42 assistant license to any applicant determined to be
43 unqualified by the board.

§30-3E-6. License renewal requirements.

1 (a) A licensee shall renew biennially, on a schedule
2 established by the appropriate licensing board, by
3 submitting:

4 (1) A complete renewal application;

5 (2) The renewal fee; and

6 (3) An attestation that all continuing education
7 requirements for the reporting period have been met.

8 (b) If a licensee fails to timely renew his or her license,
9 then the license automatically expires.

§30-3E-7. Expired license requirements.

1 (a) If a license automatically expires and reinstatement
2 is sought within one year of the automatic expiration, then
3 an applicant shall submit:

4 (1) A complete reinstatement application;

5 (2) The applicable fees;

6 (3) Proof that he or she has passed Physician Assistant
7 National Certifying Examination; and

8 (4) An attestation that all continuing education
9 requirements have been met.

10 (b) If a license automatically expires and more than one
11 year has passed since the automatic expiration, then an
12 applicant shall apply for a new license.

§30-3E-9. Practice requirements.

1 (a) A physician assistant may not practice independent
2 of a collaborating physician.

3 (b) Before a licensed physician assistant may practice
4 and before a collaborating physician may delegate medical
5 acts to a physician assistant, the collaborating physician and
6 the physician assistant shall:

7 (1) File a practice agreement with the appropriate
8 licensing board, including any designated alternate
9 collaborating physicians;

10 (2) Pay the applicable fees; and

11 (3) Receive written authorization from the appropriate
12 licensing board to commence practicing as a physician
13 assistant pursuant to the practice agreement.

14 (c) A physician applying to collaborate with a physician
15 assistant shall affirm that:

16 (1) The medical services set forth in the practice
17 agreement are consistent with the skills and training of the
18 collaborating physician and the physician assistant; and

19 (2) The activities delegated to a physician assistant are
20 consistent with sound medical practice and will protect the
21 health and safety of the patient.

22 (d) A collaborating physician may enter into practice
23 agreements with up to five full-time physician assistants at
24 any one time. A physician is prohibited from being a
25 collaborating or alternate collaborating physician to more

26 than five physician assistants at any one time. However, a
27 physician practicing medicine in an emergency department
28 of a hospital or a physician who collaborating with a
29 physician assistant who is employed by or on behalf of a
30 hospital may collaborate with up to five physician assistants
31 per shift if the physician has an authorized practice
32 agreement in place with the physician assistant or the
33 physician has been properly authorized as an alternate
34 collaborating physician for each physician assistant.

§30-3E-10. Practice agreement requirements.

1 (a) A practice agreement shall include:

2 (1) A description of the qualifications of the
3 collaborating physician, the alternate collaborating
4 physicians, if applicable, and the physician assistant;

5 (2) A description of the settings in which the
6 collaborating physician assistant will practice;

7 (3) A description of the continuous physician
8 collaboration mechanisms that are reasonable and
9 appropriate for the practice setting, and the experience and
10 training of the physician assistant;

11 (4) A description of the medical acts that are to be
12 delegated;

13 (5) An attestation by the collaborating physician that the
14 medical acts to be delegated are:

15 (A) Within the collaborating physician's scope of
16 practice; and

17 (B) Appropriate to the physician assistant's education,
18 training and level of competence;

19 (6) A description of the medical care the physician
20 assistant will provide in an emergency, including a
21 definition of an emergency;

22 (7) A description of the limitation of the ability of the
23 physician assistant to prescribe as set forth in subdivision
24 (7), subsection (a), section three of this article; and

25 (8) Any other information required by the boards.

26 (b) A licensing board may:

27 (1) Decline to authorize a physician assistant to
28 commence practicing pursuant to a practice agreement, if
29 the board determines that:

30 (A) The practice agreement is inadequate; or

31 (B) The physician assistant is unable to perform the
32 proposed delegated duties safely; or

33 (2) Request additional information from the
34 collaborating physician and/or the physician assistant to
35 evaluate the delegation of duties and advanced duties.

36 (c) A licensing board may authorize a practice
37 agreement that includes advanced duties which are to be
38 performed in a hospital or ambulatory surgical facility, if
39 the practice agreement has a certification that:

40 (1) A physician, with credentials that have been
41 reviewed by the hospital or ambulatory surgical facility as a
42 condition of employment as an independent contractor or as
43 a member of the medical staff, collaborates with the
44 physician assistant;

45 (2) The physician assistant has credentials that have
46 been reviewed by the hospital or ambulatory surgical
47 facility as a condition of employment as an independent
48 contractor or as a member of the medical staff; and

49 (3) Each advanced duty to be delegated to the physician
50 assistant is reviewed and approved within a process
51 approved by the governing body of the health care facility

52 or ambulatory surgical facility before the physician assistant
53 performs the advanced duties.

54 (d) If a licensing board declines to authorize a practice
55 agreement or any proposed delegated act incorporated
56 therein, the board shall provide the collaborating physician
57 and the physician assistant with written notice. A physician
58 assistant who receives notice that the board has not
59 authorized a practice agreement or a delegated act shall not
60 practice under the agreement or perform the delegated act.

61 (e) If a practice agreement is terminated, then a
62 physician assistant shall notify the appropriate licensing
63 board in writing within ten days of the termination. Failure
64 to provide timely notice of the termination constitutes
65 unprofessional conduct and disciplinary proceedings may
66 be instituted by the appropriate licensing board.

§30-3E-11. Collaboration with physician assistants.

1 (a) A licensed physician or podiatrist may collaborate
2 with a physician assistant:

3 (1) As a collaborating physician in accordance with an
4 authorized practice agreement; or

5 (2) As an alternate collaborating physician who:

6 (A) Collaborates in accordance with an authorized
7 practice agreement;

8 (B) Has been designated an alternate collaborating
9 physician in the authorized practice agreement; and

10 (C) Only delegates those medical acts that have been
11 authorized by the practice agreement and are within the
12 scope of practice of both the primary collaborating
13 physician and the alternate collaborating physician.

14 (b) A collaborating physician is responsible at all times
15 for the physician assistant with whom he or she is
16 collaborating, including:

- 17 (1) The legal responsibility of the physician assistant;
- 18 (2) Observing, directing and evaluating the physician
19 assistant's work records and practices; and
- 20 (3) Collaborating with the physician assistant in the care
21 and treatment of a patient in a health care facility.
- 22 (c) A health care facility is only legally responsible for
23 the actions or omissions of a physician assistant when the
24 physician assistant is employed by or on behalf of the
25 facility. Credentialed medical facility staff and attending
26 physicians of a hospital who provide direction to or utilize
27 physician assistants employed by or on behalf of the
28 hospital are considered alternate collaborating physicians.

§30-3E-12. Scope of practice.

- 1 (a) A license issued to a physician assistant by the
2 appropriate state licensing board shall authorize the
3 physician assistant to perform medical acts:
- 4 (1) Delegated to the physician assistant as part of an
5 authorized practice agreement;
- 6 (2) Appropriate to the education, training and
7 experience of the physician assistant;
- 8 (3) Customary to the practice of the collaborating
9 physician; and
- 10 (4) Consistent with the laws of this state and rules of the
11 boards.
- 12 (b) This article does not authorize a physician assistant
13 to perform any specific function or duty delegated by this
14 code to those persons licensed as chiropractors, dentists,
15 dental hygienists, optometrists or pharmacists, or certified
16 as nurse anesthetists.

§30-3E-12a. Physician assistant signatory authority.

1 (a) A physician assistant may provide an authorized
2 signature, certification, stamp, verification, affidavit or
3 endorsement on documents within the scope of their
4 practice, including, but not limited to, the following
5 documents:

6 (1) Death certificates: *Provided*, That the physician
7 assistant has received training on the completion of death
8 certificates;

9 (2) “Physician orders for life sustaining treatment”,
10 “physician orders for scope of treatment” and “do not
11 resuscitate” forms;

12 (3) Handicap hunting certificates; and

13 (4) Utility company forms requiring maintenance of
14 utilities regardless of ability to pay.

15 (b) A physician assistant may not sign a certificate of
16 merit for a medical malpractice claim against a physician.

§30-3E-15. Summer camp or volunteer endorsement — West Virginia licensee.

1 (a) The appropriate licensing board may grant a summer
2 camp or volunteer endorsement to provide services at a
3 children’s summer camp or volunteer services for a public
4 or community event to a physician assistant who:

5 (1) Is currently licensed by the appropriate licensing
6 board;

7 (2) Has no current discipline, limitations or restrictions
8 on his or her license;

9 (3) Has submitted a timely application; and

10 (4) Attests that:

11 (A) The organizers of the summer camp and public or
12 community event have arranged for a collaborating

13 physician to be available as needed to the physician
14 assistant;

15 (B) The physician assistant shall limit his or her scope
16 of practice to medical acts which are within his or her
17 education, training and experience; and

18 (C) The physician assistant will not prescribe any
19 controlled substances or legend drugs as part of his or her
20 practice at the summer camp or public or community event.

21 (b) A physician assistant may only receive one summer
22 camp or volunteer endorsement annually. The endorsement
23 is active for one specifically designated period annually,
24 which period cannot exceed three weeks.

25 (c) A fee cannot be assessed for the endorsement if the
26 physician assistant is volunteering his or her services
27 without compensation or remuneration.

§30-3E-16. Summer camp or volunteer endorsement — Out-of-state licensee.

1 (a) The appropriate licensing board may grant a summer
2 camp or volunteer endorsement to provide services at a
3 children's summer camp or volunteer services for a public
4 or community event to a physician assistant licensed from
5 another jurisdiction who:

6 (1) Is currently licensed in another jurisdiction and has
7 a current certification from the National Commission on
8 Certification of Physician Assistants;

9 (2) Has no current discipline, limitations or restrictions
10 on his or her license;

11 (3) Has passed the Physician Assistant National
12 Certifying Examination administered by the National
13 Commission on Certification of Physician Assistants;

14 (4) Has submitted a timely application;

15 (5) Has paid the applicable fees; and

16 (6) Attests that:

17 (A) The organizers of the summer camp and public or
18 community event have arranged for a collaborating
19 physician to be available as needed to the physician
20 assistant;

21 (B) The physician assistant shall limit his or her scope
22 of practice to medical acts which are within his or her
23 education, training and experience; and

24 (C) The physician assistant will not prescribe any
25 controlled substances or legend drugs as part of his or her
26 practice at the summer camp or public or community event;
27 and

28 (7) Has fulfilled any other requirements specified by the
29 appropriate board.

30 (b) A physician assistant may only receive one summer
31 camp or volunteer endorsement annually. The endorsement
32 is active for one specifically designated period annually,
33 which period cannot exceed three weeks.

§30-3E-17. Complaint process.

1 (a) All hearings and procedures related to denial of a
2 license, and all complaints, investigations, hearings and
3 procedures regarding a physician assistant license and the
4 discipline accorded thereto, shall be in accordance with the
5 processes and procedures set forth in articles three and/or
6 fourteen of this chapter, depending on which board licenses
7 the physician assistant.

8 (b) The boards may impose the same discipline,
9 restrictions and/or limitations upon the license of a
10 physician assistant as they are authorized to impose upon
11 physicians and/or podiatrists.

12 (c) The boards shall direct to the appropriate licensing
13 board a complaint against a physician assistant, a collaborating
14 physician and/or an alternate collaborating physician.

15 (d) In the event that independent complaint processes
16 are warranted by the boards with respect to the professional
17 conduct of a physician assistant or a collaborating and/or
18 alternate collaborating physician, the boards are authorized
19 to work cooperatively and to disclose to one another
20 information which may assist the recipient appropriate
21 licensing board in its disciplinary process. The
22 determination of what information, if any, to disclose shall
23 be at the discretion of the disclosing board.

24 (e) A physician assistant licensed under this article may
25 not be disciplined for providing expedited partner therapy in
26 accordance with article four-f, chapter sixteen of this code.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-14. Policies discriminating among health care providers.

1 Notwithstanding any other provisions of law, when any
2 health insurance policy, health care services plan or other
3 contract provides for the payment of medical expenses,
4 benefits or procedures, such policy, plan or contract shall be
5 construed to include payment to all health care providers
6 including medical physicians, osteopathic physicians,
7 podiatric physicians, chiropractic physicians, midwives,
8 physician assistants and nurse practitioners who provide
9 medical services, benefits or procedures which are within
10 the scope of each respective provider's license. Any
11 limitation or condition placed upon services, diagnoses or
12 treatment by, or payment to, any particular type of licensed
13 provider shall apply equally to all types of licensed
14 providers without unfair discrimination as to the usual and
15 customary treatment procedures of any of the aforesaid
16 providers.

CHAPTER 4

**(Com. Sub. for H. B. 117 - By Delegate Miley)
[By Request of the Executive]**

[Passed June 13, 2017; in effect from passage.]
[Approved by the Governor on June 19, 2017.]

AN ACT to amend and reenact §16-2D-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-29B-3 and §16-29B-8 of said code; and to amend said code by adding two new sections, designated §16-29B-24 and §16-29B-25, all relating to West Virginia Health Care Authority; defining terms; clarifying an exemption to the certificate of need; prohibiting the department from limiting the transfer of skilled nursing beds; authorizing legislative rulemaking; establishing an assessment on acute care hospitals; requiring entities file certain information with the authority; permitting the assessing of a penalty for failing to file reports; authorizing the authority to coordinate the collection of health data; requiring the authority to provide access to data; requiring the authority to charge a fee to obtain data; requiring a report to the Legislative Oversight Commission on Health and Human Resources; permitting the secretary to assume control of the data repository if certain conditions are met; authorizing emergency rules to implement the provisions of new article.

Be it enacted by the Legislature of West Virginia:

That §16-2D-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-29B-3 and §16-29B-8 of said code be amended and reenacted; and that of said code be amended by adding thereto two new sections designated §16-29B-24 and §16-29B-25, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-11. Exemptions from certificate of need which require approval from the authority.

1 (a) To obtain an exemption under this section a person
2 shall:

3 (1) File an exemption application;

4 (2) Pay the \$1,000 application fee; and

5 (3) Provide a statement detailing which exemption
6 applies and the circumstances justifying the approval of the
7 exemption.

8 (b) The authority has forty-five days to review the
9 exemption request. The authority may not hold an
10 administrative hearing to review the application. A person
11 may not file an objection to the request for an exemption.
12 The applicant may request or agree with the authority to a
13 fifteen day extension of the timeframe. If the authority does
14 not approve or deny the application within forty-five days,
15 then the exemption is immediately approved. If the
16 authority denies the approval of the exemption, only the
17 applicant may appeal the authority's decision to the Office
18 of Judges or refile the application with the authority.

19 (c) Notwithstanding section eight and ten and except as
20 provided in section nine of this article, the Legislature finds
21 that a need exists and these health services are exempt from
22 the certificate of need process:

23 (1) The acquisition and utilization of one computed
24 tomography scanner with a purchase price up to \$750,000
25 that is installed in a private office practice where at
26 minimum seventy-five percent of the scans are performed
27 on the patients of the practice. The private office practice
28 shall obtain and maintain accreditation from the American
29 College of Radiology prior to, and at all times during, the
30 offering of this service. The authority may at any time
31 request from the private office practice information relating
32 to the number of patients who have been provided scans and

33 proof of active and continuous accreditation from the
34 American College of Radiology. If a physician owns or
35 operates a private office practice in more than one location,
36 this exemption shall only apply to the physician's primary
37 place of business and if a physician wants to expand the
38 offering of this service to include more than one computed
39 topography scanner, he or she shall be required to obtain a
40 certificate of need prior to expanding this service. All
41 current certificates of need issued for computed tomography
42 services, with a required percentage threshold of scans to be
43 performed on patients of the practice in excess of seventy-
44 five percent, shall be reduced to seventy-five percent:
45 *Provided*, That these limitations on the exemption for a
46 private office practice with more than one location shall not
47 apply to a private office practice with more than twenty
48 locations in the state on April 8, 2017.

49 (2) (A) A birthing center established by a nonprofit
50 primary care center that has a community board and
51 provides primary care services to people in their community
52 without regard to ability to pay; or

53 (B) A birthing center established by a nonprofit hospital
54 with less than one hundred licensed acute care beds.

55 (i) To qualify for this exemption, an applicant shall be
56 located in an area that is underserved with respect to low-
57 risk obstetrical services; and

58 (ii) Provide a proposed health service area.

59 (3) (A) A health care facility acquiring major medical
60 equipment, adding health services or obligating a capital
61 expenditure to be used solely for research;

62 (B) To qualify for this exemption, the health care
63 facility shall show that the acquisition, offering or
64 obligation will not:

65 (i) Affect the charges of the facility for the provision of
66 medical or other patient care services other than the services
67 which are included in the research;

68 (ii) Result in a substantial change to the bed capacity of
69 the facility; or

70 (iii) Result in a substantial change to the health services
71 of the facility.

72 (C) For purposes of this subdivision, the term "solely
73 for research" includes patient care provided on an
74 occasional and irregular basis and not as part of a research
75 program;

76 (4) The obligation of a capital expenditure to acquire,
77 either by purchase, lease or comparable arrangement, the
78 real property, equipment or operations of a skilled nursing
79 facility: *Provided*, That a skilled nursing facility developed
80 pursuant to subdivision (17) of this section and
81 subsequently acquired pursuant to this subdivision may not
82 transfer or sell any of the skilled nursing home beds of the
83 acquired skilled nursing facility until the skilled nursing
84 facility has been in operation for at least ten years.

85 (5) Shared health services between two or more
86 hospitals licensed in West Virginia providing health
87 services made available through existing technology that
88 can reasonably be mobile. This exemption does not include
89 providing mobile cardiac catheterization;

90 (6) The acquisition, development or establishment of a
91 certified interoperable electronic health record or electronic
92 medical record system;

93 (7) The addition of forensic beds in a health care
94 facility;

95 (8) A behavioral health service selected by the
96 Department of Health and Human Resources in response to
97 its request for application for services intended to return

98 children currently placed in out-of-state facilities to the state
99 or to prevent placement of children in out-of-state facilities
100 is not subject to a certificate of need;

101 (9) The replacement of major medical equipment with
102 like equipment, only if the replacement major medical
103 equipment cost is more than the expenditure minimum;

104 (10) Renovations within a hospital, only if the
105 renovation cost is more than the expenditure minimum. The
106 renovations may not expand the health care facility's
107 current square footage, incur a substantial change to the
108 health services, or a substantial change to the bed capacity;

109 (11) Renovations to a skilled nursing facility;

110 (12) The donation of major medical equipment to
111 replace like equipment for which a certificate of need has
112 been issued and the replacement does not result in a
113 substantial change to health services. This exemption does
114 not include the donation of major medical equipment made
115 to a health care facility by a related organization;

116 (13) A person providing specialized foster care personal
117 care services to one individual and those services are
118 delivered in the provider's home;

119 (14) A hospital converting the use of beds except a
120 hospital may not convert a bed to a skilled nursing home
121 bed and conversion of beds may not result in a substantial
122 change to health services provided by the hospital;

123 (15) The construction, renovation, maintenance or
124 operation of a state owned veterans skilled nursing facilities
125 established pursuant to the provisions of article one-b of this
126 chapter;

127 (16) To develop and operate a skilled nursing facility
128 with no more than thirty-six beds in a county that currently
129 is without a skilled nursing facility;

130 (17) A critical access hospital, designated by the state as
131 a critical access hospital, after meeting all federal eligibility
132 criteria, previously licensed as a hospital and subsequently
133 closed, if it reopens within ten years of its closure;

134 (18) The establishing of a health care facility or offering
135 of health services for children under one year of age
136 suffering from Neonatal Abstinence Syndrome;

137 (19) The construction, development, acquisition or
138 other establishment of community mental health and
139 intellectual disability facility;

140 (20) Providing behavioral health facilities and services;

141 (21) The construction, development, acquisition or
142 other establishment of kidney disease treatment centers,
143 including freestanding hemodialysis units but only to a
144 medically underserved population;

145 (22) The transfer, purchase or sale of intermediate care
146 or skilled nursing beds from a skilled nursing facility or a
147 skilled nursing unit of an acute care hospital to a skilled
148 nursing facility providing intermediate care and skilled
149 nursing services. The Department of Health and Human
150 Resources may not create a policy which limits the transfer,
151 purchase or sale of intermediate care or skilled nursing beds
152 from a skilled nursing facility or a skilled nursing unit of an
153 acute care hospital. The transferred beds shall retain the
154 same certification status that existed at the nursing home or
155 hospital skilled nursing unit from which they were acquired.
156 If construction is required to place the transferred beds into
157 the acquiring nursing home, the acquiring nursing home has
158 one year from the date of purchase to commence
159 construction;

160 (23) The construction, development, acquisition or
161 other establishment by a health care facility of a nonhealth
162 related project, only if the nonhealth related project cost is
163 more than the expenditure minimum;

164 (24) The construction, development, acquisition or
165 other establishment of an alcohol or drug treatment facility
166 and drug and alcohol treatment services unless the
167 construction, development, acquisition or other
168 establishment is an opioid treatment facility or programs as
169 set forth in subdivision (4) of section nine of this article;

170 (25) Assisted living facilities and services;

171 (26) The creation, construction, acquisition or
172 expansion of a community-based nonprofit organization
173 with a community board that provides or will provide
174 primary care services to people without regard to ability to
175 pay and receives approval from the Health Resources and
176 Services Administration; and

177 (27) The acquisition and utilization of one computed
178 tomography scanner and/or one magnetic resonance
179 imaging scanner with a purchase price of up to \$750,000 by
180 a hospital.

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-3. Definitions.

1 (a) Definitions of words and terms defined in article
2 two-d of this chapter are incorporated in this section unless
3 this section has different definitions.

4 (b) As used in this article, unless a different meaning
5 clearly appears from the context:

6 (1) “Authority” means the Health Care Authority
7 created pursuant to the provisions of this article;

8 (2) “Board” means the five-member board of directors
9 of the West Virginia Health Care Authority;

10 (3) “Charges” means the economic value established for
11 accounting purposes of the goods and services a hospital
12 provides for all classes of purchasers;

13 (4) “Class of purchaser” means a group of potential
14 hospital patients with common characteristics affecting the
15 way in which their hospital care is financed. Examples of
16 classes of purchasers are Medicare beneficiaries, welfare
17 recipients, subscribers of corporations established and
18 operated pursuant to article twenty-four, chapter thirty-three
19 of this code, members of health maintenance organizations
20 and other groups as defined by the authority;

21 (5) “Covered facility” means a hospital, behavioral
22 health facility, kidney disease treatment center, including a
23 free-standing hemodialysis unit; ambulatory health care
24 facility; ambulatory surgical facility; home health agency;
25 rehabilitation facility; or community mental health or
26 intellectual disability facility, whether under public or
27 private ownership or as a profit or nonprofit organization
28 and whether or not licensed or required to be licensed, in
29 whole or in part, by the state: *Provided*, That nonprofit,
30 community-based primary care centers providing primary
31 care services without regard to ability to pay which provide
32 the Secretary with a year-end audited financial statement
33 prepared in accordance with generally accepted auditing
34 standards and with governmental auditing standards issued
35 by the Comptroller General of the United States shall be
36 deemed to have complied with the disclosure requirements
37 of this section.

38 (6) “Executive Director” or “Director” means the
39 administrative head of the Health Care Authority as set forth
40 in section five-a of this article;

41 (7) “Health care provider” means a person, partnership,
42 corporation, facility, hospital or institution licensed,
43 certified or authorized by law to provide professional health
44 care service in this state to an individual during this
45 individual's medical, remedial, or behavioral health care,
46 treatment or confinement. For purposes of this article,
47 “health care provider” shall not include the private office
48 practice of one or more health care professionals licensed to

49 practice in this state pursuant to the provisions of chapter
50 thirty of this code;

51 (8) "Hospital" means a facility subject to licensure as
52 such under the provisions of article five-b of this chapter,
53 and any acute care facility operated by the state government
54 which is primarily engaged in providing to inpatients, by or
55 under the supervision of physicians, diagnostic and
56 therapeutic services for medical diagnosis, treatment and
57 care of injured, disabled or sick persons, and does not
58 include state mental health facilities or state long-term care
59 facilities;

60 (9) "Person" means an individual, trust, estate,
61 partnership, committee, corporation, association or other
62 organization such as a joint stock company, a state or
63 political subdivision or instrumentality thereof or any legal
64 entity recognized by the state;

65 (10) "Purchaser" means a consumer of patient care
66 services, a natural person who is directly or indirectly
67 responsible for payment for such patient care services
68 rendered by a health care provider, but does not include
69 third-party payers;

70 (11) "Rates" means all value given or money payable to
71 health care providers for health care services, including
72 fees, charges and cost reimbursements;

73 (12) "Records" means accounts, books and other data
74 related to health care costs at health care facilities subject to
75 the provisions of this article which do not include privileged
76 medical information, individual personal data, confidential
77 information, the disclosure of which is prohibited by other
78 provisions of this code and the laws enacted by the federal
79 government, and information, the disclosure of which
80 would be an invasion of privacy;

81 (13) "Related organization" means an organization,
82 whether publicly owned, nonprofit, tax-exempt or for profit,

83 related to a health care provider through common
84 membership, governing bodies, trustees, officers, stock
85 ownership, family members, partners or limited partners
86 including, but not limited to, subsidiaries, foundations,
87 related corporations and joint ventures. For the purposes of
88 this subsection family members means brothers and sisters,
89 whether by the whole or half blood, spouse, ancestors and
90 lineal descendants;

91 (14) "Secretary" means the Secretary of the Department
92 of Health and Human Resources; and

93 (15) "Third-party payor" means any natural person,
94 person, corporation or government entity responsible for
95 payment for patient care services rendered by health care
96 providers.

§16-29B-8. Powers generally; budget expenses of the authority.

1 (a) The authority may:

2 (1) Adopt, amend and repeal necessary, appropriate and
3 lawful policy guidelines, and in cooperation with the
4 Secretary, propose rules in accordance with article three,
5 chapter twenty-nine-a of this code;

6 (2) Hold public hearings, conduct investigations and
7 require the filing of information relating to matters affecting
8 the costs of health care services subject to the provisions of
9 this article and may subpoena witnesses, papers, records,
10 documents and all other data in connection therewith. The
11 board may administer oaths or affirmations in any hearing
12 or investigation;

13 (3) Exercise, subject to limitations or restrictions herein
14 imposed, all other powers which are reasonably necessary
15 or essential to effect the express objectives and purposes of
16 this article.

17 (4) Assess a fee on a pro rata basis on hospitals, except
18 critical access hospital, using net patient revenue, as defined
19 under generally accepted accounting principles. The
20 assessment may not exceed a total five one hundredths of
21 one percent of its net patient revenue in a fiscal year. The
22 amount of the assessment shall be determined by the
23 authority based upon the information provided in a
24 hospital's most recent audited financial statement. The
25 authority shall collect the assessment on a semi-annual
26 basis. Two hundred and fifty thousandths of one percent
27 shall be collected on July 1st. The amount of the second
28 assessment shall be based upon the projected expenses to
29 perform the duties consistent with article twenty-nine-b,
30 chapter sixteen, and article two-d, chapter sixteen, but may
31 not exceed two hundred and fifty thousandths of one percent
32 and shall be collected after the first of January of the next
33 year. The assessment shall be paid into the state treasury and
34 kept as a special revolving fund designated "Health Care
35 Cost Review Fund", with the moneys in the fund being
36 expendable after appropriation by the Legislature for
37 purposes consistent with article twenty-nine-b, chapter
38 sixteen, article two-d, chapter sixteen. The Secretary may
39 use any balance remaining in the "Health Care Cost Review
40 Fund" at the end of June 30, 2017 to support the financial
41 viability of certain critical access hospitals that operate rural
42 health clinics in West Virginia. Any balance remaining in
43 the fund at the end of June 30, 2018 and thereafter shall not
44 revert to the treasury, but shall remain in said fund and such
45 moneys shall be expendable after appropriation by the
46 Legislature in ensuing fiscal years. The assessment shall
47 terminate on July 1, 2020.

48 (b) The Legislature finds that health care services will
49 be disrupted and important data could be lost which could
50 create significant hardships upon health care providers and
51 the citizens of this state, therefore an emergency exists and
52 the authority shall promulgate emergency rules pursuant to
53 the provisions of section fifteen, article three, chapter

54 twenty-nine of this code, to effectuate the changes in this
55 article by July 1, 2017.

§16-29B-24. Reports required to be filed.

1 (a) A covered facility, within one hundred twenty days
2 after the end of its fiscal year, unless an extension be granted
3 by the authority, shall file with the authority its annual
4 financial report prepared by an accountant or auditor.

5 (b) A covered facility, if applicable by legislative rule,
6 shall submit upon request of the authority but at least
7 annually:

8 (1) A statement of charges for all services rendered,
9 except a behavioral health facility shall submit its gross
10 rates for its top thirty services by utilization;

11 (2) The Health Care Authority Financial Report,
12 through the Uniform Reporting System;

13 (3) The current Uniform Bill form in effect for
14 inpatients. This data is not subject to the provisions of
15 subsection (f), section twenty-five of this article.

16 (c) The authority may request from a covered facility,
17 except hospitals, the information from subsection (a) and
18 (b) from its related organization.

19 (d) A home health agency shall annually submit a
20 utilization survey.

21 (e) A covered facility failing to submit a report to the
22 authority shall be notified by the authority and, if the failure
23 continues for ten days after receipt of the notice, the
24 delinquent facility or organization is subject to a penalty of
25 \$1,000 for each day thereafter that the failure continues.

§16-29B-25. Data repository.

1 (a) The authority shall:

2 (1) Coordinate and oversee the health data collection of
3 state agencies;

4 (2) Lead state agencies' efforts to make the best use of
5 emerging technology to effect the expedient and appropriate
6 exchange of health care information and data, including
7 patient records and reports; and

8 (3) Coordinate database development, analysis and
9 report to facilitate cost management, review utilization
10 review and quality assurance efforts by state payor and
11 regulatory agencies, insurers, consumers, providers and
12 other interested parties.

13 (b) A state agency collecting health data shall work
14 through the authority to develop an integrated system for the
15 efficient collection, responsible use and dissemination of
16 data and to facilitate and support the development of
17 statewide health information systems that will allow for the
18 electronic transmittal of all health information and claims
19 processing activities of a state agency within the state and
20 to coordinate the development and use of electronic health
21 information systems within state government.

22 (c) The authority shall establish minimum requirements
23 and issue reports relating to information systems of state
24 health programs, including simplifying and standardizing
25 forms and establishing information standards and reports
26 for capitated managed care programs;

27 (d) The authority shall develop a comprehensive system
28 to collect ambulatory health care data.

29 (e) The authority may access any health-related
30 database maintained or operated by a state agency for the
31 purposes of fulfilling its duties. The use and dissemination
32 of information from that database shall be subject to the
33 confidentiality provisions applicable to that database.

34 (f) A report, statement, schedule or other filing may not
35 contain any medical or individual information personally

36 identifiable to a patient or a consumer of health services,
37 whether directly or indirectly.

38 (g) A report, statement, schedule or other filing filed
39 with the authority is open to public inspection and
40 examination during regular hours. A copy shall be made
41 available to the public upon request upon payment of a fee.

42 (h) The authority may require the production of any
43 records necessary to verify the accuracy of any information
44 set forth in any statement, schedule or report filed under the
45 provisions of this article.

46 (i) The authority may provide requested aggregate data
47 to an entity. The authority may charge a fee to an entity to
48 obtain the data collected by the authority. The authority
49 may not charge a fee to a covered entity to obtain the data
50 collected by the authority.

51 (j) The authority shall provide to the Legislative
52 Oversight Commission on Health and Human Resources
53 Accountability before July 1, 2018, and every other year
54 thereafter, a strategic data collection and analysis plan:

55 (1) What entities are submitting data;

56 (2) What data is being collected;

57 (3) The types of analysis performed on the submitted
58 data;

59 (4) A way to reduce duplicative data submissions;

60 (5) The current and projected expenses to operate the
61 data collection and analysis program.

62 (k) The Secretary of the Department of Health and
63 Human Resources may assume the powers and duties
64 provided to the authority in this section, if the Secretary
65 determines it is more efficient and cost effective to have
66 direct control over the data repository program.

CHAPTER 5

**(S. B. 1003 - By Senators Carmichael (Mr. President)
and Prezioso)
[By Request of the Executive]**

[Passed June 16, 2017; in effect from passage.]
[Approved by the Governor on June 22, 2017.]

AN ACT to repeal §17-16A-18a and §17-16A-23 of the Code of West Virginia, 1931, as amended; to amend and reenact §17-16A-5, §17-16A-6, §17-16A-10, §17-16A-11, §17-16A-13, §17-16A-13a, §17-16A-18, §17-16A-21, §17-16A-22, §17-16A-29 and §17-16A-30 of said code; to amend said code by adding thereto a new section, designated §17-16A-11a; to amend and reenact §17-16D-3 of said code; to amend said code by adding thereto a new section, designated §17A-2-25; to amend and reenact §17A-3-7 of said code; and to amend said code by adding thereto a new section, designated §17A-10-17, all relating generally to the West Virginia Parkways Authority; defining terms; enlarging, restricting and otherwise modifying the powers of the Parkways Authority relating to the issuance of parkways bonds and the authority to charge tolls or fees; permitting the authority to study and evaluate, and, if feasible, develop and implement a single fee program; authorizing the authority to promulgate rules; permitting the authority to impose, in connection with any single fee program, a flat fee in connection with any or all certificates of passenger motor vehicle registration and renewal thereof by the Division of Motor Vehicles; clarifying that Parkways Authority may not charge tolls on certain existing roads absent express legislative authorization; providing for the use of proceeds of fee collections; adding the power of the authority to enter into reciprocal toll enforcement agreements; creating and designating a special revenue account within the State Road Fund known as the State Road Construction

Account; authorizing the deposit of proceeds of parkway revenue bonds to the State Road Construction Account; requiring the expenditure of the account's funds for construction, maintenance and repair of public highways and bridges in certain counties within the state; creating and designating a special revenue account within the State Treasury known as the West Virginia Parkways Authority Single Fee Program Fund; clarifying notice and public meeting requirements and procedures; requiring either a single fee program or unlimited use single fee EZ Pass transponder discount program before any increase in vehicle rates, tolls or charges may be instituted; establishing limitations on the amounts of the single annual fee that may be charged; clarifying the power of the Parkways Authority to fix rates or tolls for Corridor L toll collection facility; expanding the authority of the Parkways Authority to issue revenue bonds or refunding revenue bonds for parkways' projects and for the West Virginia Turnpike; modifying approval required of certain county commissions prior to approval of any parkway project; authorizing electronic toll collection and enforcement of tolls on roads, highways and bridges; authorizing implementation and collection of a fee for the single fee program; modifying requirements for reports of local committees and resolutions of approval by county commissions; authorizing the Division of Motor Vehicles to enter into agreements with the authority to collect and remit certain fees; expanding the grounds for refusing to register a motor vehicle; and creating a misdemeanor offense and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §17-16A-18a and §17-16A-23 of the Code of West Virginia, 1931, as amended, be repealed; that §17-16A-5, §17-16A-6, §17-16A-10, §17-16A-11, §17-16A-13, §17-16A-13a, §17-16A-18, §17-16A-21, §17-16A-22, §17-16A-29 and §17-16A-30 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §17-16A-11a; that §17-16D-3 of said code be amended and reenacted; that

said code be amended by adding thereto a new section, designated §17A-2-25; that §17A-3-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §17A-10-17, all to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16A. WEST VIRGINIA PARKWAYS AUTHORITY.

§17-16A-5. Definitions.

1 As used in this article, the following words and terms
2 shall have the following meanings, unless the context shall
3 indicate another or different meaning or intent:

4 (a) "Cost" means the cost of construction,
5 reconstruction, maintenance, improvement, repair and
6 operation of the project, the cost of the acquisition of all
7 land, rights-of-way, property, rights, easements and
8 interests acquired by the Parkways Authority or the
9 Department of Transportation for such construction,
10 reconstruction, maintenance, improvement and repair, the
11 cost of all machinery, equipment, material and labor which
12 are deemed essential thereto, the cost of improvements, the
13 cost of financing charges, interest prior to and during
14 construction and for one year after completion of
15 construction, the cost of traffic estimates and of
16 engineering, consultant, accounting, architects', trustees'
17 and legal fees and expenses, plans, specifications, surveys,
18 estimates of cost and of revenues, other costs and expenses
19 necessary or incident to determining the feasibility or
20 practicability of constructing any such project,
21 administrative expenses and such other costs and expenses
22 as may be necessary or incident to the construction of the
23 project, the financing of such construction and the placing
24 of the project in operation or to the operation of the project.
25 Any obligation or expense hereafter incurred by the
26 Department of Transportation with the approval of the
27 Parkways Authority, regardless of whether the approval was
28 authorized before or after the obligation or expense was

29 incurred, for traffic surveys, borings, preparation of plans
30 and specifications, and other engineering and consulting
31 services in connection with the construction of a parkway
32 project shall be regarded as a part of the cost of such project
33 and may be reimbursed to the state out of the proceeds of
34 parkway revenue bonds or revenue refunding bonds
35 hereinafter authorized.

36 (b) "Department of Transportation" means the West
37 Virginia Department of Transportation and each of its
38 respective divisions and subordinate agencies, including,
39 without limitation, the Division of Highways.

40 (c) "Economic development project" means any land or
41 water site, structure, facility or equipment which the
42 Parkways Authority may acquire, create, develop,
43 construct, reconstruct, improve or repair, or previously may
44 have acquired, created, developed, constructed,
45 reconstructed, improved or repaired under the provisions of
46 this article to promote the agricultural, economic or
47 industrial development of the state, together with all
48 property rights, easements and interests which may be
49 acquired by the Parkways Authority for the development,
50 construction or operation of such project.

51 (d) "Expressway" means any road serving major
52 intrastate and interstate travel, including federal interstate
53 routes.

54 (e) "Feeder roads" means any road serving community-
55 to-community travel or collects and feeds traffic to an
56 expressway or turnpike.

57 (f) "Local service road" means any local arterIALIZED and
58 spur roads which provide land access and socioeconomic
59 benefits to abutting properties.

60 (g) "Owner" means all individuals, co-partnerships,
61 associations or corporations having any title or interest in

62 any property, rights, easements and interests authorized to
63 be acquired by this article.

64 (h) "Park and forest roads" means any road serving
65 travel within state parks, state forests and public hunting and
66 fishing areas.

67 (i) "Parkways Authority" or "authority" means the West
68 Virginia Parkways Authority, or if the Parkways Authority
69 is abolished, the board, body, commission or authority
70 succeeding to the principal functions thereof or to whom the
71 powers given by this article to the Parkways Authority shall
72 be given by law.

73 (j) "Parkway project" means any expressway, turnpike,
74 bridge, tunnel, trunk line, feeder road, state local service
75 road or park and forest road, or any portion or portions of
76 any expressway, turnpike, trunk line, feeder road, state local
77 service road or park and forest road, whether contiguous or
78 noncontiguous to the West Virginia Turnpike or to any such
79 portion or portions thereof, which the Parkways Authority
80 or the Department of Transportation may acquire, construct,
81 reconstruct, maintain, operate, improve, repair or finance
82 under the provisions of this article, which shall include for
83 all purposes of this article, any acquisition, construction,
84 reconstruction, maintenance, operation, improvement,
85 repair or financing that the authority may undertake by
86 agreement with the Department of Transportation, or any
87 expressway, turnpike or other road constructed by the West
88 Virginia Turnpike Commission pursuant to the authority
89 granted to it under the laws of this state prior to June 1,
90 1989, and shall embrace all bridges, tunnels, overpasses,
91 underpasses, interchanges, entrance plazas, approaches, toll
92 houses, service stations and administration, storage and
93 other buildings, which the Parkways Authority or the
94 Department of Transportation may deem necessary for the
95 operation of a parkway project, or which is used in the
96 operation of a parkway project, together with all property,
97 rights, easements and interests which may be acquired by
98 the Parkways Authority or the Department of

99 Transportation for the construction or the operation of a
100 parkway project or which were acquired in connection with
101 or are used in the operation of the turnpike or any other
102 existing parkway project. A parkway project shall also
103 include any enhancements or improvements to the turnpike
104 or any parkway project, including, without limitation,
105 projects involving lane widening, resurfacing, surface
106 replacement, bridge replacement, bridge improvements and
107 enhancements, other bridge work, drainage system
108 improvements and enhancements, drainage system
109 replacements, safety improvements and enhancements, and
110 traffic flow improvements and enhancements, which have
111 been recommended by the authority's or the Department of
112 Transportation's consulting engineers or traffic engineers,
113 or both.

114 (k) "Project" or "projects" means a parkway project,
115 economic development project or tourism project, or any
116 combination thereof.

117 (l) "Public meeting" means a meeting designed to solicit
118 input and provide information sufficient to allow the public
119 to understand the scope and the costs of a particular project.

120 (m) "State Road Fund" means the State Road Fund
121 created in article three, chapter seventeen of this code.

122 (n) "Transportation secretary" means the Secretary of
123 the Department of Transportation.

124 (o) "Toll revenues" means any amount received by the
125 Parkways Authority from any source as a fee for the right
126 of transit over the West Virginia Turnpike or any other
127 parkway project and any fees paid by owners of registered
128 motor vehicles in the state or any other state collected
129 pursuant to section seventeen, article ten, chapter
130 seventeen-a of this code.

131 (p) "Tourism project" means:

132 (1) Any park or tourist facility and attraction which the
133 Parkways Authority may create, develop, construct,
134 reconstruct, improve, maintain or repair or may have
135 previously created, developed, constructed, reconstructed,
136 improved, maintained or repaired under the provisions of
137 this article, and shall include all roads, interchanges,
138 entrance plazas, approaches, service stations,
139 administration, storage and any other buildings or service
140 stations, structures which the Parkways Authority may
141 deem necessary for the operation of the tourism project,
142 together with all property rights, easements and interests
143 which may be acquired by the Parkways Authority for the
144 construction or operation of the tourism project; and

145 (2) The construction, reconstruction, improvement,
146 maintenance and repair of any park or tourist facility and
147 attraction owned by the state as of June 1, 1989.

148 (q) "Tourist facility and attraction" mean cabins, lodges,
149 recreational facilities, restaurants and other revenue
150 producing facilities, any land or water site, and any
151 information center, visitors' center or rest stop which the
152 Parkways Authority determines may improve, enhance or
153 contribute to the development of the tourism industry in the
154 state.

155 (r) "Trunk line" means any road serving major city-to-
156 city travel.

157 (s) "Turnpike" means the West Virginia Turnpike or
158 any other toll road in the state.

159 (t) "West Virginia Turnpike Commission" means the
160 State Turnpike Commission existing as of June 1, 1989.

161 (u) "West Virginia Turnpike" means the turnpike from
162 Charleston to a point approximately one mile south of the
163 intersection of Interstate 77 and U. S. Route 460 near
164 Princeton in Mercer County, West Virginia, which road is
165 presently a part of the Federal Interstate Highway System.

§17-16A-6. Parkways Authority's powers.

1 (a) The Parkways Authority is hereby authorized and
2 empowered:

3 (1) To adopt bylaws for the regulation of its affairs and
4 the conduct of its business;

5 (2) To adopt an official seal and alter the same at
6 pleasure;

7 (3) To maintain an office at such place or places within
8 the state as it may designate;

9 (4) To sue and be sued in its own name, plead and be
10 impleaded. Any and all actions against the Parkways
11 Authority shall be brought only in the county in which the
12 principal office of the Parkways Authority is located;

13 (5) To construct, reconstruct, improve, maintain, repair,
14 operate or finance projects, at such locations within the state
15 or adjacent to the state pursuant to a reciprocal toll
16 enforcement agreement as may be determined by the
17 Parkways Authority: *Provided*, That after July 1, 2010, the
18 Parkways Authority is prohibited from constructing new
19 tourism projects or new economic development projects,
20 but this prohibition shall not prevent the authority from
21 entering into lease agreements, development agreements or
22 other agreements with private businesses or companies
23 allowing and providing for such private businesses or
24 companies to acquire, develop, construct and operate
25 motels, lodging facilities or other businesses and business
26 facilities on land owned by the authority and located
27 adjacent to the Tamarack project and facilities at Exit 45 of
28 the West Virginia Turnpike;

29 (6) To issue parkway revenue bonds of the State of West
30 Virginia, payable solely from toll revenues, for the purpose
31 of paying all or any part of the cost of any one or more
32 parkway projects;

33 (7) To issue parkway revenue refunding bonds of the
34 State of West Virginia, payable solely from toll revenues,
35 for any one or more of the following purposes:

36 (A) Refunding any bonds which shall have been issued
37 under the provisions of this article or any predecessor
38 thereof; and

39 (B) Repaying to the state all or any part of the state
40 funds used to upgrade the West Virginia Turnpike to federal
41 interstate standards;

42 (8) To charge, fix and revise, from time to time, tolls or
43 fees for transit over each parkway project constructed or
44 improved or financed by it, by the Department of
45 Transportation or by the West Virginia Turnpike
46 Commission: *Provided*, That the Parkways Authority may
47 not charge tolls or fees for transit over an existing road
48 without express legislative authorization for the charging of
49 such tolls or fees: *Provided, however*, That an existing road
50 does not include the West Virginia Turnpike, new lanes or
51 sections of an existing road, the replacement or construction
52 of any bridge or tunnel, or related facilities;

53 (9) To fix and revise, rents, fees or other charges, of
54 whatever kind or character, for the use of each tourism
55 project or economic development project constructed by it
56 or for the use of any building, structure or facility
57 constructed by it or financed in connection with a parkway
58 project;

59 (10) To acquire, hold, lease and dispose of real and
60 personal property in the exercise of its powers and the
61 performance of its duties under this article;

62 (11) To acquire in the name of the state by purchase or
63 otherwise, on such terms and conditions and in such manner
64 as it may deem proper, or by the exercise of the right of
65 condemnation in the manner hereinafter provided, such
66 public or private lands, including public parks, playgrounds

67 or reservations, or parts thereof or rights therein, rights-of-
68 way, property, rights, easements and interests, as it may
69 deem necessary for carrying out the provisions of this
70 article. No compensation shall be paid for public lands,
71 playgrounds, parks, parkways or reservations so taken, and
72 all public property damaged in carrying out the powers
73 granted by this article shall be restored or repaired and
74 placed in its original condition as nearly as practicable;

75 (12) To designate the locations of, and establish, limit
76 and control such points of ingress to and egress from, each
77 project as may be necessary or desirable in the judgment of
78 the Parkways Authority to ensure the proper operation and
79 maintenance of such project and to prohibit entrance to such
80 project from any point or points not so designated;

81 (13) To make and enter into all contracts and
82 agreements necessary or incidental to the performance of its
83 duties and the execution of its powers under this article, and
84 to employ consulting engineers, attorneys, accountants,
85 architects, construction and financial experts, trustees,
86 superintendents, managers and such other employees and
87 agents as may be necessary in its judgment, and to fix their
88 compensation. All such expenses shall be payable solely
89 from the proceeds of parkway revenue bonds or parkway
90 revenue refunding bonds issued under the provisions of this
91 article or from toll revenues;

92 (14) To make and enter into all contracts, agreements or
93 other arrangements with any agency, department, division,
94 board, bureau, commission, authority or other governmental
95 unit of the state to operate, maintain or repair any project;

96 (15) To receive and accept from any federal agency
97 grants for or in aid of the construction of any project, and to
98 receive and accept aid or contributions from any source of
99 either money, property, labor or other things of value, to be
100 held, used and applied only for the purposes for which such
101 grants and contributions may be made;

102 (16) To study, investigate, evaluate and, if feasible,
103 develop and implement a “single fee” program the purpose
104 of which is to charge a flat fee to owners of motor vehicles
105 registered in this state who opt into any such program or any
106 other state which opts into any such program: *Provided,*
107 That any single fee program shall apply only to passenger
108 motor vehicles, divided into classes based on size and
109 usage, and shall not apply to commercial motor vehicles.
110 The flat fee shall be set by the authority at a rate or amount
111 so that the aggregate of all toll revenues estimated to be
112 received by the authority at the time of fixing any such rate
113 or amount, or any increase thereof, provides sufficient toll
114 revenues consistent with the purposes set forth in section
115 thirteen of this article and to cover the administrative costs
116 of any such single fee program. The separate fee shall be
117 collected by adding it to the annual cost of vehicle
118 registration as an additional fee payable solely to the
119 authority pursuant to section seventeen, article ten, chapter
120 seventeen-a of this code. A registered motor vehicle for
121 which such single program fee has been paid shall be
122 entitled to traverse all toll roads within the state without
123 stopping to pay individual tolls during the effective period
124 of said vehicle registration. The single fee program may also
125 include comparable provisions which would allow vehicles
126 registered in other states to traverse West Virginia toll roads
127 in like fashion to West Virginia vehicles as set forth in this
128 section upon the payment of a single fee for each and every
129 vehicle registered in such state, in accordance with the same
130 classification system adopted for West Virginia vehicles.
131 The Parkways Authority, in consultation with the Division
132 of Motor Vehicles, shall propose rules for legislative
133 approval in accordance with the provisions of article three,
134 chapter twenty-nine-a of this code to implement any single
135 fee program under this subdivision (16);

136 (17) To enter into reciprocal toll enforcement
137 agreements with other toll agencies in this state or in any
138 other state or foreign country;

139 (18) To do all acts and things necessary or convenient
140 to carry out the powers expressly granted in this article; and

141 (19) To file the necessary petition or petitions pursuant
142 to federal bankruptcy laws.). The State of West Virginia
143 hereby consents to the application of Title 11 of the United
144 States Code to the Parkways Authority.

145 (b) Nothing in this article shall be construed to prohibit
146 the issuance of parkway revenue refunding bonds in a
147 common plan of financing with the issuance of parkway
148 revenue bonds.

§17-16A-10. Parkway revenue bonds, generally.

1 (a) The Parkways Authority is authorized to provide by
2 resolution for the issuance of parkway revenue bonds of the
3 state for the purpose of paying all or any part of the cost of
4 one or more parkway projects. The principal of and the
5 interest on bonds shall be payable solely from the funds
6 provided for payment, except that:

7 (1) None of the proceeds of the issuance of parkway
8 revenue bonds under this section shall be used to pay all or
9 any part of the cost of any economic development project or
10 tourism project;

11 (2) Nothing in this section shall be construed as
12 prohibiting the Parkways Authority from issuing additional
13 parkway revenue bonds to the extent permitted by
14 applicable federal law for the purpose of constructing,
15 maintaining and operating any highway constructed, in
16 whole or in part, with money obtained from the Appalachian
17 Regional Commission; and

18 (3) The authorization to issue bonds under this section
19 is in addition to the authorization and power to issue bonds
20 under any other section of this code.

21 (b) The bonds of each issue shall be dated, shall bear
22 interest at a rate as may be determined by the Parkways

23 Authority in its sole discretion, shall mature at a time not
24 exceeding forty years from their date of issue as may be
25 determined by the Parkways Authority, and may be made
26 redeemable before maturity, at the option of the Parkways
27 Authority at a price and under the terms and conditions as
28 may be fixed by the Parkways Authority prior to the
29 issuance of the bonds.

30 (c) The Parkways Authority shall determine the form of
31 the bonds, including any interest coupons to be attached
32 thereto, and shall fix the denomination of the bonds and the
33 place of payment of principal and interest, which may be at
34 any bank or trust company or securities depository within
35 or without the state.

36 (d) The bonds shall be executed by manual or facsimile
37 signature by the chair of the Parkways Authority, and the
38 official seal of the Parkways Authority shall be affixed to or
39 printed on each bond, and attested, manually or by facsimile
40 signature, by the Secretary and Treasurer of the Parkways
41 Authority. Any coupons attached to any bond shall bear the
42 manual or facsimile signature of the chair of the Parkways
43 Authority.

44 (e) In case any officer whose signature or a facsimile of
45 whose signature appears on any bonds or coupons shall
46 cease to be an officer before the delivery of the bonds, the
47 signature or facsimile shall nevertheless be valid and
48 sufficient for all purposes the same as if he had remained in
49 office until delivery. In case the seal of the Parkways
50 Authority has been changed after a facsimile has been
51 imprinted on the bonds, then the facsimile seal will continue
52 to be sufficient for all purposes.

53 (f) All bonds issued under the provisions of this article
54 shall have all the qualities and incidents of negotiable
55 instruments under the negotiable instruments law of the
56 state. The bonds may be issued in coupon or in registered
57 form, or both, as the Parkways Authority may determine,
58 and provision may be made for the registration of any

59 coupon bonds as to principal alone and also as to both
60 principal and interest, and for the recorders into coupon
61 bonds of any bonds registered as to both principal and
62 interest.

63 (g) The Parkways Authority may sell the bonds at a
64 public or private sale at a price it determines to be in the best
65 interests of the state.

66 (h) The proceeds of the bonds of each issue shall be used
67 solely for the payment of the cost of the parkway project or
68 parkway projects and by the Division of Highways for any
69 acquisition, construction, reconstruction, maintenance,
70 improvement or repair of public highways and bridges as
71 provided for in this article for which the bonds were issued,
72 and shall be disbursed in a manner consistent with the
73 resolution authorizing the issuance of the bonds or in the
74 trust agreement securing the bonds.

75 (i) If the proceeds of the bonds of any issue, by error of
76 estimates or otherwise, shall be less than the cost, then
77 additional bonds may in like manner be issued to provide
78 the amount of the deficit. Unless otherwise provided in the
79 resolution authorizing the issuance of the bonds or in the
80 trust agreement securing the bonds, the additional bonds
81 shall be deemed to be of the same issue and shall be entitled
82 to payment from the same fund without preference or
83 priority of the bonds first issued.

84 (j) If the proceeds of the bonds of any issue exceed the
85 cost of the parkway project or parkway projects for which
86 the bonds were issued, then the surplus shall be deposited to
87 the credit of the sinking fund for the bonds.

88 (k) Prior to the preparation of definitive bonds, the
89 Parkways Authority may, under like restrictions, issue
90 interim receipts or temporary bonds, with or without
91 coupons, exchangeable for definitive bonds when the bonds
92 have been executed and are available for delivery. The

93 Parkways Authority may also provide for the replacement
94 of any bonds that become mutilated or are destroyed or lost.

95 (l) All or any portion of the proceeds of any parkway
96 revenue bonds issued pursuant to this section may be
97 credited to the special revenue account within the State
98 Road Fund created in section eleven of this article. Moneys
99 in such fund shall be used by the Division of Highways for
100 any acquisition, construction, reconstruction, maintenance,
101 improvement or repair of public highways and bridges in
102 this state.

103 (m) Bonds may be issued under the provisions of this
104 article without obtaining the consent of any department,
105 division, commission, board, bureau or agency of the state
106 in accordance with this article: *Provided*, That the Parkways
107 Authority shall comply with the provisions of section
108 twenty-eight, article one, chapter five of this code.

§17-16A-11. State Road Construction Account.

1 (a) There is hereby created within the State Road Fund
2 a special revenue account to be known as the State Road
3 Construction Account held in the State Treasury to be
4 expended by the Division of Highways for construction,
5 maintenance and repair of public highways and bridges in
6 this state. The State Road Construction Account created in
7 this section is a special revenue account in the State
8 Treasury and is not part of the state General Revenue Fund.

9 (b) The State Road Construction Account shall consist
10 of:

11 (1) All or any portion of the proceeds of any parkway
12 revenue bonds issued pursuant to section ten of this article
13 that the Parkways Authority, in its discretion, may credit to
14 the State Road Construction Account, notwithstanding any
15 provision of said section to the contrary;

16 (2) Any appropriations, grants, gifts, contributions or
17 other revenues received by the State Road Construction
18 Account from any source; and

19 (3) All interest earned on moneys held in the account.

20 (c) The funds in the special revenue account created
21 by this section will be expended by the Division of
22 Highways for the costs of acquisition, construction,
23 reconstruction, maintenance, improvement or repair of
24 public highways and bridges, as contained in the Division
25 of Highways' Statewide Transportation Improvement Plan
26 as it existed on June 1, 2017, or the West Virginia Division
27 of Highways SOS Transportation Investment Program
28 Candidate Project List dated May 3, 2017, in the following
29 counties:

- 30 (1) Raleigh County;
- 31 (2) Fayette County;
- 32 (3) Wyoming County;
- 33 (4) Mercer County;
- 34 (5) Kanawha County;
- 35 (6) Greenbrier County;
- 36 (7) Monroe County;
- 37 (8) Summers County;
- 38 (9) McDowell County; and
- 39 (10) Nicholas County.

**§17-16A-11a. West Virginia Parkways Authority Single Fee
Program Fund.**

1 There is hereby created within the State Treasury a
2 special account within the State Road Fund, designated the

3 West Virginia Parkways Authority Single Fee Program
4 Fund. The account shall consist of any fees received from
5 owners of registered motor vehicles in the state or any other
6 state that have opted in under any single fee program that
7 may be created and implemented by the authority pursuant
8 to section six of this article. The account shall be
9 administered by the Parkways Authority and expenditures
10 from the fund shall be used exclusively by the authority for
11 the purposes authorized in section thirteen of this article and
12 for administrative costs related to any single fee program
13 implemented by the Parkways Authority under subdivision
14 (16), subsection (a), section six of this article.

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

1 (a) The Parkways Authority is hereby authorized to fix,
2 revise, charge and collect tolls and fees for the use of each
3 parkway project and the different parts or sections thereof
4 and to fix, revise, charge and collect rents, fees, charges and
5 other revenues, of whatever kind or character, for the use of
6 each economic development project or tourism project, or
7 any part or section thereof, and to contract with any person,
8 partnership, association or corporation desiring the use of
9 any part thereof, including the right-of-way adjoining the
10 paved portion, for placing thereon telephone, fiber optic or
11 other data transmission lines or devices, electric light,
12 power or other utility lines, gas stations, garages, stores,
13 hotels, restaurants and advertising signs, or for any other
14 purpose except for tracks for railroad or railway use, and to
15 fix the terms, conditions, rents and rates of charges for such
16 use: *Provided*, That the Parkways Authority may not charge
17 tolls or fees for transit over an existing road without express
18 legislative authorization for the charging of such tolls or
19 fees: *Provided, however*, That an existing road does not
20 include the West Virginia Turnpike, new lanes or new
21 sections of an existing road, the replacement or construction
22 of any bridge or tunnel, or related facilities. Such tolls, rents,
23 fees and charges shall be so fixed and adjusted in respect of
24 the aggregate of tolls, or in respect of the aggregate rents,

25 fees and charges, from the project or projects in connection
26 with which the bonds of any issue shall have been issued as
27 to provide a fund sufficient with other revenues, if any: (1)
28 To pay the cost of acquiring, constructing, reconstructing,
29 maintaining, repairing, improving and operating such
30 project or projects and to create reserves therefor; (2) to pay
31 the principal of and the interest on such bonds and related
32 costs and expenses as the same shall become due and
33 payable, and to create reserves for such purposes; and (3) to
34 comply with any covenants under any trust agreement
35 securing any bonds issued by the Parkways Authority, or
36 any predecessor thereof, or to maintain bond credit ratings.
37 Such tolls, rents, fees and other charges shall not be subject
38 to supervision or regulation by any other commission,
39 board, bureau, department or agency of the state. The tolls,
40 rents, fees, charges and all other revenues derived from the
41 project or projects in connection with which the bonds of
42 any issue shall have been issued, except such part thereof as
43 may be necessary to pay the cost of acquiring, constructing,
44 reconstructing, maintaining, improving, repairing and
45 operating such project or projects and to provide such
46 reserves therefor as may be provided in the resolution
47 authorizing the issuance of such bonds or in the trust
48 agreement securing the same, shall be set aside at regular
49 intervals as may be provided in the resolution or the trust
50 agreement in a sinking fund which is hereby pledged to, and
51 charged with, the payment of: (i) The interest upon the
52 bonds as such interest shall fall due; (ii) the principal of the
53 bonds as the same shall fall due; (iii) the necessary charges
54 of paying agents and trustees for paying principal and
55 interest; and (iv) the redemption price or the purchase price
56 of bonds retired by call or purchase as therein provided. The
57 use and disposition of moneys to the credit of such sinking
58 fund shall be subject to the provisions of the resolution
59 authorizing the issuance of the bonds or of the trust
60 agreement. Except as may otherwise be provided in the
61 resolution or the trust agreement, such sinking fund shall be
62 a fund for all bonds without distinction or priority of one
63 over another. The moneys in the sinking fund, less such

64 reserve as may be provided in the resolution or trust
65 agreement, if not used within a reasonable time for the
66 purchase of bonds for cancellation as above provided, shall
67 be applied to the redemption of bonds at the redemption
68 price then applicable.

69 (b) The Parkways Authority shall cause, as soon as it is
70 legally able to do so, all contracts to which it is a party and
71 which relate to the operation, maintenance or use of any
72 restaurant, motel or other lodging facility, truck and
73 automobile service facility, food vending facility or any
74 other service facility located along the West Virginia
75 Turnpike, to be renewed on a competitive bid basis. All
76 contracts relating to any facility or services entered into by
77 the Parkways Authority with a private party with respect to
78 any project constructed after the effective date of this
79 legislation shall be let on a competitive bid basis only. If the
80 Parkways Authority receives a proposal for the
81 development of a project, except for a parkway project, such
82 proposal shall be made available to the public in a
83 convenient location in the county wherein the proposed
84 facility may be located. The Parkways Authority shall
85 publish a notice of the proposal by a Class I legal
86 advertisement in accordance with the provisions of article
87 three, chapter fifty-nine of this code. The publication area
88 shall be the county in which the proposed facility would be
89 located. Any citizen may communicate by writing to the
90 Parkways Authority his or her opposition to or approval to
91 such proposal within a period of time not less than forty-
92 five days from the publication of the notice. No contract for
93 the development of an economic development project or a
94 tourism project may be entered into by the Parkways
95 Authority until a public hearing is held in the vicinity of the
96 location of the proposed economic development project or
97 tourism project with at least twenty days' notice of such
98 hearing by a Class I publication pursuant to section two of
99 said article. The Parkways Authority shall make written
100 findings of fact prior to rendering a decision on any such
101 proposed project. All studies, records, documents and other

102 materials which are considered by the Parkways Authority
103 in making such findings shall be made available for public
104 inspection at the time of the publication of the notice of
105 public hearing and at a convenient location in the county
106 where the proposed economic development project or
107 tourism project may be located. The Parkways Authority
108 shall promulgate rules in accordance with chapter twenty-
109 nine-a of this code for the conduct of any hearing required
110 by this section. Persons attending any such hearing shall be
111 afforded a reasonable opportunity to speak and be heard on
112 the proposed economic development project or tourism
113 project.

§17-16A-13a. Public notice and meeting requirements.

1 (a) Notwithstanding any provision of the law to the
2 contrary, on and after the effective date of the amendment
3 and reenactment of this section in 2017, the Parkways
4 Authority is authorized after prior public notice and
5 meeting, as set forth in this section, to:

6 (1) Fix initial rates, tolls or charges along any portion of
7 a parkway project and fix fees for any single fee program
8 implemented in accordance with section six of this article
9 including, without limitation, fixing initial rates, tolls or
10 charges that may be subject to adjustment or escalation from
11 time to time, or approve any proposal or contract that would
12 require the Parkways Authority to fix any initial rates, tolls
13 or charges along any portion of a parkway project or any
14 fees under any single fee program;

15 (2) Increase any rates, tolls or charges along any portion
16 of the parkway project, increase fees for any single fee
17 program implemented in accordance with section six of this
18 article, or approve any proposal or contract that would result
19 in or require an increase in any rates or tolls along any
20 portion of the parkway project or any fees under any single
21 fee program: *Provided*, That the Parkways Authority may
22 not increase any passenger vehicle rates, tolls or charges
23 without establishing either a single fee program pursuant to

24 subdivision (16), subsection (a), section six of this article or
25 a passenger motor vehicle unlimited use single fee EZ Pass
26 transponder discount program pursuant to section twenty-
27 nine of this article: *Provided, however,* That the program
28 shall extend at least through the period that any rates, tolls
29 or charges are imposed: *Provided further,* That the single
30 annual fee proposed to be charged under either such
31 program may not exceed:

32 (A) An amount of \$25 per year: *Provided,* That the
33 Parkways Authority may adjust this amount every three
34 years: *Provided, however,* That an increase in such amount
35 may not exceed five percent of the amount at each
36 adjustment; and

37 (B) A usage fee for the EZ Pass transponder, radio
38 frequency identifying tag or other device issued by the
39 Parkways Authority to participate in such program, which
40 fee shall not exceed the actual cost of issuing such device;

41 (3) Issue any parkway revenue bond pursuant to section
42 ten of this article or any parkway revenue refunding bond
43 pursuant to sections twenty-one and twenty-two of this
44 article which would require the Parkways Authority to
45 increase or adjust rates, tolls, fees under any single fee
46 program, or charges whether at the time of issuance of the
47 bonds or at any time during the term of any bonds;

48 (4) Approve any contract or project which would
49 require or result in an increase in the rates, tolls or charges
50 along any portion of the parkway project or fees under any
51 single fee program implemented in accordance with section
52 six of this article; or

53 (5) Take any other action which would require or result
54 in an increase in the rates, tolls or charges along any portion
55 of the parkway project or fees under any single fee program
56 implemented in accordance with section six of this article.

57 (b) The Parkways Authority shall publish notice of any
58 proposed contract, project or bond which would require the
59 Parkways Authority to fix any initial toll rates or charges or
60 fees or result in an increase of any toll rates or charges or
61 fees, along with the associated initial rate or fee and rate or
62 fee increase, by a Class II legal advertisement in accordance
63 with the provisions of article three, chapter fifty-nine of this
64 code, published and of general circulation in each county
65 which borders the parkway project or proposed parkway
66 project affected by the proposed contract, project or bond.

67 (c) Once notice has been provided in accordance with
68 the provisions of this section, the Parkways Authority shall
69 conduct at least one public meeting at a reasonable time and
70 location in any county which borders the parkway project
71 or proposed parkway project affected by the proposed
72 contract, project or bond, to allow interested members of the
73 public an opportunity to ask questions and give written
74 comments during the meeting respecting the proposed
75 contract, project or bond which would require the Parkways
76 Authority to fix any initial toll rates or charges or fees or
77 result in an increase of any toll rates or charges or fees. Any
78 citizen may also communicate by writing to the Parkways
79 Authority his or her opposition to or approval of such
80 proposal, initial rate or toll or fee, rate or toll or fee increase
81 or amended bond terms. The public notice and written
82 public comment period shall be conducted not less than
83 forty-five days from the publication of the notice and the
84 affected public must be provided with at least twenty days'
85 notice of any scheduled public meeting.

86 (d) All studies, records, documents and other materials
87 which were considered by the Parkways Authority before
88 recommending the approval of any such project or
89 recommending the adoption of any such initial rate or
90 increase shall be made available for public inspection for a
91 period of at least twenty days prior to the scheduled meeting
92 at a convenient location in each county where a public
93 meeting is held or online.

94 (e) Any final action taken by the Parkways Authority to
95 approve or implement any proposed initial rate or fee, rate
96 or fee increase, contract or project which would require or
97 result in a proposed initial rate or toll or fee or a proposed
98 increase of any rate or tolls along any portion of a parkway
99 project or fee for any single fee program without first
100 satisfying the public notice and meeting requirements of this
101 section, shall be null and void.

102 (f) Nothing in this section shall be construed to permit
103 or authorize the Parkways Authority to charge tolls or fees
104 on any existing road without express legislative
105 authorization for the charging of such tolls or fees:
106 *Provided*, That an existing road does not include the West
107 Virginia Turnpike, new lanes or new sections of an existing
108 road, the replacement or construction of any bridge or
109 tunnel, or related facilities.

§17-16A-18. Corridor L toll fees authorized; commuter pass.

1 (a) The Parkways Authority is hereby authorized to
2 operate the currently existing toll collection facility located
3 at the interchange of U. S. Route 19 (Corridor L) and to fix,
4 revise, charge and collect tolls for the use of such toll
5 collection facility in accordance with the provisions of
6 section thirteen of this article. Any proposed increase of any
7 rate or toll for use of the toll collection facility located at
8 Corridor L shall be subject to the public notice and meeting
9 requirements of section thirteen-a of this article. (1) The
10 Parkways Authority shall maintain, advertise, implement
11 and otherwise make generally available to all qualified
12 members of the public, resident or nonresident, a system of
13 commuter passes, in a form to be determined by the
14 authority. Applications for these commuter passes are to be
15 made available by the Parkways Authority to Division of
16 Motor Vehicles offices in the state;

17 (2) The system of commuter passes implemented in
18 accordance with the provisions of subdivision (1),
19 subsection (a) of this section, shall be available only for use

20 when operating or traveling in a Class A motor vehicle as
21 herein defined. Any person who knowingly or intentionally
22 utilizes any commuter pass issued in accordance with this
23 section while operating a vehicle other than a Class A motor
24 vehicle, as herein defined, at the U. S. Route 19 (Corridor
25 L) turnpike toll facility, or any other toll facility at or upon
26 which such pass may later be usable, is guilty of a
27 misdemeanor and, for every such offense, upon conviction
28 thereof, shall be punished in accordance with the provisions
29 of section seventeen, article sixteen-a of this chapter; and
30 the Parkways Authority shall hereafter be authorized and
31 empowered to cancel any such commuter pass or passes
32 improperly used in accordance with this section;

33 (3) For the purpose of this section, a "Class A vehicle"
34 shall be defined as a motor vehicle of passenger type and
35 truck with a gross weight of ten thousand pounds or less and
36 registered or eligible for registration as a Class A vehicle in
37 accordance with section one, article ten, chapter seventeen-
38 a of this code as the same is currently constituted; and

39 (4) Notwithstanding any other provisions of this code to
40 the contrary, the Parkways Authority may not promulgate
41 emergency rules in accordance with section fifteen, article
42 three, chapter twenty-nine-a of this code to increase or
43 decrease tolls, "single program" fees or the commuter pass
44 fee established herein.

45 (b) Nothing in this section is to be construed to apply to,
46 regulate or in any manner affect the operation of the three
47 main line toll barriers and toll collection facilities currently
48 located on the West Virginia Turnpike and operated by the
49 Parkways Authority as Barrier A, Barrier B and Barrier C
50 (I-64, I-77).

§17-16A-21. Parkway revenue refunding bonds, generally.

1 The Parkways Authority is hereby authorized to provide
2 by resolution for the issuance of parkway revenue refunding
3 bonds of the state for the purpose of refunding any bonds

4 then outstanding which shall have been issued or may be
5 issued under the provisions of this article in connection with
6 the construction of any parkway project, including the
7 payment of any redemption premium thereon and any
8 interest accrued or to accrue to the date of redemption of
9 such bonds; and, if deemed advisable by the Parkways
10 Authority, for the additional purpose of constructing
11 improvements, extensions or enlargements of the project or
12 projects in connection with which the bonds to be refunded
13 shall have been issued: *Provided*, That this section shall not
14 be construed as authorizing the issuance of parkway
15 revenue refunding bonds for the purpose of refunding any
16 bonds then outstanding which shall have been issued under
17 the provisions of this article, or any predecessor thereof, in
18 connection with the construction of the West Virginia
19 Turnpike, which revenue refunding bonds may be issued
20 only as authorized under section twenty-two of this article.
21 The issuance of such bonds, the maturities and other details
22 thereof, the rights of the holders thereof and the rights,
23 duties and obligations of the Parkways Authority in respect
24 of the same shall be governed by the provisions of this
25 article insofar as the same may be applicable. No issuance
26 of a refunding bond may extend the maturity date of such
27 bond being refunded and may not exceed the outstanding
28 principal of such bond being refunded. Any refunding bond
29 shall be structured to provide for approximately level annual
30 debt service savings each fiscal year through the final
31 maturity or structured to approximate the level of debt
32 service that would have been paid prior to the refunding,
33 with a preponderance of the savings being deferred toward
34 eliminating or reducing the most distant maturities. For
35 purposes of this section, the outstanding principal is to be
36 determined as of the date on which the revenue bond is
37 refinanced.

§17-16A-22. Parkway revenue refunding bonds—West Virginia Turnpike.

1 The Parkways Authority is hereby authorized to provide
2 by resolution for the issuance of parkway revenue refunding
3 bonds of the state for the purpose of refunding any bonds
4 which shall have been issued under this article, or any
5 predecessor thereof, in connection with the construction of
6 the West Virginia Turnpike, including the payment of any
7 redemption premium thereon and any interest accrued or to
8 accrue to the date of redemption of such bonds, and, to the
9 extent permissible under federal law and if deemed
10 advisable by the Parkways Authority, for repaying to the
11 state all or any part of the state funds used to upgrade the
12 West Virginia Turnpike to federal interstate standards:
13 *Provided*, That none of the proceeds of the issuance of
14 parkway revenue refunding bonds issued under this section
15 shall be used to pay all or any part of the cost of any
16 economic development project or tourism project. Except as
17 otherwise specifically provided in this section, the issuance
18 of parkway revenue refunding bonds pursuant to this
19 section, the maturities and other details thereof, the rights of
20 the holders thereof, and the rights, duties and obligations of
21 the parkways authority in respect of the same, shall be
22 governed by the provisions of this article insofar as the same
23 may be applicable.

24 The authority to issue parkway revenue refunding bonds
25 under the provisions of this section and section twenty-one
26 of this article does not extend to the refunding of any
27 parkway revenue refunding bonds outstanding on the
28 effective date of the amendment and reenactment of such
29 sections in 2017.

30 No issuance of a refunding bond may extend the
31 maturity date of such bond being refunded and may not
32 exceed the outstanding principal of such bond being
33 refunded. Any refunding bond shall be structured to
34 provide for approximately level annual debt service savings
35 each fiscal year through the final maturity or structured to
36 approximate the level of debt service that would have been
37 paid prior to the refunding, with a preponderance of the

38 savings being deferred toward eliminating or reducing the
39 most distant maturities. For purposes of this section, the
40 outstanding principal is to be determined as of the date on
41 which the revenue bond is refinanced.

§17-16A-29. Discount program for purchasers of West Virginia EZ Pass transponders.

1 (a) The Parkways Authority is hereby authorized to
2 create a discount program for purchasers of West Virginia
3 EZ Pass transponders: *Provided*, That prior to the fixation
4 of any initial rates, tolls or charges or any increase in any
5 rates, tolls or charges along any portion of the parkway
6 project, the Parkways Authority may create a discount
7 program for purchasers of West Virginia EZ Pass
8 transponders. Any discount program created pursuant to this
9 section shall provide discounts for each class of motor
10 vehicles: *Provided, however*, That any single fee program
11 implemented by the authority pursuant to subdivision (16),
12 subsection (a), section six of this article shall apply only to
13 passenger motor vehicles.

14 (b) The authority shall provide public notice and hold a
15 public meeting on any proposed discount program as
16 required in section thirteen-a of this article prior to
17 implementation of such program.

18 (c) For purposes of this section, a “West Virginia EZ
19 Pass transponder” means a device issued by the Parkways
20 Authority which allows the purchaser to attach the device to
21 his or her motor vehicle and travel through a Parkways
22 Authority toll facility and be billed for such travel by the
23 authority.

§17-16A-30. Coordination with county commission in counties where a parkway project may be located.

1 Once a parkway project for a new toll road is identified
2 by the authority, the Governor shall appoint, with the advice
3 and consent of the Senate, two persons from each county
4 where the parkway project for the new toll road is located

5 to serve on a local committee to provide recommendations
6 and suggestions to the authority on all matters regarding the
7 local identified project. The local committee shall also
8 report any of its findings to the county commission or
9 county commissions of the counties in which the parkway
10 project for the new toll road is located. Prior to any final
11 approval of a parkway project for a new toll road, the county
12 commissions of the counties in which the parkway project
13 road is located shall by resolution approve the parkway
14 project: *Provided*, That a resolution approving the parkway
15 project for a new toll road is only required from a simple
16 majority of the county commissions of the counties in which
17 the parkway project for a new toll road is located.

ARTICLE 16D. ELECTRONIC TOLL COLLECTION.

§17-16D-3. Electronic toll collection authorized.

1 Notwithstanding the provisions of article sixteen-a and
2 section five-b, article seventeen-a of this chapter and section
3 seven-a, article six, chapter seventeen-c of this code to the
4 contrary, the collection and enforcement of tolls for the use
5 of roads, highways and bridges may be accomplished by
6 electronic toll collection as provided in this article and in
7 rules promulgated by authority of this article.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE AND ANTITHEFT PROVISIONS.

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-25. Agreements with West Virginia Parkways Authority.

1 The Division is hereby authorized, directed and
2 empowered to enter into all necessary agreements with the
3 West Virginia Parkways Authority to collect road user fees
4 imposed by the authority under subdivision (16), subsection
5 (a), section six, article sixteen-a, chapter seventeen of this
6 code, or any other applicable section of its enabling

7 legislation, and to deposit the fees collected by the Division
8 into the West Virginia Parkways Authority Single Fee
9 Program Fund established under section eleven-a, article
10 sixteen-a, chapter seventeen of this code.

**ARTICLE 3. ORIGINAL AND RENEWAL OF
REGISTRATION; ISSUANCE OF CERTIFICATES OF
TITLE.**

**§17A-3-7. Grounds for refusing registration or certificate of
title.**

1 The division shall refuse registration or issuance of a
2 certificate of title or any transfer of registration upon any of
3 the following grounds:

4 (1) That the application contains any false or fraudulent
5 statement or that the applicant has failed to furnish required
6 information or reasonable additional information requested
7 by the division or that the applicant is not entitled to the
8 issuance of a certificate of title or registration of the vehicle
9 under this chapter;

10 (2) That the applicant fails to present a statement of
11 insurance or proof of other security as required pursuant to
12 the provisions of section three of this article;

13 (3) That the vehicle is mechanically unfit or unsafe to
14 be operated or moved upon the highways;

15 (4) That the division has reasonable grounds to believe
16 that the vehicle is a stolen or embezzled vehicle or that the
17 granting of registration or the issuance of certificate of title
18 would constitute a fraud against the rightful owner or other
19 person having a valid lien upon such vehicle;

20 (5) That the registration of the vehicle stands suspended
21 or revoked for any reason as provided in the motor vehicle
22 laws of this state;

23 (6) That the required fee has not been paid;

24 (7) That the vehicle is operated by a commercial motor
25 carrier who has failed to provide a federal motor carrier
26 identification number (USDOT number) or whose authority
27 to operate in interstate commerce has been denied or
28 suspended by the federal Motor Carrier Safety
29 Administration; or

30 (8) That any road user fee due under a single fee
31 program imposed by the West Virginia Parkways Authority
32 has not been paid.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-17. Fee for West Virginia Parkways Authority Single Fee Program.

1 In addition to each fee provided in this article, an
2 additional fee for any single fee program that may be
3 implemented by the West Virginia Parkways Authority
4 pursuant to section six, article sixteen-a, chapter seventeen
5 of this code shall be payable upon the issuance of each
6 certificate of registration and renewal thereof issued
7 pursuant to article three of this chapter. The Division shall
8 collect and deposit all the additional fees into the West
9 Virginia Parkways Authority Single Fee Program Fund
10 created in section eleven-a, article sixteen-a, chapter
11 seventeen of this code. The additional fee provided herein
12 may be imposed for each application for such certificate and
13 renewal thereof made on or after July 1, 2017.

CHAPTER 6

**(S. B. 1006 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed June 16, 2017; in effect from passage.]

[Approved by the Governor on June 22, 2017.]

AN ACT to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-3c and §11-15-18b of said code; to amend and reenact §17A-2-13 of said code; to amend and reenact §17A-3-4 of said code; to amend and reenact §17A-4-1 of said code; to amend and reenact §17A-4-10 of said code as contained in Chapter 152, Acts of the Legislature, Regular Session, 2017; to amend and reenact §17A-4A-10 of said code; to amend and reenact §17A-7-2 of said code; to amend and reenact §17A-10-3, §17A-10-10 and §17A-10-11 of said code; to amend said code by adding thereto a new section, designated §17A-10-3c; to amend and reenact §17B-2-1, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-8 and §17B-2-11 of said code; to amend and reenact §17C-5A-2a of said code; and to amend and reenact §17D-2-2 of said code, all relating generally to increasing the funding for the State Road Fund; increasing the minimum average wholesale price of motor fuels and minimum tax for purposes of the five percent variable component of motor fuel excise tax as of specified date; increasing the rate of consumers sales and service tax on sales of motor vehicles as of a specified date; deleting superfluous language relating to floorstocks; increasing Division of Motor Vehicles administrative fees, including increasing fees for various documents, records, registrations, certificates, titles, liens, releases, transfers, cards, stickers, decals, licenses and plates; requiring payment of certain fee for each attempt at the written and road skills test; allowing the Division of Motor Vehicles

to adjust fees every five years on September 1 based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index; limiting increase in fees to ten percent; imposing annual registration fee for certain alternative fuel vehicles; correcting cross-references and agency title; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15-3c and §11-15-18b of said code be amended and reenacted; that §17A-2-13 of said code be amended and reenacted; that §17A-3-4 of said code be amended and reenacted; that §17A-4-1 of said code be amended and reenacted; that §17A-4-10 of said code as contained in Chapter 152, Acts of the Legislature, Regular Session, 2017, be amended and reenacted; that §17A-4A-10 of said code be amended and reenacted; that §17A-7-2 of said code be amended and reenacted; that §17A-10-3, §17A-10-10 and §17A-10-11 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §17A-10-3c; that §17B-2-1, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-8 and §17B-2-11 of said code be amended and reenacted; that §17C-5A-2a of said code be amended and reenacted; and that §17D-2-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-5. Taxes levied; rate.

1 (a) There is hereby levied on all motor fuel an excise tax
2 composed of a flat rate equal to \$.205 per invoiced gallon
3 and, on alternative fuel, on each gallon equivalent, plus a
4 variable component comprised of:

5 (1) On motor fuel other than alternative fuel, either the
6 tax imposed by section eighteen-b, article fifteen of this
7 chapter or the tax imposed under section thirteen-a, article
8 fifteen-a of this chapter, as applicable. The variable

9 component shall be equal to five percent of the average
10 wholesale price of the motor fuel: *Provided*, That on and
11 after January 1, 2010, the average wholesale price shall be
12 no less than \$2.34 per invoiced gallon and is computed as
13 hereinafter prescribed in this section: *Provided, however*,
14 That on and after July 1, 2017, the average wholesale price
15 of motor fuel may not be determined to be less than \$3.04
16 per invoiced gallon for all gallons of motor fuel sold during
17 the reporting period notwithstanding any provision of this
18 code to the contrary and on and after July 1, 2017, the tax
19 per gallon may not be less than 15.2 cents per gallon of
20 motor fuel; and

21 (2) On alternative fuel, either the tax imposed by section
22 eighteen-b, article fifteen of this chapter or the tax imposed
23 under section thirteen-a, article fifteen-a of this chapter, as
24 applicable. The variable component of the tax on alternative
25 fuel shall be equal to five percent of the average wholesale
26 price of the alternative fuel.

27 (b) *Determination of average wholesale price.* —

28 (1) To simplify determining the average wholesale price
29 of all motor fuel, the Tax Commissioner shall, effective
30 with the period beginning the first day of the month of the
31 effective date of the tax and each January 1 thereafter,
32 determine the average wholesale price of motor fuel for
33 each annual period on the basis of sales data gathered for
34 the preceding period of July 1 through October 31.
35 Notification of the average wholesale price of motor fuel
36 shall be given by the Tax Commissioner at least thirty days
37 in advance of each January 1 by filing notice of the average
38 wholesale price in the State Register and by other means as
39 the Tax Commissioner considers reasonable.

40 (2) The “average wholesale price” means the single,
41 statewide average per gallon wholesale price, rounded to the
42 third decimal (thousandth of a cent), exclusive of state and
43 federal excise taxes on each gallon of motor fuel or on each
44 gallon equivalent of alternative fuel as determined by the

45 Tax Commissioner from information furnished by
46 suppliers, importers and distributors of motor fuel and
47 alternative-fuel providers, alternative-fuel bulk end users
48 and retailers of alternative fuel in this state, or other
49 information regarding wholesale selling prices as the Tax
50 Commissioner may gather or a combination of information.
51 On and after January 1, 2010, in no event shall the average
52 wholesale price be determined to be less than \$2.34 per
53 gallon of motor fuel: *Provided*, That on and after July 1,
54 2017, the average wholesale price may not be determined to
55 be less than \$3.04 per gallon of motor fuel. On and after
56 January 1, 2011, the average wholesale price shall not vary
57 by more than ten percent from the average wholesale price
58 of motor fuel as determined by the Tax Commissioner for
59 the previous calendar year: *Provided, however*, That in no
60 case shall the average wholesale price of motor fuel be
61 determined to be less than \$3.04 per invoiced gallon. Any
62 limitation on the average wholesale price of motor fuel
63 contained in this subsection shall not be applicable to
64 alternative fuel.

65 (3) All actions of the Tax Commissioner in acquiring
66 data necessary to establish and determine the average
67 wholesale price of motor fuel, in providing notification of
68 his or her determination prior to the effective date of a
69 change in rate, and in establishing and determining the
70 average wholesale price of motor fuel may be made by the
71 Tax Commissioner without compliance with the provisions
72 of article three, chapter twenty-nine-a of this code.

73 (4) In an administrative or court proceeding brought to
74 challenge the average wholesale price of motor fuel as
75 determined by the Tax Commissioner, his or her
76 determination is presumed to be correct and shall not be set
77 aside unless it is clearly erroneous.

78 (c) Every licensee who, on the effective date of any rate
79 change, has in inventory any motor fuel upon which the tax
80 or any portion thereof has been previously paid shall take a
81 physical inventory and file a report thereof with the

82 commissioner, in the format as required by the
83 commissioner, within thirty days after the effective date of
84 the rate change, and shall pay to the commissioner at the
85 time of filing the report any additional tax due under the
86 increased rate.

87 (d) The Tax Commissioner shall determine by January
88 1, 2014, the gasoline gallon equivalent for each alternative
89 fuel by filing a notice of the gasoline gallon equivalent in
90 the State Register and by other means that the Tax
91 Commissioner considers reasonable. The Tax
92 Commissioner may redetermine the gasoline gallon
93 equivalent for each alternative fuel by filing a notice of the
94 gasoline gallon equivalent in the State Register at least
95 thirty days in advance of January 1 for the next succeeding
96 tax year. For purposes of this notice, the Tax Commissioner
97 may adopt or incorporate by reference provisions of the
98 National Institute of Standards and Technology, United
99 States Department of Commerce, the Internal Revenue
100 Code, United States Treasury Regulations, the Internal
101 Revenue Service publications or guidelines or other
102 publications or guidelines which may be useful in
103 determining, setting or describing the gasoline gallon
104 equivalent for each alternative fuel used as motor fuel.

105 (e) Effective date. — The amendments to this section
106 enacted during the first extraordinary session of 2017 shall
107 take effect on July 1, 2017.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

1 (a) Notwithstanding any provision of this article or
2 article fifteen-a of this chapter to the contrary, beginning on

3 July 1, 2008, all motor vehicle sales to West Virginia
4 residents shall be subject to the consumers sales tax
5 imposed by this article.

6 (b) *Rate of tax on motor vehicles.* — Notwithstanding
7 any provision of this article or article fifteen-a of this
8 chapter to the contrary, the rate of tax on the sale and use of
9 a motor vehicle shall be five percent of its sale price, as
10 defined in section two, article fifteen-b of this chapter:
11 *Provided*, That so much of the sale price or consideration as
12 is represented by the exchange of other vehicles on which
13 the tax imposed by this section or section four, article three,
14 chapter seventeen-a of this code has been paid by the
15 purchaser shall be deducted from the total actual sale price
16 paid for the motor vehicle, whether the motor vehicle be
17 new or used. However, beginning July 1, 2017, the rate of
18 tax imposed by this section shall increase to six percent of
19 the sales price for purchases of motor vehicles made on and
20 after that date.

21 (c) *Motor vehicles purchased out of state.* —
22 Notwithstanding this article or article fifteen-a to the
23 contrary, the tax imposed by this section shall apply to all
24 motor vehicles, used as defined by section one, article
25 fifteen-a of this chapter, within this state, regardless of
26 whether the vehicle was purchased in a state other than West
27 Virginia.

28 (d) *Definition of sale.* — Notwithstanding any provision
29 of this article or article fifteen-a of this chapter to the
30 contrary, for purposes of this section, “sale”, “sales” or
31 “selling” means any transfer or lease of the possession or
32 ownership of a motor vehicle for consideration, including
33 isolated transactions between individuals not being made in
34 the ordinary course of repeated and successive business and
35 also including casual and occasional sales between
36 individuals not conducted in a repeated manner or in the
37 ordinary course of repetitive and successive transactions.

38 (e) *Definition of motor vehicle.* — For purposes of this
39 section, “motor vehicle” means every propellable device in
40 or upon which any person or property is or may be
41 transported or drawn upon a highway including, but not
42 limited to: Automobiles; buses; motor homes; motorcycles;
43 motorboats; all-terrain vehicles; snowmobiles; low-speed
44 vehicles; trucks, truck tractors and road tractors having a
45 weight of less than fifty-five thousand pounds; trailers,
46 semitrailers, full trailers, pole trailers and converter gear
47 having a gross weight of less than two thousand pounds; and
48 motorboat trailers, fold-down camping trailers, traveling
49 trailers, house trailers and motor homes; except that the term
50 “motor vehicle” does not include: Modular homes,
51 manufactured homes, mobile homes, similar nonmotive
52 propelled vehicles susceptible of being moved upon the
53 highways but primarily designed for habitation and
54 occupancy; devices operated regularly for the transportation
55 of persons for compensation under a certificate of
56 convenience and necessity or contract carrier permit issued
57 by the Public Service Commission; mobile equipment as
58 defined in section one, article one, chapter seventeen-a of
59 this code; special mobile equipment as defined in section
60 one, article one, chapter seventeen-a of this code; trucks,
61 truck tractors and road tractors having a gross weight of
62 fifty-five thousand pounds or more; trailers, semitrailers,
63 full trailers, pole trailers and converter gear having weight
64 of two thousand pounds or greater: *Provided,* That
65 notwithstanding the provisions of section nine, article
66 fifteen, chapter eleven of this code, the exemption from tax
67 under this section for mobile equipment as defined in
68 section one, article one, chapter seventeen-a of this code;
69 special mobile equipment defined in section one, article
70 one, chapter seventeen-a of this code; Class B trucks, truck
71 tractors and road tractors registered at a gross weight of
72 fifty-five thousand pounds or more; and Class C trailers,
73 semitrailers, full trailers, pole trailers and converter gear
74 having weight of two thousand pounds or greater does not
75 subject the sale or purchase of the vehicle to the consumers
76 sales and service tax imposed by section three of this article.

77 (f) *Exemptions.* — Notwithstanding any other provision
78 of this code to the contrary, the tax imposed by this section
79 shall not be subject to any exemption in this code other than
80 the following:

81 (1) The tax imposed by this section does not apply to
82 any passenger vehicle offered for rent in the normal course
83 of business by a daily passenger rental car business as
84 licensed under the provisions of article six-d, chapter
85 seventeen-a of this code. For purposes of this section, a
86 daily passenger car means a motor vehicle having a gross
87 weight of eight thousand pounds or less and is registered in
88 this state or any other state. In lieu of the tax imposed by
89 this section, there is hereby imposed a tax of not less than
90 \$1 nor more than \$1.50 for each day or part of the rental
91 period. The Commissioner of the Division of Motor
92 Vehicles shall propose an emergency rule in accordance
93 with the provisions of article three, chapter twenty-nine-a of
94 this code to establish this tax.

95 (2) The tax imposed by this section does not apply
96 where the motor vehicle has been acquired by a corporation,
97 partnership or limited liability company from another
98 corporation, partnership or limited liability company that is
99 a member of the same controlled group and the entity
100 transferring the motor vehicle has previously paid the tax on
101 that motor vehicle imposed by this section. For the purposes
102 of this section, control means ownership, directly or
103 indirectly, of stock or equity interests possessing fifty
104 percent or more of the total combined voting power of all
105 classes of the stock of a corporation or equity interests of a
106 partnership or limited liability company entitled to vote or
107 ownership, directly or indirectly, of stock or equity interests
108 possessing fifty percent or more of the value of the
109 corporation, partnership or limited liability company.

110 (3) The tax imposed by this section does not apply
111 where motor vehicle has been acquired by a senior citizen
112 service organization which is exempt from the payment of
113 income taxes under the United States Internal Revenue

114 Code, Title 26 U. S. C. §501(c)(3) and which is recognized
115 to be a bona fide senior citizen service organization by the
116 Bureau of Senior Services existing under the provisions of
117 article five-p, chapter sixteen of this code.

118 (4) The tax imposed by this section does not apply to
119 any active duty military personnel stationed outside of West
120 Virginia who acquires a motor vehicle by sale within nine
121 months from the date the person returns to this state.

122 (5) The tax imposed by this section does not apply to
123 motor vehicles acquired by registered dealers of this state
124 for resale only.

125 (6) The tax imposed by this section does not apply to
126 motor vehicles acquired by this state or any political
127 subdivision thereof or by any volunteer fire department or
128 duly chartered rescue or ambulance squad organized and
129 incorporated under the laws of this state as a nonprofit
130 corporation for protection of life or property.

131 (7) The tax imposed by this section does not apply to
132 motor vehicles acquired by an urban mass transit authority,
133 as defined in article twenty-seven, chapter eight of this
134 code, or a nonprofit entity exempt from federal and state
135 income tax under the Internal Revenue Code for the purpose
136 of providing mass transportation to the public at large or
137 designed for the transportation of persons and being
138 operated for the transportation of persons in the public
139 interest.

140 (8) The tax imposed by this section does not apply to
141 the registration of a vehicle owned and titled in the name of
142 a resident of this state if the applicant:

143 (A) Was not a resident of this state at the time the
144 applicant purchased or otherwise acquired ownership of the
145 vehicle;

146 (B) Presents evidence as the Commissioner of the
147 Division of Motor Vehicles may require of having titled the
148 vehicle in the applicant's previous state of residence;

149 (C) Has relocated to this state and can present such
150 evidence as the Commissioner of the Division of Motor
151 Vehicles may require to show bona fide residency in this
152 state; and

153 (D) Makes application to the Division of Motor
154 Vehicles for a title and registration and pays all other fees
155 required by chapter seventeen-a of this code within thirty
156 days of establishing residency in this state as prescribed in
157 subsection (a), section one-a of this article.

158 (9) On and after January 1, 2009, the tax imposed by
159 this section does not apply to Class B trucks, truck tractors
160 and road tractors registered at a gross weight of fifty-five
161 thousand pounds or more or to Class C trailers, semitrailers,
162 full trailers, pole trailers and converter gear having a weight
163 of two thousand pounds or greater. If an owner of a vehicle
164 has previously titled the vehicle at a declared gross weight
165 of fifty-five thousand pounds or more and the title was
166 issued without the payment of the tax imposed by this
167 section, then before the owner may obtain registration for
168 the vehicle at a gross weight less than fifty-five thousand
169 pounds, the owner shall surrender to the commissioner the
170 exempted registration, the exempted certificate of title and
171 pay the tax imposed by this section based upon the current
172 market value of the vehicle.

173 (10) The tax imposed by this section does not apply to
174 vehicles leased by residents of West Virginia. On or after
175 January 1, 2009, a tax is imposed upon the monthly
176 payments for the lease of any motor vehicle leased under a
177 written contract of lease by a resident of West Virginia for
178 a contractually specified continuous period of more than
179 thirty days, which tax is equal to five percent of the amount
180 of the monthly payment, applied to each payment, and
181 continuing for the entire term of the initial lease period. The

182 tax shall be remitted to the Division of Motor Vehicles on a
183 monthly basis by the lessor of the vehicle. Leases of thirty
184 days or less are taxable under the provisions of this article
185 and article fifteen-a of this chapter without reference to this
186 section.

187 (g) *Division of Motor Vehicles to collect.* —
188 Notwithstanding any provision of this article, article fifteen-
189 a and article ten of this chapter to the contrary, the Division
190 of Motor Vehicles shall collect the tax imposed by this
191 section: *Provided*, That such tax is imposed upon the
192 monthly payments for the lease of any motor vehicle leased
193 by a resident of West Virginia, which tax is equal to five
194 percent of the amount of the monthly payment, applied to
195 each payment, and continuing for the entire term of the
196 initial lease period. The tax shall be remitted to the Division
197 of Motor Vehicles on a monthly basis by the lessor of the
198 vehicle.

199 (h) *Dedication of tax to highways.* — Notwithstanding
200 any provision of this article or article fifteen-a of this
201 chapter to the contrary, all taxes collected pursuant to this
202 section, after deducting the amount of any refunds lawfully
203 paid, shall be deposited in the State Road Fund in the State
204 Treasury and expended by the Commissioner of Highways
205 for design, maintenance and construction of roads in the
206 state highway system.

207 (i) *Legislative rules; emergency rules.* —
208 Notwithstanding any provision of this article, article fifteen-
209 a and article ten of this chapter to the contrary, the
210 Commissioner of the Division of Motor Vehicles shall
211 promulgate legislative rules explaining and implementing
212 this section, which rules shall be promulgated in accordance
213 with the provisions of article three, chapter twenty-nine-a of
214 this code and should include a minimum taxable value and
215 set forth instances when a vehicle is to be taxed at fair
216 market value rather than its purchase price. The authority to
217 promulgate rules includes authority to amend or repeal
218 those rules. If proposed legislative rules for this section are

219 filed in the State Register before June 15, 2008, those rules
220 may be promulgated as emergency legislative rules as
221 provided in article three, chapter twenty-nine-a of this code.

222 (j) Notwithstanding any other provision of this code,
223 effective January 1, 2009, no municipal sales or use tax or
224 local sales or use tax or special downtown redevelopment
225 district excise tax or special district excise tax shall be
226 imposed under article twenty-two, chapter seven of this
227 code or article thirteen, chapter eight of this code or article
228 thirteen-b of said chapter or article thirty-eight of said
229 chapter or any other provision of this code, except this
230 section, on sales of motor vehicles as defined in this article
231 or on any tangible personal property excepted or exempted
232 from tax under this section. Nothing in this subsection shall
233 be construed to prevent the application of the municipal
234 business and occupation tax on motor vehicle retailers and
235 leasing companies.

§11-15-18b. Tax on motor fuel.

1 (a) *General.* — All sales of motor fuel and alternative
2 fuel subject to the flat rate of the tax imposed by section
3 five, article fourteen-c of this chapter, are subject to the tax
4 imposed by this article and comprises the variable
5 component of the tax imposed by section five, article
6 fourteen-c of this chapter and is collected and remitted at
7 the time the tax imposed by said section is remitted. Sales
8 of motor fuel and alternative fuel upon which the tax
9 imposed by this article has been paid is not again taxed
10 under the provisions of this article. This section means that
11 all gallons of motor fuel and equivalent gallons of
12 alternative fuel sold and delivered or delivered in this state
13 are taxed one time.

14 (b) *Measure of tax.* — The measure of tax imposed by
15 this article is as follows:

16 (1) On sales of motor fuel, the average wholesale price
17 as defined and determined in section five, article fourteen-c

18 of this chapter. For purposes of maintaining revenue for
19 highways, and recognizing that the tax imposed by this
20 article is generally imposed on gross proceeds from sales to
21 ultimate consumers, whereas the tax on motor fuel herein is
22 imposed on the average wholesale price of the motor fuel;
23 in no case, for the purposes of taxation under this article,
24 may the average wholesale price be determined to be less
25 than 97 cents per gallon of motor fuel for all gallons of
26 motor fuel sold during the reporting period, notwithstanding
27 any provision of this article to the contrary. On and after
28 January 1, 2010, for the purpose of taxation under this
29 article, in no case may the average wholesale price be
30 determined to be less than \$2.34 per gallon of motor fuel for
31 all gallons of motor fuel sold during the reporting period
32 notwithstanding any provision of this article to the contrary:
33 *Provided*, That on and after July 1, 2017, in no case may the
34 average wholesale price be determined to be less than \$3.04
35 per gallon of motor fuel for all gallons of motor fuel sold
36 during the reporting period notwithstanding any provision
37 of this article to the contrary and on and after July 1, 2017,
38 the tax per gallon may not be less than 15.2 cents per gallon
39 of motor fuel. Any limitation on the average wholesale price
40 of motor fuel contained in this subsection shall not be
41 applicable to alternative fuel.

42 (2) On sales of alternative fuel, the average wholesale
43 price as defined and determined in section five, article
44 fourteen-c of this chapter.

45 (c) *Definitions.* — For purposes of this article, the terms
46 “gasoline” and “special fuel” and “alternative fuel” are
47 defined as provided in section two, article fourteen-c of this
48 chapter. Other terms used in this section have the same
49 meaning as when used in a similar context in said article.

50 (d) *Tax return and tax due.* —

51 (1) The tax imposed by this article on sales of motor fuel
52 shall be paid by each taxpayer on or before the last day of
53 the calendar month by check, bank draft, certified check or

54 money order payable to the Tax Commissioner for the
55 amount of tax due for the preceding month notwithstanding
56 any provision of this article to the contrary. The
57 commissioner may require all or certain taxpayers to file tax
58 returns and payments electronically. The return required by
59 the commissioner shall accompany the payment of tax. If no
60 tax is due, the return required by the commissioner shall be
61 completed and filed on or before the last day of the month.

62 (2) The tax due under this article comprising the
63 variable component of the tax due under article fourteen-c
64 of this chapter on alternative fuel, is due and shall be
65 collected and remitted at the time the tax imposed by section
66 five, article fourteen-c of this chapter is due, collected and
67 remitted.

68 (e) *Compliance.* — To facilitate ease of administration
69 and compliance by taxpayers, the Tax Commissioner shall
70 require persons liable for the tax imposed by this article on
71 sales of motor fuel to file a combined return and make a
72 combined payment of the tax due under this article on sales
73 of motor fuel and the tax due under article fourteen-c of this
74 chapter on motor fuel. In order to encourage use of a
75 combined return each month and the making of a single
76 payment each month for both taxes, the due date of the
77 return and tax due under article fourteen-c of this chapter is
78 the last day of each month notwithstanding any provision in
79 said article to the contrary. The Tax Commissioner may
80 prescribe reporting and payment requirements for tax due
81 under this article on alternative fuel which accommodate the
82 due dates and requirements prescribed in this article and
83 article fourteen-c of this chapter, either under a separate
84 return and payment or a combined return and payment,
85 within the discretion of the Tax Commissioner.

86 (f) *Dedication of tax.* — All tax collected under the
87 provisions of this section, after deducting the amount of
88 refunds lawfully paid, shall be deposited in the road fund in
89 the State Treasurer's office and used only for the purpose of
90 construction, reconstruction, maintenance and repair of

91 highways and payment of principal and interest on state
92 bonds issued for highway purposes. Notwithstanding any
93 provision to the contrary, tax collected on the sale of
94 aviation fuel after deducting the amount of refunds lawfully
95 paid shall be deposited in the State Treasurer's office and
96 transferred to the state Aeronautical Commission to be used
97 for the purpose of matching federal funds available for the
98 reconstruction, maintenance and repair of public airports
99 and airport runways.

100 (g) *Construction.* — This section does not tax a sale of
101 motor fuel which this state is prohibited from taxing under
102 the Constitution of this state or the Constitution or laws of
103 the United States.

104 (h) *Effective date.* — The provisions of this section take
105 effect on January 1, 2004. The provisions of this section
106 enacted during the 2007 legislative session take effect on
107 January 1, 2008. The provisions of this section enacted
108 during the 2013 regular legislative session take effect on
109 January 1, 2014. The amendments of this section enacted
110 during the first extraordinary session of 2017 take effect on
111 July 1, 2017.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE AND ANTI- THEFT PROVISIONS.

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-13. Authority to administer oaths and certify copies of records; information as to registration.

1 (a) Officers and employees of the division designated
2 by the commissioner are, for the purpose of administering
3 the motor vehicle laws, authorized to administer oaths and
4 acknowledge signatures, and shall do so without fee.

5 (b) The commissioner and such officers of the division
6 as he or she may designate are hereby authorized to prepare
7 under the seal of the division and deliver upon request in

8 conformance with article two-a of this chapter a certified
9 copy of any record of the division, charging a fee of \$1.50
10 for each document so authenticated, and every such
11 certified copy is admissible in any proceeding in any court
12 in like manner as the original thereof. The Division of Motor
13 Vehicles may adjust this fee every five years on September
14 1, based on the U. S. Department of Labor, Bureau of Labor
15 Statistics most current Consumer Price Index: *Provided*,
16 That an increase in such fee may not exceed ten percent of
17 the total fee amount in a single year.

18 (c) Subject to the provisions of article two-a of this
19 chapter, the commissioner and such officers of the division
20 as he or she may designate may furnish the requested
21 information to any person making a written request for
22 information regarding the registration of any vehicle at a fee
23 of \$1.50 for each registration about which information is
24 furnished. The Division of Motor Vehicles may adjust this
25 fee every five years on September 1, based on the U. S.
26 Department of Labor, Bureau of Labor Statistics most
27 current Consumer Price Index: *Provided*, That an increase
28 in such fee may not exceed ten percent of the total fee
29 amount in a single year.

30 (d) The provisions of this section enacted in 2017 take
31 effect on July 1, 2017.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; fees; abolishing privilege tax; prohibition of issuance of certificate of title without compliance with consumers sales and service tax provisions; exceptions.

1 (a) Certificates of registration of any vehicle or
2 registration plates for the vehicle, whether original issues or
3 duplicates, may not be issued or furnished by the Division
4 of Motor Vehicles or any other officer or agent charged with

5 the duty, unless the applicant already has received, or at the
6 same time makes application for and is granted, an official
7 certificate of title of the vehicle in either an electronic or
8 paper format. The application shall be upon a blank form to
9 be furnished by the Division of Motor Vehicles and shall
10 contain a full description of the vehicle, which description
11 shall contain a manufacturer's serial or identification
12 number or other number as determined by the commissioner
13 and any distinguishing marks, together with a statement of
14 the applicant's title and of any liens or encumbrances upon
15 the vehicle, the names and addresses of the holders of the
16 liens and any other information as the Division of Motor
17 Vehicles may require. The application shall be signed and
18 sworn to by the applicant. A duly certified copy of the
19 division's electronic record of a certificate of title is
20 admissible in any civil, criminal or administrative
21 proceeding in this state as evidence of ownership.

22 (b) A tax is imposed upon the privilege of effecting the
23 certification of title of each vehicle in the amount equal to
24 five percent of the value of the motor vehicle at the time of
25 the certification, to be assessed as follows:

26 (1) If the vehicle is new, the actual purchase price or
27 consideration to the purchaser of the vehicle is the value of
28 the vehicle. If the vehicle is a used or secondhand vehicle,
29 the present market value at time of transfer or purchase is
30 the value of the vehicle for the purposes of this section:
31 *Provided*, That so much of the purchase price or
32 consideration as is represented by the exchange of other
33 vehicles on which the tax imposed by this section has been
34 paid by the purchaser shall be deducted from the total actual
35 price or consideration paid for the vehicle, whether the
36 vehicle be new or secondhand. If the vehicle is acquired
37 through gift or by any manner whatsoever, unless
38 specifically exempted in this section, the present market
39 value of the vehicle at the time of the gift or transfer is the
40 value of the vehicle for the purposes of this section.

41 (2) No certificate of title for any vehicle may be issued
42 to any applicant unless the applicant has paid to the Division
43 of Motor Vehicles the tax imposed by this section which is
44 five percent of the true and actual value of the vehicle
45 whether the vehicle is acquired through purchase, by gift or
46 by any other manner whatsoever, except gifts between
47 husband and wife or between parents and children:
48 *Provided*, That the husband or wife, or the parents or
49 children, previously have paid the tax on the vehicles
50 transferred to the State of West Virginia.

51 (3) The Division of Motor Vehicles may issue a
52 certificate of registration and title to an applicant if the
53 applicant provides sufficient proof to the Division of Motor
54 Vehicles that the applicant has paid the taxes and fees
55 required by this section to a motor vehicle dealership that
56 has gone out of business or has filed bankruptcy
57 proceedings in the United States bankruptcy court and the
58 taxes and fees so required to be paid by the applicant have
59 not been sent to the division by the motor vehicle dealership
60 or have been impounded due to the bankruptcy proceedings:
61 *Provided*, That the applicant makes an affidavit of the same
62 and assigns all rights to claims for money the applicant may
63 have against the motor vehicle dealership to the Division of
64 Motor Vehicles.

65 (4) The Division of Motor Vehicles shall issue a
66 certificate of registration and title to an applicant without
67 payment of the tax imposed by this section if the applicant
68 is a corporation, partnership or limited liability company
69 transferring the vehicle to another corporation, partnership
70 or limited liability company when the entities involved in
71 the transfer are members of the same controlled group and
72 the transferring entity has previously paid the tax on the
73 vehicle transferred. For the purposes of this section, control
74 means ownership, directly or indirectly, of stock or equity
75 interests possessing fifty percent or more of the total
76 combined voting power of all classes of the stock of a
77 corporation or equity interests of a partnership or limited

78 liability company entitled to vote or ownership, directly or
79 indirectly, of stock or equity interests possessing fifty
80 percent or more of the value of the corporation, partnership
81 or limited liability company.

82 (5) The tax imposed by this section does not apply to
83 vehicles to be registered as Class H vehicles or Class M
84 vehicles, as defined in section one, article ten of this chapter,
85 which are used or to be used in interstate commerce. Nor
86 does the tax imposed by this section apply to the titling of
87 Class B vehicles registered at a gross weight of fifty-five
88 thousand pounds or more, or to the titling of Class C
89 semitrailers, full trailers, pole trailers and converter gear:
90 *Provided*, That if an owner of a vehicle has previously titled
91 the vehicle at a declared gross weight of fifty-five thousand
92 pounds or more and the title was issued without the payment
93 of the tax imposed by this section, then before the owner
94 may obtain registration for the vehicle at a gross weight less
95 than fifty-five thousand pounds, the owner shall surrender
96 to the commissioner the exempted registration, the
97 exempted certificate of title and pay the tax imposed by this
98 section based upon the current market value of the vehicle:
99 *Provided, however*, That notwithstanding the provisions of
100 section nine, article fifteen, chapter eleven of this code, the
101 exemption from tax under this section for Class B vehicles
102 in excess of fifty-five thousand pounds and Class C
103 semitrailers, full trailers, pole trailers and converter gear
104 does not subject the sale or purchase of the vehicles to the
105 consumers sales and service tax.

106 (6) The tax imposed by this section does not apply to
107 titling of vehicles leased by residents of West Virginia. A
108 tax is imposed upon the monthly payments for the lease of
109 any motor vehicle leased by a resident of West Virginia,
110 which tax is equal to five percent of the amount of the
111 monthly payment, applied to each payment, and continuing
112 for the entire term of the initial lease period. The tax shall
113 be remitted to the Division of Motor Vehicles on a monthly
114 basis by the lessor of the vehicle.

115 (7) The tax imposed by this section does not apply to
116 titling of vehicles by a registered dealer of this state for
117 resale only, nor does the tax imposed by this section apply
118 to titling of vehicles by this state or any political subdivision
119 thereof, or by any volunteer fire department or duly
120 chartered rescue or ambulance squad organized and
121 incorporated under the laws of this state as a nonprofit
122 corporation for protection of life or property. The total
123 amount of revenue collected by reason of this tax shall be
124 paid into the State Road Fund and expended by the
125 Commissioner of Highways for matching federal funds
126 allocated for West Virginia. In addition to the tax, there is a
127 charge of \$10 for each original certificate of title or
128 duplicate certificate of title so issued: *Provided*, That this
129 state or any political subdivision of this state or any
130 volunteer fire department or duly chartered rescue squad is
131 exempt from payment of the charge. The Division of Motor
132 Vehicles may adjust the fee for each original certificate or
133 duplicate certificate of title every five years on September
134 1, based on the U. S. Department of Labor, Bureau of Labor
135 Statistics most current Consumer Price Index: *Provided*,
136 That an increase in the fee may not exceed ten percent of
137 the total fee amount in a single year.

138 (8) The certificate is good for the life of the vehicle, so
139 long as the vehicle is owned or held by the original holder
140 of the certificate and need not be renewed annually, or any
141 other time, except as provided in this section.

142 (9) If, by will or direct inheritance, a person becomes
143 the owner of a motor vehicle and the tax imposed by this
144 section previously has been paid to the Division of Motor
145 Vehicles on that vehicle, he or she is not required to pay the
146 tax.

147 (10) A person who has paid the tax imposed by this
148 section is not required to pay the tax a second time for the
149 same motor vehicle, but is required to pay a charge of \$10
150 for the certificate of retitling of that motor vehicle, except that
151 the tax shall be paid by the person when the title to the

152 vehicle has been transferred either in this or another state
153 from the person to another person and transferred back to
154 the person. The Division of Motor Vehicles may adjust the
155 fee for each original certificate of title every five years on
156 September 1, based on the U. S. Department of Labor,
157 Bureau of Labor Statistics most current Consumer Price
158 Index: *Provided*, That an increase in such fee may not
159 exceed ten percent of the total fee amount in a single year.

160 (11) The tax imposed by this section does not apply to
161 any passenger vehicle offered for rent in the normal course
162 of business by a daily passenger rental car business as
163 licensed under the provisions of article six-d of this chapter.
164 For purposes of this section, a daily passenger car means a
165 Class A motor vehicle having a gross weight of eight
166 thousand pounds or less and is registered in this state or any
167 other state. In lieu of the tax imposed by this section, there
168 is hereby imposed a tax of not less than \$1 nor more than
169 \$1.50 for each day or part of the rental period. The
170 commissioner shall propose an emergency rule in
171 accordance with the provisions of article three, chapter
172 twenty-nine-a of this code to establish this tax.

173 (12) The tax imposed by this article does not apply to
174 the titling of any vehicle purchased by a senior citizen
175 service organization which is exempt from the payment of
176 income taxes under the United States Internal Revenue
177 Code, Title 26 U. S. C. §501(c)(3) and which is recognized
178 to be a bona fide senior citizen service organization by the
179 Bureau of Senior Services existing under the provisions of
180 article five-p, chapter sixteen of this code.

181 (13) The tax imposed by this section does not apply to
182 the titling of any vehicle operated by an urban mass transit
183 authority as defined in article twenty-seven, chapter eight of
184 this code or a nonprofit entity exempt from federal and state
185 income tax under the Internal Revenue Code and whose
186 purpose is to provide mass transportation to the public at
187 large designed for the transportation of persons and being

188 operated for the transportation of persons in the public
189 interest.

190 (14) The tax imposed by this section does not apply to
191 the transfer of a title to a vehicle owned and titled in the
192 name of a resident of this state if the applicant:

193 (A) Was not a resident of this state at the time the
194 applicant purchased or otherwise acquired ownership of the
195 vehicle;

196 (B) Presents evidence as the commissioner may require
197 of having titled the vehicle in the applicant's previous state
198 of residence;

199 (C) Has relocated to this state and can present such
200 evidence as the commissioner may require to show bona-
201 fide residency in this state;

202 (D) Presents an affidavit, completed by the assessor of
203 the applicant's county of residence, establishing that the
204 vehicle has been properly reported and is on record in the
205 office of the assessor as personal property; and

206 (E) Makes application to the division for a title and
207 registration, and pays all other fees required by this chapter
208 within thirty days of establishing residency in this state as
209 prescribed in subsection (a), section one-a of this article:
210 *Provided*, That a period of amnesty of three months be
211 established by the commissioner during the calendar year
212 2007, during which time any resident of this state, having
213 titled his or her vehicle in a previous state of residence, may
214 pay without penalty any fees required by this chapter and
215 transfer the title of his or her vehicle in accordance with the
216 provisions of this section.

217 (c) Notwithstanding any provisions of this code to the
218 contrary, the owners of trailers, semitrailers, recreational
219 vehicles and other vehicles not subject to the certificate of
220 title tax prior to the enactment of this chapter are subject to
221 the privilege tax imposed by this section: *Provided*, That the

222 certification of title of any recreational vehicle owned by the
223 applicant on June 30, 1989, is not subject to the tax imposed
224 by this section: *Provided, however,* That mobile homes,
225 manufactured homes, modular homes and similar
226 nonmotive propelled vehicles, except recreational vehicles
227 and house trailers, susceptible of being moved upon the
228 highways but primarily designed for habitation and
229 occupancy, rather than for transporting persons or property,
230 or any vehicle operated on a nonprofit basis and used
231 exclusively for the transportation of intellectually disabled
232 or physically disabled children when the application for
233 certificate of registration for the vehicle is accompanied by
234 an affidavit stating that the vehicle will be operated on a
235 nonprofit basis and used exclusively for the transportation
236 of intellectually disabled and physically disabled children,
237 are not subject to the tax imposed by this section, but are
238 taxable under the provisions of articles fifteen and fifteen-
239 a, chapter eleven of this code.

240 (d) Beginning on July 1, 2008, the tax imposed under
241 this subsection (b) of this section is abolished and after that
242 date no certificate of title for any motor vehicle may be
243 issued to any applicant unless the applicant provides
244 sufficient proof to the Division of Motor Vehicles that the
245 applicant has paid the fees required by this article and the
246 tax imposed under section three-c, article fifteen, chapter
247 eleven of this code.

248 (e) Any person making any affidavit required under any
249 provision of this section who knowingly swears falsely, or
250 any person who counsels, advises, aids or abets another in
251 the commission of false swearing, or any person, while
252 acting as an agent of the Division of Motor Vehicles, issues
253 a vehicle registration without first collecting the fees and
254 taxes or fails to perform any other duty required by this
255 chapter or chapter eleven of this code to be performed
256 before a vehicle registration is issued is, on the first offense,
257 guilty of a misdemeanor and, upon conviction thereof, shall
258 be fined not more than \$500 or be confined in jail for a

259 period not to exceed six months or, in the discretion of the
260 court, both fined and confined. For a second or any
261 subsequent conviction within five years, that person is
262 guilty of a felony and, upon conviction thereof, shall be
263 fined not more than \$5,000 or be imprisoned in a state
264 correctional facility for not less than one year nor more than
265 five years or, in the discretion of the court, both fined and
266 imprisoned.

267 (f) Notwithstanding any other provisions of this section,
268 any person in the military stationed outside West Virginia
269 or his or her dependents who possess a motor vehicle with
270 valid registration are exempt from the provisions of this
271 article for a period of nine months from the date the person
272 returns to this state or the date his or her dependent returns
273 to this state, whichever is later.

274 (g) No person may transfer, purchase or sell a factory-
275 built home without a certificate of title issued by the
276 commissioner in accordance with the provisions of this
277 article:

278 (1) Any person who fails to provide a certificate of title
279 upon the transfer, purchase or sale of a factory-built home
280 is guilty of a misdemeanor and, upon conviction thereof,
281 shall for the first offense be fined not less than \$100 nor
282 more than \$1,000, or be confined in jail for not more than
283 one year, or both fined and confined. For each subsequent
284 offense, the fine may be increased to not more than \$2,000,
285 with confinement in jail not more than one year, or both
286 fined and confined.

287 (2) Failure of the seller to transfer a certificate of title
288 upon sale or transfer of the factory-built home gives rise to
289 a cause of action, upon prosecution thereof, and allows for
290 the recovery of damages, costs and reasonable attorney fees.

291 (3) This subsection does not apply to a mobile or
292 manufactured home for which a certificate of title has been
293 canceled pursuant to section twelve-b of this article.

294 (h) Notwithstanding any other provision to the contrary,
295 whenever reference is made to the application for or
296 issuance of any title or the recordation or release of any lien,
297 it includes the application, transmission, recordation,
298 transfer of ownership and storage of information in an
299 electronic format.

300 (i) Notwithstanding any other provision contained in
301 this section, nothing herein shall be considered to include
302 modular homes as defined in subsection (i), section two,
303 article fifteen, chapter thirty-seven of this code and built to
304 the state building code as established by legislative rules
305 promulgated by the State Fire Commission pursuant to
306 section five-b, article three, chapter twenty-nine of this
307 code.

308 (j) The provisions of this section enacted in 2017 take
309 effect on July 1, 2017.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

1 Whenever the owner of a registered vehicle transfers or
2 assigns his or her title, or interest thereto, the registration of
3 such vehicle shall expire: *Provided*, That such owner, if he
4 or she has made application to the department within sixty
5 days from the date of purchase to have said registration
6 plates transferred to be used on another vehicle owned by
7 said owner, may then operate the other vehicle for a period
8 of sixty days, but in no event longer than sixty days from
9 the date of original transfer. Upon such transfer, it shall be
10 the duty of the original owner to retain the registration plates
11 issued therefor and to immediately notify the commissioner
12 of such transfer upon such form as may be provided therefor
13 and to deliver to him or her the certificate of registration,
14 whereupon the commissioner shall, upon the payment of a
15 fee of \$10, issue a new certificate showing the use to be
16 made of such plates. The Division of Motor Vehicles may

17 adjust the fee for each new certificate every five years on
18 September 1, based on the U. S. Department of Labor,
19 Bureau of Labor Statistics most current Consumer Price
20 Index: *Provided*, That an increase in such fee may not
21 exceed ten percent of the total fee amount in a single year.
22 Such plates may then be used by such owner on another
23 vehicle of the same class as the vehicle for which they were
24 originally issued if such other vehicle does not require a
25 greater license fee than was required for such original
26 vehicle. If such other vehicle requires a greater license fee
27 than such original vehicle, then such plates may be used by
28 paying such difference to the commissioner. When such
29 transfer of ownership is made to a licensed dealer in motor
30 vehicles it shall be the duty of such dealer to immediately
31 execute notification of transfer, in triplicate, and to have this
32 notification properly signed by the owner making the
33 transfer. The dealer shall immediately forward to the
34 department the original copy of the notification of transfer.
35 One copy of the notification of transfer shall be given to the
36 owner and one shall be retained by the dealer. The owner
37 shall immediately send to the department the transfer fee of
38 \$10 with any additional fee that may be required under the
39 terms of this chapter. The owner's copy, properly signed by
40 the dealer, will be the owner's identification until he or she
41 receives a new registration card from the department.

42 The owner of a set of registration plates may surrender
43 them to the commissioner together with the registration card
44 and, upon the payment of \$10 as an exchange fee and upon
45 the payment of such additional fees as are necessary to
46 equalize the value of the plates surrendered with the value
47 of registration plates desired, receive in exchange a set of
48 plates and registration card for a vehicle of a different class.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 (a) In the event a motor vehicle is determined to be a
2 total loss or otherwise designated as totaled by an insurance
3 company or insurer, and upon payment of a total loss claim

4 to an insured or claimant owner for the purchase of the
5 vehicle, the insurance company or the insurer, as a condition
6 of the payment, shall require the owner to surrender the
7 certificate of title: *Provided*, That an insured or claimant
8 owner may choose to retain physical possession and
9 ownership of a total loss vehicle. If the vehicle owner
10 chooses to retain the vehicle and the vehicle has not been
11 determined to be a cosmetic total loss in accordance with
12 subsection (d) of this section, the insurance company or
13 insurer shall also require the owner to surrender the vehicle
14 registration certificate. The term “total loss” means a motor
15 vehicle which has sustained damages equivalent to seventy-
16 five percent or more of the market value as determined by a
17 nationally accepted used car value guide or meets the
18 definition of a flood-damaged vehicle as defined in this
19 section.

20 (b) The insurance company or insurer shall, prior to the
21 payment of the total loss claim, determine if the vehicle is
22 repairable, cosmetically damaged or nonrepairable. Except
23 as provided in subsection (p) of this section, within ten days
24 of payment of the total loss claim, the insurance company
25 or insurer shall surrender the certificate of title, a copy of
26 the claim settlement, a completed application on a form
27 prescribed by the commissioner and the registration
28 certificate if the owner has chosen to keep the vehicle to the
29 Division of Motor Vehicles.

30 (c) If the insurance company or insurer determines that
31 the vehicle is repairable, the division shall issue a salvage
32 certificate, on a form prescribed by the commissioner, in the
33 name of the insurance company, the insurer or the vehicle
34 owner if the owner has chosen to retain the vehicle. The
35 certificate shall contain, on the reverse, spaces for one
36 successive assignment before a new certificate at an
37 additional fee is required. Upon the sale of the vehicle, the
38 insurance company, insurer or vehicle owner if the owner
39 has chosen to retain the vehicle, shall complete the
40 assignment of ownership on the salvage certificate and

41 deliver it to the purchaser. The vehicle may not be titled or
42 registered for operation on the streets or highways of this
43 state unless there is compliance with subsection (h) of this
44 section. The division shall charge a fee of \$22.50 for each
45 salvage title issued. The Division of Motor Vehicles may
46 adjust the fee for each salvage title every five years on
47 September 1, based on the U. S. Department of Labor,
48 Bureau of Labor Statistics most current Consumer Price
49 Index: *Provided*, That an increase in such fee may not
50 exceed ten percent of the total fee amount in a single year.

51 (d) If the insurance company or insurer determines the
52 damage to a totaled vehicle is exclusively cosmetic and no
53 repair is necessary in order to legally and safely operate the
54 motor vehicle on the roads and highways of this state, the
55 insurance company or insurer shall, upon payment of the
56 claim, submit the certificate of title to the division. Neither
57 the insurance company nor the division may require the
58 vehicle owner to surrender the registration certificate in the
59 event of a cosmetic total loss settlement.

60 (1) The division shall, without further inspection, issue
61 a title branded “cosmetic total loss” to the insured or
62 claimant owner if the insured or claimant owner wishes to
63 retain possession of the vehicle, in lieu of a salvage
64 certificate. The division shall charge a fee of \$22.50 for each
65 cosmetic total loss title issued. The terms “cosmetically
66 damaged” and “cosmetic total loss” do not include any
67 vehicle which has been damaged by flood or fire. The
68 designation “cosmetic total loss” on a title may not be
69 removed. The Division of Motor Vehicles may adjust the
70 fee for each cosmetic total loss title every five years on
71 September 1, based on the U. S. Department of Labor,
72 Bureau of Labor Statistics most current Consumer Price
73 Index: *Provided*, That an increase in such fee may not
74 exceed ten percent of the total fee amount in a single year.

75 (2) If the insured or claimant owner elects not to take
76 possession of the vehicle and the insurance company or
77 insurer retains possession, the division shall issue a

78 cosmetic total loss salvage certificate to the insurance
79 company or insurer. The division shall charge a fee of
80 \$22.50 for each cosmetic total loss salvage certificate
81 issued. The Division of Motor Vehicles may adjust the fee
82 for each cosmetic total loss salvage certificate every five
83 years on September 1, based on the U. S. Department of
84 Labor, Bureau of Labor Statistics most current Consumer
85 Price Index: *Provided*, That an increase in such fee may not
86 exceed ten percent of the total fee amount in a single year.
87 The division shall, upon surrender of the cosmetic total loss
88 salvage certificate issued under the provisions of this
89 paragraph and payment of the five percent motor vehicle
90 sales tax on the fair market value of the vehicle as
91 determined by the commissioner, issue a title branded
92 “cosmetic total loss” without further inspection.

93 (e) If the insurance company or insurer determines that
94 the damage to a totaled vehicle renders it nonrepairable,
95 incapable of safe operation for use on roads and highways
96 and as having no resale value except as a source of parts or
97 scrap, the insurance company or vehicle owner shall, in the
98 manner prescribed by the commissioner, request that the
99 division issue a nonrepairable motor vehicle certificate in
100 lieu of a salvage certificate. The division shall issue a
101 nonrepairable motor vehicle certificate without charge.

102 (f) Any owner who scraps, compresses, dismantles or
103 destroys a vehicle without further transfer or sale for which
104 a certificate of title, nonrepairable motor vehicle certificate
105 or salvage certificate has been issued shall, within forty-five
106 days, surrender the certificate of title, nonrepairable motor
107 vehicle certificate or salvage certificate to the division for
108 cancellation.

109 (g) Any person who purchases or acquires a vehicle as
110 salvage or scrap, to be dismantled, compressed or
111 destroyed, shall, within forty-five days, surrender to the
112 division the certificate of title, nonrepairable motor vehicle
113 certificate, salvage certificate or a statement of cancellation
114 signed by the seller, on a form prescribed by the

115 commissioner. Subsequent purchasers of salvage or scrap
116 are not required to comply with the notification
117 requirement.

118 (h) If the motor vehicle is a “reconstructed vehicle” as
119 defined in this section or section one, article one of this
120 chapter, it may not be titled or registered for operation until
121 it has been inspected by an official state inspection station
122 and by the Division of Motor Vehicles. Following an
123 approved inspection, an application for a new certificate of
124 title may be submitted to the division. The applicant is
125 required to retain all receipts for component parts,
126 equipment and materials used in the reconstruction. The
127 salvage certificate shall also be surrendered to the division
128 before a certificate of title may be issued with the
129 appropriate brand.

130 (i) The owner or title holder of a motor vehicle titled in
131 this state which has previously been branded in this state or
132 another state as salvage, reconstructed, cosmetic total loss,
133 cosmetic total loss salvage, flood, fire, an equivalent term
134 under another state’s laws or a term consistent with the
135 intent of the National Motor Vehicle Title Information
136 System established pursuant to 49 U. S. C. §30502 shall,
137 upon becoming aware of the brand, apply for and receive a
138 title from the Division of Motor Vehicles on which the
139 brand “reconstructed”, “salvage”, “cosmetic total loss”,
140 “cosmetic total loss salvage”, “flood”, “fire” or other brand
141 is shown. The division shall charge a fee of \$10 for each
142 title so issued. The Division of Motor Vehicles may adjust
143 the fee for each reconstructed, salvage, cosmetic total loss,
144 cosmetic total loss salvage, flood, fire or other brand title
145 issued every five years on September 1, based on the U. S.
146 Department of Labor, Bureau of Labor Statistics most
147 current Consumer Price Index: *Provided*, That an increase
148 in such fee may not exceed ten percent of the total fee
149 amount in a single year.

150 (j) If application is made for title to a motor vehicle, the
151 title to which has previously been branded reconstructed,

152 salvage, cosmetic total loss, cosmetic total loss salvage,
153 flood, fire or other brand by the Division of Motor Vehicles
154 under this section and said application is accompanied by a
155 title from another state which does not carry the brand, the
156 division shall, before issuing the title, affix the brand
157 “reconstructed”, “cosmetic total loss”, “cosmetic total loss
158 salvage”, “flood”, “fire” or other brand to the title. The
159 motor vehicle sales tax paid on a motor vehicle titled as
160 reconstructed, cosmetic total loss, flood, fire or other brand
161 under the provisions of this section shall be based on fifty
162 percent of the fair market value of the vehicle as determined
163 by a nationally accepted used car value guide to be used by
164 the commissioner.

165 (k) The division shall charge a fee of \$22.50 for the
166 issuance of each salvage certificate or cosmetic total loss
167 salvage certificate but shall not require the payment of the
168 five percent motor vehicle sales tax. The Division of Motor
169 Vehicles may adjust the fee for each salvage certificate or
170 cosmetic total loss salvage certificate every five years on
171 September 1, based on the U. S. Department of Labor,
172 Bureau of Labor Statistics most current Consumer Price
173 Index: *Provided*, That an increase in such fee may not
174 exceed ten percent of the total fee amount in a single year.
175 However, upon application for a certificate of title for a
176 reconstructed, cosmetic total loss, flood or fire damaged
177 vehicle or other brand, the division shall collect the five
178 percent privilege tax on the fair market value of the vehicle
179 as determined by the commissioner unless the applicant is
180 otherwise exempt from the payment of such privilege tax.
181 A wrecker/dismantler/rebuilder, licensed by the division, is
182 exempt from the payment of the five percent privilege tax
183 upon titling a reconstructed vehicle. The division shall
184 collect a fee of \$35 per vehicle for inspections of
185 reconstructed vehicles. These fees shall be deposited in a
186 special fund created in the State Treasurer’s office and may
187 be expended by the division to carry out the provisions of
188 this article: *Provided*, That on and after July 1, 2007, any
189 balance in the special fund and all fees collected pursuant to

190 this section shall be deposited in the State Road Fund.
191 Licensed wreckers/dismantlers/rebuilders may charge a fee
192 not to exceed \$25 for all vehicles owned by private
193 rebuilders which are inspected at the place of business of a
194 wrecker/dismantler/rebuilder.

195 (l) As used in this section:

196 (1) "Reconstructed vehicle" means the vehicle was
197 totaled under the provisions of this section or by the
198 provisions of another state or jurisdiction and has been
199 rebuilt in accordance with the provisions of this section or
200 in accordance with the provisions of another state or
201 jurisdiction or meets the provisions of subsection (n),
202 section one, article one of this chapter.

203 (2) "Flood-damaged vehicle" means that the vehicle
204 was submerged in water to the extent that water entered the
205 passenger or trunk compartment.

206 (3) "Other brand" means a brand consistent with the
207 intent of the National Motor Vehicle Title Information
208 System established pursuant to 49 U. S. C. §30502 and rules
209 promulgated by the United States Department of Justice to
210 alert consumers, motor vehicle dealers or the insurance
211 industry of the history of a vehicle.

212 (m) Every vehicle owner shall comply with the branding
213 requirements for a totaled vehicle whether or not the owner
214 receives an insurance claim settlement for a totaled vehicle.

215 (n) A certificate of title issued by the division for a
216 reconstructed vehicle shall contain markings in bold print
217 on the face of the title that it is for a reconstructed, flood- or
218 fire- damaged vehicle.

219 (o) Any person who knowingly provides false or
220 fraudulent information to the division that is required by this
221 section in an application for a title, a cosmetic total loss title,
222 a reconstructed vehicle title or a salvage certificate or who
223 knowingly fails to disclose to the division information

224 required by this section to be included in the application or
225 who otherwise violates the provisions of this section is
226 guilty of a misdemeanor and, upon conviction thereof, shall
227 for each incident be fined not less than \$1,000 nor more than
228 \$2,500, or imprisoned in jail for not more than one year, or
229 both fined and imprisoned.

230 (p) Notwithstanding any other provision of law and with
231 respect to a vehicle which the vehicle owner has not chosen
232 to retain, if an insurance company or insurer is unable to
233 obtain the properly endorsed certificate of title for a motor
234 vehicle within thirty days of the payment of a total loss
235 claim, the insurance company or insurer, at any time
236 thereafter, may apply to the Division of Motor Vehicles for
237 a salvage certificate, a cosmetic total loss salvage certificate
238 or a nonrepairable motor vehicle certificate as applicable.
239 The application shall be accompanied by evidence that the
240 insurance company or insurer has paid a total loss claim on
241 the vehicle, a copy of a written request for the certificate of
242 title sent to the vehicle owner and any known lienholder by
243 the insurance company or insurer or a designee of the
244 insurance company or insurer, proof that the request was
245 sent by certified mail, return receipt requested, to the last
246 known address of the vehicle owner and any known
247 lienholder, service to be complete upon the mailing thereof,
248 and the required fee, if applicable. Upon receipt of a
249 properly completed application, the division shall issue a
250 salvage certificate, a cosmetic total loss salvage certificate
251 or a nonrepairable motor vehicle certificate, as applicable,
252 in the name of the insurance company or insurer. Such
253 salvage certificate, cosmetic total loss salvage certificate or
254 nonrepairable motor vehicle certificate shall be issued free
255 and clear of all liens and claims of ownership.

256 (q) If an insurance company or insurer requests that an
257 automobile auction take possession of a motor vehicle that
258 is the subject of an insurance claim, and subsequently the
259 insurance company denies coverage with respect to the
260 motor vehicle or otherwise does not take ownership of the

261 motor vehicle, the automobile auction may proceed as
262 follows. At any time after the automobile auction has had
263 possession of the motor vehicle for forty-five days, it may
264 apply to the division for a salvage certificate or a
265 nonrepairable motor vehicle certificate without
266 surrendering the certificate of title for the motor vehicle.
267 The application shall be accompanied by a copy of a written
268 request, on the automobile auction's letterhead, requesting
269 that, upon payment of applicable charges, the vehicle be
270 removed from the automobile auction's facility, proof that
271 the request was delivered by a nationally-recognized courier
272 service or by certified mail to the vehicle owner and any
273 known lienholder at least fifteen days before the date of the
274 application, and the required fee, if applicable. Upon
275 receipt of a properly completed application, the division
276 shall issue a salvage certificate or a nonrepairable motor
277 vehicle certificate, as applicable, in the name of the
278 automobile auction. Such salvage certificate or
279 nonrepairable motor vehicle certificate shall be issued free
280 and clear of all liens and claims of ownership.

281 (r) An applicant pursuant to subsection (p) or (q) of this
282 section shall indemnify and hold harmless the Division of
283 Motor Vehicles from any liability arising from an error or
284 misrepresentation made by such applicant in a submission
285 to the division pursuant to subsection (p) or (q) of this
286 section.

287 (s) The provisions of this article enacted in 2017 take
288 effect on July 1, 2017.

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES
TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE
TO CREDITORS AND PURCHASERS.**

§17A-4A-10. Fee for recording and release of lien.

1 The Division of Motor Vehicles is hereby authorized to
2 charge a fee of \$10 for the recording of any lien either in an
3 electronic or paper format created by the voluntary act of

4 the owner and endorsing it upon the title certificate issued
5 pursuant to this article. The Division of Motor Vehicles may
6 adjust the fee for each lien recording every five years on
7 September 1, based on the U. S. Department of Labor,
8 Bureau of Labor Statistics most current Consumer Price
9 Index: *Provided*, That an increase in such fee may not
10 exceed ten percent of the total fee amount in a single year.
11 The Division of Motor Vehicles is hereby authorized to
12 charge a fee of \$10 for recordation of any release of a lien
13 created by the voluntary act of the owner. The Division of
14 Motor Vehicles may adjust the fee for each recording of a
15 lien release every five years on September 1, based on the
16 U. S. Department of Labor, Bureau of Labor Statistics most
17 current Consumer Price Index: *Provided*, That an increase
18 in the fee may not exceed ten percent of the total fee amount
19 in a single year: *Provided, however*, That no charge shall be
20 made for the endorsement and recordation of liens or
21 releases thereof as provided under section nine of this
22 article. No charge shall be made for the issuance of a title to
23 the owner of a vehicle upon the receipt of an electronic
24 release of the final lien.

25 The provisions of this section enacted in 2017 take
26 effect on July 1, 2017.

ARTICLE 7. SPECIAL STICKERS.

§17A-7-2. Operation of motor vehicles by dealers or other persons under special stickers; application and fees; expiration.

1 (a) A member of the West Virginia State Police may at
2 any detachment office, upon application therefor on a form
3 prescribed by the commissioner, issue to a licensed dealer
4 or any other person other than those specified in section one
5 of this article, a paper sticker or decal to be affixed to the
6 left side of the rear window of a motor vehicle or to the left
7 rear of a vehicle which is not self-propelled. Such sticker or
8 decal shall be of a size to be designated by the commissioner

9 and shall be serially numbered and shall have provision
10 thereon to indicate the date of issuance thereof.

11 (b) A fee of \$10 per sticker shall be collected. The
12 Division of Motor Vehicles may adjust the fee for each
13 sticker every five years on September 1, based on the U. S.
14 Department of Labor, Bureau of Labor Statistics most
15 current Consumer Price Index: *Provided*, That an increase
16 in such fee may not exceed ten percent of the total fee
17 amount in a single year. The fees will be dispersed as
18 follows: Half shall be deposited in the State Road Fund and
19 half shall be deposited in the special revenue account within
20 the Division of Highways for the maintenance of the West
21 Virginia welcome centers and rest areas along interstate
22 highways in this state.

23 (c) Such sticker or decal shall be valid for forty-eight
24 hours after its issuance for the operation of a vehicle,
25 whether under its own power or while being towed, one time
26 only over the streets or highways, and upon being once
27 affixed to a vehicle shall become invalid for subsequent use
28 on that or any other vehicle.

29 (d) The provisions of this section enacted in 2017 take
30 effect on July 1, 2017.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

1 The following registration fees for the classes indicated
2 shall be paid to the division for the registration of vehicles
3 subject to registration under this chapter when equipped
4 with pneumatic tires:

5 (a) Registration fees for the following classes shall be
6 paid to the division annually:

7 (1) *Class A.* — The registration fee for motor vehicles
8 of this class is \$50. The Division of Motor Vehicles may
9 adjust this fee every five years on September 1, based on the
10 U. S. Department of Labor, Bureau of Labor Statistics most
11 current Consumer Price Index: *Provided*, That an increase
12 in such fee may not exceed ten percent of the total fee
13 amount in a single year: *Provided, however*, That the
14 registration fees and any other fees required by this chapter
15 for Class A vehicles under the optional biennial staggered
16 registration system shall be multiplied by two and paid
17 biennially to the division.

18 No license fee may be charged for vehicles owned by
19 churches, or by trustees for churches, which are regularly
20 used for transporting parishioners to and from church
21 services. Notwithstanding the exemption, the certificate of
22 registration and license plates shall be obtained the same as
23 other cards and plates under this article.

24 (2) *Class B.* — The registration fee for all motor
25 vehicles of this class is as follows:

26 (A) For declared gross weights of ten thousand one
27 pounds to sixteen thousand pounds — \$28 plus \$5 for each
28 one thousand pounds or fraction of one thousand pounds
29 that the gross weight of the vehicle or combination of
30 vehicles exceeds ten thousand pounds.

31 (B) For declared gross weights greater than sixteen
32 thousand pounds, but less than fifty-five thousand pounds
33 — \$78.50 plus \$10 for each one thousand or fraction of one
34 thousand pounds that the gross weight of the vehicle or
35 combination of vehicles exceeds sixteen thousand pounds.

36 (C) For declared gross weights of fifty-five thousand
37 pounds or more — \$737.50 plus \$15.75 for each one
38 thousand pounds or fraction of one thousand pounds that the
39 gross weight of the vehicle or combination of vehicles
40 exceeds fifty-five thousand pounds.

41 (3) *Class G.* — The registration fee for each motorcycle
42 or parking enforcement vehicle is \$8: *Provided,* That the
43 registration fee and any other fees required by this chapter
44 for Class G vehicles shall be for at least one year from the
45 date of registration and under an optional biennial
46 registration system the annual fee shall be multiplied by two
47 and paid biennially to the division.

48 (4) *Class H.* — The registration fee for all vehicles for
49 this class operating entirely within the state is \$5; and for
50 vehicles engaged in interstate transportation of persons, the
51 registration fee is the amount of the fees provided by this
52 section for Class B, reduced by the amount that the mileage
53 of the vehicles operated in states other than West Virginia
54 bears to the total mileage operated by the vehicles in all
55 states under a formula to be established by the Division of
56 Motor Vehicles.

57 (5) *Class J.* — The registration fee for all motor vehicles
58 of this class is \$85. Ambulances and hearses used
59 exclusively as ambulances and hearses are exempt from the
60 special fees set forth in this section.

61 (6) *Class M.* — The registration fee for all vehicles of
62 this class is \$17.50.

63 (7) *Class X.* — The registration fee for all motor
64 vehicles of this class is as follows:

65 (A) For farm trucks of declared gross weights of eight
66 thousand one pounds to sixteen thousand pounds — \$30.

67 (B) For farm trucks of declared gross weights of sixteen
68 thousand one pounds to twenty-two thousand pounds —
69 \$60.

70 (C) For farm trucks of declared gross weights of twenty-
71 two thousand one pounds to twenty-eight thousand pounds
72 — \$90.

73 (D) For farm trucks of declared gross weights of twenty-
74 eight thousand one pounds to thirty-four thousand pounds
75 — \$115.

76 (E) For farm trucks of declared gross weights of thirty-
77 four thousand one pounds to forty-four thousand pounds —
78 \$160.

79 (F) For farm trucks of declared gross weights of forty-
80 four thousand one pounds to fifty-four thousand pounds —
81 \$205.

82 (G) For farm trucks of declared gross weights of fifty-
83 four thousand one pounds to eighty thousand pounds —
84 \$250: *Provided*, That the provisions of subsection (a),
85 section eight, article one, chapter seventeen-e of this code
86 do not apply if the vehicle exceeds sixty-four thousand
87 pounds and is a truck tractor or road tractor.

88 (b) Registration fees for the following classes shall be
89 paid to the division for a maximum period of three years, or
90 portion of a year based on the number of years remaining in
91 the three-year period designated by the commissioner:

92 (1) *Class R.* — The annual registration fee for all
93 vehicles of this class is \$12.

94 (2) *Class T.* — The annual registration fee for all
95 vehicles of this class is \$8.

96 (c) The fees paid to the division for a multiyear
97 registration provided by this chapter shall be the same as the
98 annual registration fee established by this section and any
99 other fee required by this chapter multiplied by the number
100 of years for which the registration is issued.

101 (d) The registration fee for all Class C vehicles is \$50.
102 All Class C trailers shall be registered for the duration of the
103 owner's interest in the trailer and do not expire until either
104 sold or otherwise permanently removed from the service of
105 the owner: *Provided*, That a registrant may transfer a Class

106 C registration plate from a trailer owned less than thirty days
107 to another Class C trailer titled in the name of the registrant
108 upon payment of the transfer fee prescribed in section ten of
109 this article.

§17A-10-3c. Additional registration fees for alternative fuel vehicles.

1 (a) The annual registration fee for a vehicle fueled with
2 hydrogen or natural gas is \$200.

3 (b) The annual registration fee for a vehicle operating
4 on a combination of electricity and petrochemical fuels is
5 \$100.

6 (c) The annual registration fee for a vehicle operating
7 exclusively on electricity is \$200.

8 (d) The fees imposed by this section are in addition to
9 any other fee set forth in this article.

§17A-10-10. Fees upon transfer of registration and issuance of certificates of title.

1 A fee of \$10 shall be paid for a transfer of registration
2 by an owner from one vehicle to another vehicle of the same
3 class or for surrender of registration of one vehicle in
4 exchange for registration of a vehicle of a different class in
5 addition to the payment of any difference in fees as provided
6 in section one, article four of this chapter. The Division of
7 Motor Vehicles may adjust this fee every five years on
8 September 1, based on the U. S. Department of Labor,
9 Bureau of Labor Statistics most current Consumer Price
10 Index: *Provided*, That an increase in such fee may not
11 exceed ten percent of the total fee amount in a single year.

12 A fee of \$10 shall be paid for the transfer of registration
13 from a deceased person to his or her legal heir or legatee as
14 provided in section five, article four of this chapter. The
15 Division of Motor Vehicles may adjust this fee every five
16 years on September 1, based on the U. S. Department of

17 Labor, Bureau of Labor Statistics most current Consumer
18 Price Index: *Provided*, That an increase in such fee may not
19 exceed ten percent of the total fee amount in a single year.

20 A fee of \$10 shall be paid for the issuance of a certificate
21 of title. The Division of Motor Vehicles may adjust this fee
22 every five years on September 1, based on the U. S.
23 Department of Labor, Bureau of Labor Statistics most
24 current Consumer Price Index: *Provided*, That an increase
25 in such fee may not exceed ten percent of the total fee
26 amount in a single year.

**§17A-10-11. Fees for duplicate registration plates,
registration cards and certificates of title.**

1 A fee of \$10 shall be paid for the issuance of duplicate
2 or substitute registration plates, registration cards or
3 certificates of title. The Division of Motor Vehicles may
4 adjust this fee every five years on September 1, based on the
5 U. S. Department of Labor, Bureau of Labor Statistics most
6 current Consumer Price Index: *Provided*, That an increase
7 in such fee may not exceed ten percent of the total fee
8 amount in a single year. The provisions of this article
9 enacted in 2017 take effect on July 1, 2017.

**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
3 highway in this state or upon a subdivision street used by
4 the public generally unless the person has a valid driver's
5 license issued pursuant to this code for the type or class of
6 vehicle being driven.

7 (2) Any person licensed to operate a motor vehicle
8 pursuant to this code may exercise the privilege thereby
9 granted in the manner provided in this code and, except as
10 otherwise provided by law, is not required to obtain any
11 other license to exercise the privilege by a county,
12 municipality or local board or body having authority to
13 adopt local police regulations.

14 (b) The division, upon issuing a driver's license, shall
15 indicate on the license the type or general class or classes of
16 vehicles the licensee may operate in accordance with this
17 code, federal law or rule. Licenses shall be issued in
18 different colors for those drivers under age eighteen, those
19 drivers age eighteen to twenty-one and adult drivers. The
20 commissioner is authorized to select and assign colors to the
21 licenses of the various age groups.

22 (c) The following drivers' licenses classifications are
23 hereby established:

24 (1) A Class A, B or C license shall be issued to those
25 persons eighteen years of age or older with two years of
26 driving experience who have qualified for the commercial
27 driver's license established by chapter seventeen-e of this
28 code and the federal Motor Carrier Safety and Improvement
29 Act of 1999 and subsequent rules and have paid the required
30 fee.

31 (2) A Class D license shall be issued to those persons
32 eighteen years and older with one year of driving experience
33 who operate motor vehicles other than those types of
34 vehicles which require the operator to be licensed under the
35 provisions of chapter seventeen-e of this code and federal
36 law and rule and whose primary function or employment is
37 the transportation of persons or property for compensation
38 or wages and have paid the required fee. For the purpose of
39 regulating the operation of motor vehicles, wherever the
40 term "chauffeur's license" is used in this code, it means the
41 Class A, B, C or D license described in this section or
42 chapter seventeen-e of this code or federal law or rule:

43 *Provided*, That anyone not required to be licensed under the
44 provisions of chapter seventeen-e of this code and federal
45 law or rule and who operates a motor vehicle registered or
46 required to be registered as a Class A motor vehicle, as that
47 term is defined in section one, article ten, chapter seventeen-
48 a of this code, with a gross vehicle weight rating of less than
49 eight thousand one pounds, is not required to obtain a Class
50 D license.

51 (3) A Class E license shall be issued to persons who
52 have qualified for a driver's license under the provisions of
53 this chapter and who are not required to obtain a Class A,
54 B, C or D license and who have paid the required fee. The
55 Class E license may be endorsed under the provisions of
56 section seven-b of this article for motorcycle operation. The
57 Class E or G license for a person under the age of eighteen
58 may also be endorsed with the appropriate graduated driver
59 license level in accordance with the provisions of section
60 three-a of this article.

61 (4) A Class F license shall be issued to those persons
62 who successfully complete the motorcycle examination
63 procedure provided by this chapter and have paid the
64 required fee but who do not possess a Class A, B, C, D or E
65 driver's license.

66 (5) A Class G driver's license or instruction permit shall
67 be issued to a person using bioptic telescopic lenses who has
68 successfully completed an approved driver training program
69 and complied with all other requirements of article two-b of
70 this chapter.

71 (d) All licenses issued under this section may contain
72 information designating the licensee as a diabetic, organ
73 donor, as deaf or hard-of-hearing, as having any other
74 handicap or disability or that the licensee is an honorably
75 discharged veteran of any branch of the Armed Forces of
76 the United States, according to criteria established by the
77 division, if the licensee requests this information on the
78 license. An honorably discharged veteran may be issued a

79 replacement license without charge if the request is made
80 before the expiration date of the current license and the only
81 purpose for receiving the replacement license is to get the
82 veterans designation placed on the license.

83 (e) No person, except those hereinafter expressly
84 exempted, may drive a motorcycle on a street or highway in
85 this state or on a subdivision street used by the public
86 generally unless the person has a valid motorcycle license,
87 a valid license which has been endorsed under section
88 seven-b of this article for motorcycle operation or a valid
89 motorcycle instruction permit.

90 (f) (1) An identification card may be issued to a person
91 who:

92 (A) Is a resident of this state in accordance with the
93 provisions of section one-a, article three, chapter seventeen-
94 a of this code;

95 (B) Has reached the age of two years or, for good cause
96 shown, under the age of two.

97 (C) Has paid the required fee of \$5 per year. The
98 Division of Motor Vehicles may adjust this fee every five
99 years on September 1, based on the U. S. Department of
100 Labor, Bureau of Labor Statistics most current Consumer
101 Price Index: *Provided*, That an increase in such fee may not
102 exceed ten percent of the total fee amount in a single year:
103 *Provided, however*, That no fees or charges, including
104 renewal fees, are required if the applicant:

105 (i) Is sixty-five years or older;

106 (ii) Is legally blind; or

107 (iii) Will be at least eighteen years of age at the next
108 general, municipal or special election and intends to use this
109 identification card as a form of identification for voting; and

110 (D) Presents a birth certificate or other proof of age and
111 identity acceptable to the division with a completed
112 application on a form furnished by the division.

113 (2) The identification card shall contain the same
114 information as a driver's license except that the
115 identification card shall be clearly marked as an
116 identification card. The division may issue an identification
117 card with less information to persons under the age of
118 sixteen. An identification card may be renewed annually on
119 application and payment of the fee required by this section.

120 (A) Every identification card issued to a person who has
121 attained his or her twenty-first birthday expires on the
122 licensee's birthday in those years in which the licensee's
123 age is evenly divisible by five. Except as provided in
124 paragraph (B) of this subdivision, no identification card
125 may be issued for less than three years or for more than
126 seven years and expires on the licensee's birthday in those
127 years in which the licensee's age is evenly divisible by five.

128 (B) Every identification card issued to a person who has
129 not attained his or her twenty-first birthday expires thirty
130 days after the licensee's twenty-first birthday.

131 (C) Every identification card issued to persons under the
132 age of sixteen shall be issued for a period of two years and
133 expire on the last day of the month in which the applicant's
134 birthday occurs.

135 (3) The division may issue an identification card to an
136 applicant whose privilege to operate a motor vehicle has
137 been refused, canceled, suspended or revoked under the
138 provisions of this code.

139 (g) For any person over the age of fifty years who
140 wishes to obtain a driver's license or identification card
141 under the provisions of this section:

142 (1) A raised seal or stamp on the birth certificate or
143 certified copy of the birth certificate is not required if the
144 issuing jurisdiction does not require one; and

145 (2) If documents are lacking to prove all changes of
146 name in the history of any such applicant, applicants
147 renewing a driver's license or identification card under the
148 provisions of this section may complete a Name Variance
149 Approval Document as instituted by the division, so long as
150 they can provide:

151 (A) Proof of identity;

152 (B) Proof of residency; and

153 (C) A valid Social Security number.

154 (3) The division may waive any documents necessary to
155 prove a match between names, so long as the division
156 determines the person is not attempting to:

157 (A) Change his or her identity;

158 (B) Assume another person's identity; or

159 (C) Commit a fraud.

160 (h) A person over the age of seventy years, or who is on
161 Social Security disability, who wishes to obtain or renew a
162 driver's license or identification card under the provisions
163 of this section, may not be required to furnish a copy of a
164 birth certificate if they can provide:

165 (1) Proof of identity;

166 (2) Proof of residency;

167 (3) A valid Social Security number; and

168 (4) One of the following identifying items:

169 (A) A form of military identification, including a
170 DD214 or equivalent;

171 (B) A U. S. passport, whether valid or expired;

172 (C) School records, including a yearbook;

173 (D) A religious document, that in the judgment of the
174 Division is sufficient and authentic to reflect that the person
175 was born in the United States; or

176 (E) An expired driver's license, employment
177 identification card, or other reliable identification card with
178 a recognizable photograph of the person.

179 (i) Any person violating the provisions of this section is
180 guilty of a misdemeanor and, upon conviction, shall be
181 fined not more than \$500 and, upon a second or subsequent
182 conviction, shall be fined not more than \$500 or confined in
183 jail not more than six months, or both fined and confined.

§17B-2-3a. Graduated driver's license.

1 (a) Any person under the age of eighteen may not
2 operate a motor vehicle unless he or she has obtained a
3 graduated driver's license in accordance with the three-level
4 graduated driver's license system described in the following
5 provisions.

6 (b) Any person under the age of twenty-one, regardless
7 of class or level of licensure, who operates a motor vehicle
8 with any measurable alcohol in his or her system is subject
9 to the provisions of section two, article five, chapter
10 seventeen-c of this code and section two, article five-a of
11 said chapter. Any person under the age of eighteen,
12 regardless of class or licensure level, is subject to the
13 mandatory school attendance and satisfactory academic
14 progress provisions of section eleven, article eight, chapter
15 eighteen of this code.

16 (c) *Level one instruction permit.* — An applicant who is
17 fifteen years or older meeting all other requirements
18 prescribed in this code may be issued a level one instruction
19 permit.

20 (1) *Eligibility.* — The division shall not issue a level one
21 instruction permit unless the applicant:

22 (A) Presents a completed application, as prescribed by
23 the provisions of section six of this article, and which is
24 accompanied by a writing, duly acknowledged, consenting
25 to the issuance of the graduated driver's license and
26 executed by a parent or guardian entitled to custody of the
27 applicant;

28 (B) Presents a certified copy of a birth certificate issued
29 by a state or other governmental entity responsible for vital
30 records unexpired, or a valid passport issued by the United
31 States government evidencing that the applicant meets the
32 minimum age requirement and is of verifiable identity;

33 (C) Passes the vision and written knowledge
34 examination and completes the driving under the influence
35 awareness program, as prescribed in section seven of this
36 article;

37 (D) Presents a driver's eligibility certificate or
38 otherwise shows compliance with the provisions of section
39 eleven, article eight, chapter eighteen of this code; and

40 (E) Pays a fee of \$7.50, which shall permit the applicant
41 one attempt at the written knowledge test. The Division of
42 Motor Vehicles may adjust this fee every five years on
43 September 1, based on the U. S. Department of Labor,
44 Bureau of Labor Statistics most current Consumer Price
45 Index: *Provided*, That an increase in such fee may not
46 exceed ten percent of the total fee amount in a single year.

47 (2) Terms and conditions of instruction permit. — A
48 level one instruction permit issued under the provisions of
49 this section is valid until thirty days after the date the

50 applicant attains the age of eighteen and is not renewable.
51 However, any permit holder who allows his or her permit to
52 expire prior to successfully passing the road skills portion
53 of the driver examination, and who has not committed any
54 offense which requires the suspension, revocation or
55 cancellation of the instruction permit, may reapply for a new
56 instruction permit under the provisions of section six of this
57 article. The division shall immediately revoke the permit
58 upon receipt of a second conviction for a moving violation
59 of traffic regulations and laws of the road or violation of the
60 terms and conditions of a level one instruction permit,
61 which convictions have become final unless a greater
62 penalty is required by this section or any other provision of
63 this code. Any person whose instruction permit has been
64 revoked is disqualified from retesting for a period of ninety
65 days. However, after the expiration of ninety days, the
66 person may retest if otherwise eligible. In addition to all
67 other provisions of this code for which a driver's license
68 may be restricted, suspended, revoked or canceled, the
69 holder of a level one instruction permit may only operate a
70 motor vehicle under the following conditions:

71 (A) Under the direct supervision of a licensed driver,
72 twenty-one years of age or older, or a driver's education or
73 driving school instructor who is acting in an official
74 capacity as an instructor, who is fully alert and unimpaired,
75 and the only other occupant of the front seat. The vehicle
76 may be operated with no more than two additional
77 passengers, unless the passengers are family members;

78 (B) Between the hours of five a.m. and ten p.m.;

79 (C) All occupants must use safety belts in accordance
80 with the provisions of section forty-nine, article fifteen,
81 chapter seventeen-c of this code;

82 (D) Without any measurable blood alcohol content, in
83 accordance with the provisions of subsection (h), section
84 two, article five, chapter seventeen-c of this code; and

85 (E) Maintains current school enrollment and is making
86 satisfactory academic progress or otherwise shows
87 compliance with the provisions of section eleven, article
88 eight, chapter eighteen of this code.

89 (F) A holder of a level one instruction permit who is
90 under the age of eighteen years shall be prohibited from
91 using a wireless communication device while operating a
92 motor vehicle, unless the use of the wireless communication
93 device is for contacting a 9-1-1 system. A person violating
94 the provisions of this paragraph is guilty of a misdemeanor
95 and, upon conviction thereof, shall for the first offense be
96 fined \$25; for a second offense be fined \$50; and for a third
97 or subsequent offense be fined \$75.

98 (d) *Level two intermediate driver's license.* — An
99 applicant sixteen years of age or older, meeting all other
100 requirements of the code, may be issued a level two
101 intermediate driver's license.

102 (1) *Eligibility.* — The division shall not issue a level two
103 intermediate driver's license unless the applicant:

104 (A) Presents a completed application as prescribed in
105 section six of this article;

106 (B) Has held the level one instruction permit conviction-
107 free for the one hundred eighty days immediately preceding
108 the date of application for a level two intermediate license;

109 (C) Has completed either a driver's education course
110 approved by the state Department of Education or fifty
111 hours of behind-the-wheel driving experience, including a
112 minimum of ten hours of nighttime driving, certified by a
113 parent or legal guardian or other responsible adult over the
114 age of twenty-one as indicated on the form prescribed by
115 the division: *Provided*, That nothing in this paragraph shall
116 be construed to require any school or any county board of
117 education to provide any particular number of driver's

118 education courses or to provide driver's education training
119 to any student;

120 (D) Presents a driver's eligibility certificate or
121 otherwise shows compliance with the provisions of section
122 eleven, article eight, chapter eighteen of this code;

123 (E) Passes the road skills examination as prescribed by
124 section seven of this article; and

125 (F) Pays a fee of \$7.50 for one attempt. The Division of
126 Motor Vehicles may adjust this fee every five years on
127 September 1, based on the U. S. Department of Labor,
128 Bureau of Labor Statistics most current Consumer Price
129 Index: *Provided*, That an increase in such fee may not
130 exceed ten percent of the total fee amount in a single year.

131 (2) *Terms and conditions of a level two intermediate*
132 *driver's license.* — A level two intermediate driver's
133 license issued under the provisions of this section shall
134 expire thirty days after the applicant attains the age of
135 eighteen, or until the licensee qualifies for a level three full
136 Class E license, whichever comes first. In addition to all
137 other provisions of this code for which a driver's license
138 may be restricted, suspended, revoked or canceled, the
139 holder of a level two intermediate driver's license may only
140 operate a motor vehicle under the following conditions:

141 (A) Unsupervised between the hours of five a.m. and ten
142 p.m.;

143 (B) Only under the direct supervision of a licensed
144 driver, age twenty-one years or older, between the hours of
145 ten p.m. and five a.m. except when the licensee is going to
146 or returning from:

147 (i) Lawful employment;

148 (ii) A school-sanctioned activity;

149 (iii) A religious event; or

150 (iv) An emergency situation that requires the licensee to
151 operate a motor vehicle to prevent bodily injury or death of
152 another;

153 (C) All occupants shall use safety belts in accordance
154 with the provisions of section forty-nine, article fifteen,
155 chapter seventeen-c of this code;

156 (D) For the first six months after issuance of a level two
157 intermediate driver's license, the licensee may not operate a
158 motor vehicle carrying any passengers less than twenty
159 years old, unless these passengers are family members of
160 the licensee; for the second six months after issuance of a
161 level two intermediate driver's license, the licensee may not
162 operate a motor vehicle carrying more than one passenger
163 less than twenty years old, unless these passengers are
164 family members of the licensee;

165 (E) Without any measurable blood alcohol content in
166 accordance with the provisions of subsection (h), section
167 two, article five, chapter seventeen-c of this code;

168 (F) Maintains current school enrollment and is making
169 satisfactory academic progress or otherwise shows
170 compliance with the provisions of section eleven, article
171 eight, chapter eighteen of this code;

172 (G) A holder of a level two intermediate driver's license
173 who is under the age of eighteen years shall be prohibited
174 from using a wireless communication device while
175 operating a motor vehicle, unless the use of the wireless
176 communication device is for contacting a 9-1-1 system. A
177 person violating the provisions of this paragraph is guilty of
178 a misdemeanor and, upon conviction thereof, shall for the
179 first offense be fined \$25; for a second offense be fined \$50;
180 and for a third or subsequent offense be fined \$75.

181 (H) Upon the first conviction for a moving traffic
182 violation or a violation of paragraph (A), (B), (C), (D) or
183 (G), subdivision (1), subsection (d) of this section of the

184 terms and conditions of a level two intermediate driver's
185 license, the licensee shall enroll in an approved driver
186 improvement program unless a greater penalty is required
187 by this section or by any other provision of this code; and

188 At the discretion of the commissioner, completion of an
189 approved driver improvement program may be used to
190 negate the effect of a minor traffic violation as defined by
191 the commissioner against the one year conviction-free
192 driving criteria for early eligibility for a level three driver's
193 license and may also negate the effect of one minor traffic
194 violation for purposes of avoiding a second conviction
195 under paragraph (I) of this subdivision; and

196 (I) Upon the second conviction for a moving traffic
197 violation or a violation of the terms and conditions of the
198 level two intermediate driver's license, the licensee's
199 privilege to operate a motor vehicle shall be revoked or
200 suspended for the applicable statutory period or until the
201 licensee's eighteenth birthday, whichever is longer unless a
202 greater penalty is required by this section or any other
203 provision of this code. Any person whose driver's license
204 has been revoked as a level two intermediate driver, upon
205 reaching the age of eighteen years and if otherwise eligible
206 may reapply for an instruction permit, then a driver's license
207 in accordance with the provisions of sections five, six and
208 seven of this article.

209 (e) *Level three, full Class E license.* — The level three
210 license is valid until thirty days after the date the licensee
211 attains his or her twenty-first birthday. Unless otherwise
212 provided in this section or any other section of this code, the
213 holder of a level three full Class E license is subject to the
214 same terms and conditions as the holder of a regular Class
215 E driver's license.

216 A level two intermediate licensee whose privilege to
217 operate a motor vehicle has not been suspended, revoked or
218 otherwise canceled and who meets all other requirements of
219 the code may be issued a level three full Class E license

220 without further examination or road skills testing if the
221 licensee:

222 (1) Has reached the age of seventeen years; and

223 (A) Presents a completed application as prescribed by
224 the provisions of section six of this article;

225 (B) Has held the level two intermediate license
226 conviction free for the twelve-month period immediately
227 preceding the date of the application;

228 (C) Has completed any driver improvement program
229 required under paragraph (G), subdivision (2), subsection
230 (d) of this section; and

231 (D) Pays a fee of \$2.50 for each year the license is valid.
232 An additional fee of 50 cents shall be collected to be
233 deposited in the Combined Voter Registration and Driver's
234 Licensing Fund established in section twelve, article two,
235 chapter three of this code;

236 (E) Presents a driver's eligibility certificate or otherwise
237 shows compliance with the provisions of section eleven,
238 article eight, chapter eighteen of this code; or

239 (2) Reaches the age of eighteen years; and

240 (A) Presents a completed application as prescribed by
241 the provisions of section six of this article; and

242 (B) Pays a fee of \$5 for each year the license is valid.
243 The Division of Motor Vehicles may adjust this fee every
244 five years on September 1, based on the U. S. Department
245 of Labor, Bureau of Labor Statistics most current Consumer
246 Price Index: *Provided*, That an increase in such fee may not
247 exceed ten percent of the total fee amount in a single year.
248 An additional fee of \$.50 shall be collected to be deposited
249 in the Combined Voter Registration and Driver's Licensing
250 Fund established in section twelve, article two, chapter three
251 of this code.

252 (f) A person violating the provisions of the terms and
253 conditions of a level one or level two intermediate driver's
254 license is guilty of a misdemeanor and, upon conviction
255 thereof, shall for the first offense be fined \$25; for a second
256 offense be fined \$50; and for a third or subsequent offense
257 be fined \$75.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

1 (a) Any person who is at least fifteen years of age may
2 apply to the division for an instruction permit. However,
3 any person who has not attained the age of eighteen shall
4 comply with the provisions of section three-a of this article.
5 The division may, in its discretion, after the applicant has
6 successfully passed all parts of the examination other than
7 the road skills test, issue to the applicant an instruction
8 permit which entitles the applicant while having the permit
9 in his or her immediate possession to drive a motor vehicle
10 upon the public highways when accompanied by a licensed
11 driver of at least twenty-one years of age, a driver's
12 education or driving school instructor that is acting in an
13 official capacity as an instructor, who is alert and
14 unimpaired or a certified division license examiner acting in
15 an official capacity as an examiner, who is occupying a seat
16 beside the driver.

17 (1) Any instruction permit issued to a person under the
18 age of eighteen years shall be issued in accordance with the
19 provisions of section three-a of this article.

20 (2) Any permit issued to a person who has reached the
21 age of eighteen years is valid for a period of ninety days.
22 The fee for the instruction permit is \$7.50 for one attempt.
23 The Division of Motor Vehicles may adjust this fee every
24 five years on September 1, based on the U. S. Department
25 of Labor, Bureau of Labor Statistics most current Consumer
26 Price Index: *Provided*, That an increase in such fee may not
27 exceed ten percent of the total fee amount in a single year.

28 (b) Any person sixteen years of age or older may apply
29 to the division for a motorcycle instruction permit. Any
30 person under the age of eighteen must have first completed
31 the requirements for a level two intermediate driver's
32 license or a Class E driver's license before being eligible for
33 a motorcycle instruction permit.

34 The division may, in its discretion, after the applicant
35 has successfully passed all parts of the motorcycle
36 examination other than the driving test, and presented
37 documentation of compliance with the provisions of section
38 eleven, article eight, chapter eighteen of this code, if
39 applicable, issue to the applicant an instruction permit
40 which entitles the applicant while having the permit in his
41 or her immediate possession to drive a motorcycle upon the
42 public streets or highways for a period of ninety days,
43 during the daylight hours between sunrise and sunset only.
44 No holder of a motorcycle instruction permit shall operate a
45 motorcycle while carrying any passenger on the vehicle.

46 A motorcycle instruction permit is not renewable, but a
47 qualified applicant may apply for a new permit. The fee for
48 a motorcycle instruction permit is \$5, which shall be paid
49 into a special fund in the State Treasury known as the motor
50 vehicle fees fund.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

1 (a) Every application for an instruction permit or for a
2 driver's license shall be made upon a form furnished by the
3 division. Every application shall be accompanied by the
4 proper fee and payment of the fee entitles an applicant under
5 the age of eighteen to not more than two attempts at the
6 written test or not more than one attempt to pass the road
7 skills test. An applicant age eighteen years or older is
8 entitled to not more than two attempts at the written test or
9 not more than three attempts to pass the road skills test
10 within a period of ninety days from the date of issuance of
11 the instruction permit. An applicant who fails either the

12 written test or the road skills test may not be tested twice
13 within a period of one week.

14 (b) Any applicant who has not been previously licensed
15 must hold an instruction permit for a minimum of thirty
16 days. For the purposes of this section, the term “previously
17 licensed” means an applicant who has obtained at least a
18 level two graduated license or junior driver’s license issued
19 under the provisions of this article or has obtained an equal
20 or greater level of licensure if previously licensed in another
21 state.

22 (c) Every application for an instruction permit shall state
23 the full legal name, date of birth, sex, and residence address
24 of the applicant and briefly describe the applicant. the
25 application shall state whether the applicant has theretofore
26 been a licensed driver and, if so, when, and by what state or
27 country and whether his or her license has ever been
28 suspended or revoked within five years of the date of
29 application, or whether an application has ever been refused
30 and, if so, the date of and reason for the suspension,
31 revocation or refusal. The application will indicate whether
32 the applicant desires a notation on the driver’s license
33 indicating that the applicant is an organ donor, in
34 accordance with article one-b of this chapter, is diabetic,
35 deaf, or hard of hearing, has any other handicap or
36 disability, or is an honorably discharged veteran of any
37 branch of the Armed Forces of the United States, and such
38 other pertinent information as the commissioner may
39 require.

§17B-2-8. Issuance and contents of licenses; fees.

1 (a) The division shall, upon payment of the required fee,
2 issue to every applicant qualifying therefor a driver’s
3 license, which shall indicate the type or general class or
4 classes of vehicle or vehicles the licensee may operate in
5 accordance with this chapter or chapter seventeen-e of this
6 code, or motorcycle-only license. Each license shall contain
7 a coded number assigned to the licensee, the full legal name,

8 date of birth, residence address, a brief description and a
9 color photograph of the licensee and either a facsimile of
10 the signature of the licensee or a space upon which the
11 signature of the licensee is written with pen and ink
12 immediately upon receipt of the license. No license is valid
13 until it has been so signed by the licensee.

14 (b) A driver's license which is valid for operation of a
15 motorcycle shall contain a motorcycle endorsement. A
16 driver's license which is valid for the operation of a
17 commercial motor vehicle shall be issued in accordance
18 with chapter seventeen-e of this code.

19 (c) The division shall use such process or processes in
20 the issuance of licenses that will, insofar as possible,
21 prevent any identity theft, alteration, counterfeiting,
22 duplication, reproduction, forging or modification of, or the
23 superimposition of a photograph on, the license.

24 (d) The fee for the issuance of a Class E driver's license
25 is \$5 per year for each year the license is valid. The Division
26 of Motor Vehicles may adjust this fee every five years on
27 September 1, based on the U. S. Department of Labor,
28 Bureau of Labor Statistics most current Consumer Price
29 Index: *Provided*, That an increase in such fee may not
30 exceed ten percent of the total fee amount in a single year.
31 The fee for issuance of a Class D driver's license is \$6.25
32 per year for each year the license is valid. An additional fee
33 of 50 cents shall be collected from the applicant at the time
34 of original issuance or each renewal and the additional fee
35 shall be deposited in the Combined Voter Registration and
36 Driver's Licensing Fund established pursuant to the
37 provisions of section twelve, article two, chapter three of
38 this code. The additional fee for adding a motorcycle
39 endorsement to a driver's license is \$1 per year for each year
40 the license is issued.

41 (e) The fee for issuance of a motorcycle-only license is
42 \$2.50 for each year for which the motorcycle license is
43 valid. The fees for the motorcycle endorsement or

44 motorcycle-only license shall be paid into a special fund in
45 the State Treasury known as the Motorcycle Safety Fund as
46 established in section seven, article one-d of this chapter.

47 (f) The fee for the issuance of either the level one or
48 level two graduated driver's license as prescribed in section
49 three-a of this article is \$5.

50 (g) The fee for issuance of a federally compliant driver's
51 license or identification card for federal use is \$10 in
52 addition to any other fee required by this chapter. Any fees
53 collected under the provisions of this subsection shall be
54 deposited into the Motor Vehicle Fees Fund established in
55 accordance with section twenty-one, article two, chapter
56 seventeen-a of this code.

57 (h) The division may use an address on the face of the
58 license other than the applicant's address of residence if:

59 (1) The applicant has a physical address or location that
60 is not recognized by the post office for the purpose of
61 receiving mail;

62 (2) The applicant is enrolled in a state address
63 confidentiality program or the alcohol test and lock program;

64 (3) The applicant's address is entitled to be suppressed
65 under a state or federal law or suppressed by a court order; or

66 (4) At the discretion of the commissioner, the applicant's
67 address may be suppressed to provide security for classes of
68 applicants such as law-enforcement officials, protected
69 witnesses and members of the state and federal judicial
70 systems.

71 (i) Notwithstanding any provision in this article to the
72 contrary, a valid military identification card with an expiration
73 date issued by the United States Department of Defense for
74 active duty, reserve or retired military personnel containing a
75 digitized photo and the holder's full legal name may be used
76 to establish current full legal name and legal presence. The

77 commissioner may at his or her discretion expand the use of
78 military identification cards for other uses as permitted under
79 this code or federal rule.

§17B-2-11. Duplicate permits and licenses.

1 In the event that an instruction permit or driver's license
2 issued under the provisions of this chapter is lost or destroyed,
3 or if the information contained on the license has changed, the
4 person to whom the permit or license was issued may upon
5 making proper application and upon payment of a fee of \$7.50
6 obtain a duplicate thereof upon furnishing proof satisfactory to
7 the division that the permit or license has been lost or destroyed.
8 The Division of Motor Vehicles may adjust this fee every five
9 years on September 1, based on the U. S. Department of Labor,
10 Bureau of Labor Statistics most current Consumer Price Index:
11 *Provided*, That an increase in such fee may not exceed ten
12 percent of the total fee amount in a single year.

13 The provisions of this article enacted in 2017 take effect
14 on July 1, 2017.

**CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS
OF THE ROAD.**

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR
SUSPENSION AND REVOCATION OF LICENSES FOR
DRIVING UNDER THE INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES OR DRUGS.**

§17C-5A-2a. Assessment of costs; special account created.

1 The Division of Motor Vehicles is hereby authorized
2 and required to assess witness costs at the same rate as
3 witness fees in circuit court and a docket fee of \$15 for each
4 hearing request against any person filing a request for a
5 hearing under section two of this article who fails to appear,
6 fails to have said order rescinded or fails to have said order
7 modified to a lesser period of revocation. The Division of
8 Motor Vehicles may adjust this fee every five years on
9 September 1, based on the U. S. Department of Labor,
10 Bureau of Labor Statistics most current Consumer Price

11 Index: *Provided*, That an increase in such fee may not
12 exceed ten percent of the total fee amount in a single year.

13 All fees and costs collected hereunder shall be paid into a
14 special revenue account in the State Treasury: *Provided*, That
15 on and after July 1, 2007, any unexpended balance remaining
16 in the special revolving fund shall be transferred to the Motor
17 Vehicle Fees Fund created under the provisions of section
18 twenty-one, article two, chapter seventeen-a of this code and
19 all further fees and costs collected shall be deposited in that
20 fund. A portion of the funds in the Motor Vehicle Fees Fund
21 may be used to pay or reimburse the various law-enforcement
22 agencies at the same rate as witnesses in circuit court for the
23 travel and appearance of its officers before the commissioner
24 or authorized deputy or agent pursuant to a hearing request
25 under the provisions of this article. The department shall
26 authorize payment to the law-enforcement agencies from said
27 account as the fees for a particular hearing request are received
28 from the person against whom the costs were assessed. The
29 department shall authorize transfer to an appropriate agency
30 account from the Motor Vehicle Fees Fund to pay costs of
31 registered and certified mailings and other expenses associated
32 with the conduct of hearings under this article as the docket fee
33 for a particular hearing request is received from the person
34 against whom the costs were assessed.

35 In the event judicial review results in said order being
36 rescinded or modified to a lesser period of revocation the
37 costs assessed shall be discharged.

38 The provisions of this section enacted in 2017 take
39 effect on July 1, 2017.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2. ADMINISTRATION OF LAW.

§17D-2-2. Commissioner to furnish abstract of operating record; fee for abstract.

1 The commissioner shall upon request and subject to the
2 provisions of article two-a, chapter seventeen-a of this code,

3 furnish any person a certified abstract of the operating
4 record of any person subject to the provisions of this
5 chapter, and if there is no record of any conviction of the
6 person of a violation of any law relating to the operation of
7 a motor vehicle or of any injury or damage caused by the
8 person, the commissioner shall so certify. The
9 commissioner shall collect \$7.50 for each abstract. The
10 Division of Motor Vehicles may adjust this fee every five
11 years on September 1, based on the U. S. Department of
12 Labor, Bureau of Labor Statistics most current Consumer
13 Price Index: *Provided*, That an increase in such fee may not
14 exceed ten percent of the total fee amount in a single year.

15 The provisions of this section enacted in 2017 take
16 effect on July 1, 2017.

CHAPTER 7

**(S. B. 1010 - By Senators Carmichael (Mr. President)
and Prezioso)**

[By Request of the Executive]

[Passed May 24, 2017; in effect from passage.]
[Approved by the Governor on June 9, 2017.]

AN ACT to amend and reenact §33-3-33a of the Code of West Virginia, 1931, as amended, relating to the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; providing for the deposit of moneys into the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund until June 30, 2020; providing for the expiration of Volunteer Fire Department Workers' Compensation Subsidy Program and closure of the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund on June 30, 2020; and providing for the transfer of any remaining moneys in the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund upon closure of such fund.

Be it enacted by the Legislature of West Virginia:

That §33-3-33a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33a. Excess moneys of Fire Protection Fund deposited into Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; other funding; special report from State Fire Marshal by December 15, 2015; termination of program June 30, 2020.

1 (a) There is hereby established a special fund in the
2 State Treasury known as the Volunteer Fire Department
3 Workers' Compensation Premium Subsidy Fund. The fund
4 shall be administered by the State Auditor and shall consist
5 of moneys deposited in the fund pursuant to this section, any
6 other funds appropriated by the Legislature for volunteer
7 fire departments for the purposes of section fourteen-a,
8 article four, chapter twelve of this code, and the interest or
9 other earnings on the moneys in the fund. The State Auditor
10 shall administer the distribution of moneys of the fund to
11 volunteer fire departments to help defray workers'
12 compensation insurance premium increases pursuant to said
13 section. Balances in the fund at the end of any fiscal year
14 shall not expire, but shall be expended for those purposes in
15 ensuing fiscal years pursuant to appropriation of the
16 Legislature.

17 (b) Beginning July 1, 2013, and in each fiscal year
18 thereafter until June 30, 2020, the excess of the aggregate of
19 amounts collected by the commissioner that are otherwise
20 required under any provision of this code to be deposited
21 into the Fire Protection Fund over the aggregate of those
22 amounts deposited into the Fire Protection Fund during the
23 fiscal year ending June 30, 2013, shall be deposited into the
24 Volunteer Fire Department Workers' Compensation
25 Premium Subsidy Fund and expended solely for the

26 purposes established in section fourteen-a, article four,
27 chapter twelve of this code.

28 (c) On or before August 1, 2013, the commissioner shall
29 transfer \$4 million from the Fire Marshal Fees Fund created
30 under section twelve-b, article three, chapter twenty-nine of
31 this code to the Volunteer Fire Department Workers'
32 Compensation Premium Subsidy Fund to be expended
33 solely for the purposes established in section fourteen-a,
34 article four, chapter twelve of this code until June 30, 2020.

35 (d) The State Fire Marshal, in consultation with the
36 Insurance Commissioner, the State Auditor, the Secretary of
37 Revenue and the Legislative Auditor, shall conduct a review
38 of the needs of each volunteer or part volunteer fire
39 company or volunteer fire department serving in the various
40 counties of the state. On or before December 31, 2015, the
41 State Fire Marshal shall submit to the Joint Committee on
42 Government and Finance a comprehensive report of the
43 review and the State Fire Marshal's recommendations,
44 substantiated by the findings of the review, of steps that may
45 be taken to meet the needs of and sustain the volunteer and
46 part volunteer fire companies and volunteer fire
47 departments of this state, including, but not limited to, the
48 following:

49 (1) An assessment of all current funding received by the
50 volunteer fire companies and departments, and a further
51 assessment of the funding necessary to provide the
52 community protections required for the areas served by the
53 volunteer fire companies and departments, the extent to
54 which those needs are being met, the extent to which they
55 are not being met, and recommendations of sources of funds
56 to meet additional needs and the amounts needed, if any;

57 (2) An assessment of the cost of workers' compensation
58 coverage for the volunteer fire companies and departments
59 and recommendations for any actions that may be
60 undertaken by the volunteer fire companies and departments
61 and others to reduce those costs;

62 (3) An assessment of the causes of any decline in
63 recruitment and retention of volunteer firefighters and
64 recommendations for improvements in this area, including
65 any recommendations for incentives that have a
66 demonstrated record of significant increases in recruitment
67 and retention as well as recommendations of sources of
68 funds to provide those incentives, if funds are necessary;

69 (4) An assessment of the level of financial
70 accountability that should be required of volunteer fire
71 companies and departments in order to provide the
72 Legislature the information necessary to target future
73 funding for their activities based upon the safety and fire
74 protection needs of the various areas of the state;

75 (5) An assessment of the comparative levels of funding
76 for volunteer fire companies and departments provided by
77 counties, municipalities and other political subdivisions and
78 the means by which that funding is provided, including
79 identification of those which contribute little or no funding
80 to the volunteer fire companies and departments within their
81 jurisdictions, together with recommendations for increasing
82 those levels of contributions;

83 (6) An assessment of the comparative levels of funding
84 for volunteer fire companies and departments provided by
85 their own efforts, and the means by which that funding is
86 provided, including identification of those which provide
87 little or no funding through their own efforts, together with
88 recommendations for increasing these sources of funding;

89 (7) An assessment of the comparative economic and
90 other benefits provided by the various volunteer fire
91 companies and departments to their particular counties,
92 municipalities and other political subdivisions, as well as to
93 citizens of the local communities they serve;

94 (8) An assessment of the sustainability of the current
95 model of providing fire and other protections to the citizens
96 of rural communities through volunteer fire companies and

97 departments and an assessment of alternative models for
98 providing those protections; and

99 (9) Other assessments and recommendations which the
100 State Fire Marshal deems appropriate in the circumstances.

101 (e) Upon the conclusion of the fiscal year ending June
102 30, 2020, the provisions of this section and section fourteen-
103 a, article four, chapter twelve of this code shall expire and
104 be of no further force and effect and the Volunteer Fire
105 Department Workers' Compensation Premium Subsidy
106 Fund shall be closed. Upon closure of the fund, from any
107 balances therein remaining, the State Auditor shall first, to
108 the extent available, transfer to the Fire Protection Fund an
109 amount equal to the aggregate of funds deposited into the
110 Volunteer Fire Department Workers' Compensation
111 Premium Subsidy Fund during the fiscal years ending June
112 30, 2014, 2015, 2016, 2017, 2018, 2019 and 2020 pursuant
113 to subsection (b) of this section that would otherwise have
114 been required to be deposited into the Fire Protection Fund,
115 and any balances thereafter remaining in the Volunteer Fire
116 Department Workers' Compensation Premium Subsidy
117 Fund shall expire to the General Revenue Fund of the state.

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